



Digital.NSW ICT Purchasing Framework

ICT Agreement (ICTA)

between

**The Crown in right of the State of New South Wales
represented by NSW Police Force (ABN 43 408 613 180)**

and

insert full legal name of the Supplier.

(ABN insert ABN here).

insert name of project. **Project**

Agreement Reference No: insert number.

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ICT Agreement (ICTA)

Parties

The party identified at Item 1 of the Order Form (**Customer**)

The party identified at Item 4 of the Order Form (**Supplier**)

Background

- A. The New South Wales Government's Digital.NSW ICT Purchasing Framework (**ICT Purchasing Framework**) is a suite of template documents which sets out standard terms and conditions to be used by Eligible Customers for the procurement of ICT related goods and services.
- B. The Supplier acknowledges and agrees that the New South Wales Procurement Board has directed that Government Agencies must, subject to applicable New South Wales Procurement Board Directions, use the ICT Purchasing Framework for the procurement of ICT related goods and services.
- C. This Agreement forms part of the ICT Purchasing Framework and contains the terms and conditions on which the Supplier agrees to carry out the Supplier's Activities.
- D. The Supplier has represented to the Customer that it has the relevant skills and experience to provide the Supplier's Activities.
- E. The Customer has agreed to appoint the Supplier, on a non-exclusive basis, to carry out the Supplier's Activities, subject to the Supplier's ongoing compliance with the terms and conditions of this Agreement, and the Supplier has agreed to accept that appointment.

PART A: PRELIMINARIES

1. Definitions and Agreement documents

1.1 Defined terms and interpretation

In this Agreement the definitions and interpretation provisions set out in Schedule 1 apply.

1.2 Agreement documents

This Agreement comprises the following documents:

- (a) any Additional Conditions;
- (b) these Core Terms and Schedule 1;
- (c) the applicable Module Terms;
- (d) the Order Form and Payment Schedule (excluding any Additional Conditions or Supplier's Documents);
- (e) any other schedule, attachment or annexure to this Agreement (excluding any documents forming part of the Order Form);
- (f) any other document expressly incorporated into this Agreement as set out in the Order Form; and
- (g) any Supplier's Documents.

1.3 Order of precedence

In the event of any conflict or inconsistency between the documents set out in clause 1.2, the document listed higher in the list will prevail over the document listed lower in the list to the extent of such conflict or inconsistency, regardless of anything to the contrary in those documents.

1.4 Role of the Master ICT Agreement

Where this Agreement is made under a MICTA, the Supplier acknowledges that its MICTA with the Contract Authority constitutes a standing offer under which it offers to supply the deliverables, services and/or activities specified in the MICTA to Eligible Customers, including the Customer:

- (a) pursuant to the terms of the MICTA and this Agreement; and
- (b) at rates and prices which are the same as or less than those set out in the MICTA (and, upon the commencement of any Renewal Period, at rates and prices which are the same as or less than any reduced rates and prices then applying under the MICTA at the time of such renewal).

1.5 Supplier's Documents

- (a) The parties acknowledge that the intent of incorporating any Supplier's Documents into this Agreement, where so agreed, is to supplement and elaborate the detail and specifications of particular Services and Deliverables and not to amend or contradict the terms set out in any of the documents listed in clauses 1.2(a) to 1.2(f).
- (b) The Supplier represents that the Supplier's Documents:
 - (i) set out specific details regarding how the Customer may access, use and interact with particular Services or Deliverables; and
 - (ii) may describe other elements of the Services or Deliverables which the Supplier offers to provide to the Customer, such as technical and functional specifications, service characteristics and performance standards.
- (c) No Supplier's Documents will be incorporated into this Agreement except to the extent expressly specified in, and attached to, Annexure A of the Order Form.
- (d) Notwithstanding the incorporation of Supplier's Documents under clause 1.5(c), those Supplier's Documents do not apply to the extent that they:
 - (i) deal with the same or similar subject matter as a provision of the Core Terms, Module Terms or any Additional Conditions (for example, provisions in the Supplier's Documents that deal with limitations of liability will not apply, in whole, as the Core Terms also deal with this subject matter);
 - (ii) are inconsistent, or in conflict, with the Core Terms, Module Terms or any Additional Conditions;
 - (iii) alter, or seek to alter, the legal obligations of, or relationship between, the Customer and the Supplier, as set out in the Core Terms, Module Terms or any Additional Conditions;

- (iv) impose additional obligations or requirements on the Customer, beyond those set out in the Core Terms, Module Terms or any Additional Conditions; or
- (v) limit any rights or remedies of the Customer or relieve the Supplier from any of its obligations or responsibilities under the Core Terms, Module Terms or any Additional Conditions.
- (e) Where any of the Supplier's Documents purport to override or otherwise vary the Core Terms, Module Terms or any Additional Conditions those terms will have no legal effect.
- (f) Except to the extent expressly set out in the Module Terms, no subsequent changes, amendments or updates to the Supplier's Documents will have any effect other than where made pursuant to a written variation under clause 39.6.

2. Supplier's acknowledgments

- (a) The Supplier warrants, represents, acknowledges and agrees that it:
 - (i) has the expertise to carry out the Supplier's Activities;
 - (ii) has satisfied itself about, and has obtained all information necessary to enable it to understand, the Customer's requirements under this Agreement in so far as they relate to the Supplier's Activities;
 - (iii) has satisfied itself as to the availability and suitability of the Materials, labour and resources necessary to perform its obligations under this Agreement;
 - (iv) has satisfied itself of the nature and extent of the Supplier's Activities and its obligations under this Agreement;
 - (v) did not in any way rely on:
 - A. any information, data, representation, statement or document made by the Customer or its Personnel or provided to the Supplier by the Customer or its Personnel; or
 - B. the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,
 for the purposes of entering into this Agreement, except to the extent that any such information, data, representation, statement or document forms part of this Agreement;
 - (vi) entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations; and
 - (vii) is aware that the Customer has entered into this Agreement relying upon the warranties given by the Supplier under this Agreement, including in clauses 2(a)(i) to 2(a)(vi), 17.12, 33.2, 33.3 and in the Module Terms.
- (b) The Supplier further acknowledges and agrees that, where this Agreement is entered into under a MICTA, the Customer may appoint or delegate the enforcement of any of its rights from time to time under this Agreement to the Contract Authority.

3. Purchasing Services and/or Deliverables by Order

3.1 Order Form

The Supplier must provide all Services and/or Deliverables specified in the Order Form and carry out all other Supplier's Activities on the terms of this Agreement.

3.2 Electronic execution

Subject to applicable Laws, the parties may execute this Agreement and any document entered into under it, electronically (including through an electronic platform) and in one or more counterparts. Notwithstanding the manner in which a document under this Agreement is submitted or accepted, the terms of this Agreement will apply and any click-wrap, "pop-up" or other like terms and conditions of the Supplier appearing in the course of such submittal or acceptance will have no force or effect.

3.3 Additional Orders

- (a) This clause applies where it is specified in Item 10 of the Order Form that the Customer may place Additional Orders for Services and/or Deliverables within the scope of this Agreement.
- (b) If, at any time during the Term, the Customer wishes to increase the volume or quantum of Services and/or Deliverables, the Customer may, in its sole discretion, do so by submitting a written notice to the Supplier for those increased Services and/or Deliverables. The written notice will be in the form required by the Customer and will include information relating to the Additional Order, including the number of additional Services and/or Deliverables required.
- (c) Except to the extent agreed by the parties in writing, any increased Deliverables and/or Services will be supplied for the same rates and charges specified in the Payment Particulars.
- (d) The parties agree that each time the Customer submits an Additional Order to the Supplier:
 - (i) that Additional Order forms part of this Agreement, and will not constitute a separate contractual relationship between the parties; and
 - (ii) the Supplier must increase the supply of the Deliverables and/or Services in accordance with that Additional Order, subject to any reasonable qualifications specified in Item 10 of the Order Form.

3.4 No exclusivity or minimum commitment

The Supplier acknowledges and agrees that:

- (a) except to the extent expressly set out in the Payment Particulars, the Customer is under no obligation to acquire any minimum volumes of Services or Deliverables or to meet any minimum spend level under this Agreement; and
- (b) the Supplier is not an exclusive provider of the Supplier's Activities (nor activities which are the same as or similar to them) to the Customer, and the Customer is not, by executing this Agreement, restricted in any way from engaging any other person to provide activities which are the same as, or similar to, the Supplier's Activities.

3.5 Additional Conditions

The parties agree to comply with any Additional Conditions.

3.6 Reseller arrangements

Where specified in Item 12 of the Order Form, the parties agree that the Supplier may provide particular Services and/or Deliverables in the Supplier's capacity as a reseller and subject to any Additional Conditions relating to the reseller arrangement.

4. Relationship and governance

4.1 General

The parties must perform their respective roles and responsibilities as set out in the Order Documents.

4.2 Nature of relationship

Nothing in this Agreement creates or is intended to constitute a relationship between the parties of employer and employee, principal and agent, partnership or joint venturers, and neither party has authority to bind the other party. Neither party may hold itself out in any manner which is contrary to this clause 4.2.

4.3 Governance

- (a) Each party agrees to comply with any governance arrangements specified in the Order Documents, including any governance framework approved by the Customer pursuant to clause 4.3(b) (**Governance Framework**).
- (b) If specified in the Order Form, the Supplier must prepare and submit to the Customer for its approval a Governance Framework that contains the details specified in the Order Form. The Governance Framework must be submitted by the Supplier to the Customer's Representative by the time specified in the Order Form or such other time as reasonably required by the Customer's Representative.

5. Term

5.1 Initial Term

This Agreement begins on the Commencement Date and continues for the Initial Term, unless terminated earlier by agreement in writing between the parties or in accordance with the terms of this Agreement.

5.2 Renewal Period

- (a) Where a Renewal Period has been specified in Item 9 of the Order Form, the Customer may, in its sole discretion, extend the Term for a period not exceeding the relevant Renewal Period (up to, if any, the maximum number of renewals specified in that Item), by giving the Supplier a notice in writing at least 15 Business Days prior to the end of the then current Term (or such other notice period as may be specified in Item 9 of the Order Form).
- (b) Subject to clause 1.4(b), any Renewal Period exercised in accordance with clause 5.2(a) will be on the same terms and conditions of this Agreement as in effect at the end of the then current Term, unless the parties agree to amend this Agreement in accordance with clause 39.6.

PART B: SUPPLIER'S ACTIVITIES

6. Performance of the Supplier's Activities

6.1 General

The Supplier must carry out the Supplier's Activities in accordance with the timeframes, Specifications and requirements of this Agreement, including all requirements specified in the Order Documents.

6.2 Customer Supplied Items

- (a) Other than any CSI or any items expressly specified in the Order Documents or the Additional Conditions to be provided by an Other Supplier in connection with this Agreement, the Supplier must provide all necessary Materials and resources to carry out the Supplier's Activities in accordance with this Agreement.
- (b) The Supplier acknowledges and agrees that:
 - (i) unless the Customer agrees otherwise in writing, the Supplier will only receive access to the CSI specified in the Order Form;
 - (ii) the Supplier will obtain no title or interest to any CSI;
 - (iii) it is the Supplier's responsibility to inspect and assess any CSI before the Supplier or its Personnel use it to ensure the CSI is suitable and contains no defects; and
 - (iv) the Customer provides no warranty or representation about the suitability or fitness of any CSI for the Supplier's Activities or any other use (except to the extent the Order Form expressly contemplates CSI being put to a particular use or function in relation to this Agreement).
- (c) The following will not be a breach of this Agreement by the Customer, but in relation to Critical CSI, may entitle the Supplier to an extension of time if clause 6.8 applies:
 - (i) the Customer failing to supply the CSI at the times and in accordance with any requirements specified in this Agreement;
 - (ii) the Customer failing to maintain the CSI to any minimum standards specified in the Order Documents; or
 - (iii) any Other Supplier failing to supply items in accordance with any requirements specified in this Agreement.
- (d) The Supplier must:
 - (i) take all reasonable care of all CSI, including accounting for, preserving and handling all CSI in accordance with any requirements in the Order Form;
 - (ii) take reasonable steps to protect the CSI from any loss, destruction or damage;
 - (iii) not use any CSI other than:
 - A. for the purpose for which the CSI was designed and manufactured;

- B. for the purpose of carrying out the Supplier's Activities in accordance with this Agreement; and
- C. in accordance with any applicable third party terms and conditions relating to the use of, or dealing with, such CSI;
- (iv) not modify or adapt any CSI without the prior written consent of the Customer;
- (v) promptly inform the Customer's Representative of any loss, destruction or damage to any CSI and (to the extent known) its cause and comply with any directions of the Customer in relation to such CSI;
- (vi) not part with possession of any CSI unless the Customer has provided its prior written consent to do so, nor create or allow the creation of any lien, security interest or mortgage over any CSI; and
- (vii) if specified in the Order Form, pay the costs for the CSI as stated in the Order Form, and pay those costs in accordance with the timeframes for payment set out in the Order Form or otherwise agreed by the Customer.
- (e) Unless other arrangements have been agreed by the Customer in writing, the Supplier must, at its cost, return any CSI to the Customer (or otherwise deal with CSI as directed by the Customer's Representative in writing) once it is no longer required for the purposes of this Agreement.
- (f) The Supplier is liable to the Customer for any loss, destruction or damage to CSI to the extent that any such loss, destruction or damage is caused or contributed to by the Supplier or its Personnel or resulted from the failure of the Supplier to comply with its obligations under this clause 6.2.

6.3 ICT Accessibility

- (a) The Supplier acknowledges that the Customer is committed to:
 - (i) meeting Accessibility Standard AS EN 301 549 (**Accessibility Standard**); and
 - (ii) ensuring that the Services and Deliverables support access to information and communications technology for all Customer Users, regardless of disability.
- (b) Without limiting any other obligation under this Agreement, the Supplier must ensure that, to the extent reasonably practicable, all Services and Deliverables:
 - (i) are available to Customer Users on a non-discriminatory accessible basis and do not infringe anti-discrimination Laws; and
 - (ii) meet the Accessibility Standard and any other accessibility requirements to the extent specified in the Order Documents (unless otherwise required by the Order Form).

6.4 Co-operation with the Customer and Other Suppliers

- (a) Each party agrees to reasonably co-operate with the other party and its Personnel to promote the timely progress of the activities contemplated by this Agreement.
- (b) The Supplier acknowledges that the Customer may require the Supplier to co-operate and work collaboratively with any Other Suppliers in connection with the provision of the Supplier's Activities.

- (c) Where stated in the Order Documents or at the reasonable request of the Customer, the Supplier must:
 - (i) permit any Other Suppliers to carry out their work;
 - (ii) reasonably co-operate with any Other Suppliers;
 - (iii) carefully co-ordinate and interface the Supplier's Activities with the services and work being carried out by any Other Suppliers in a manner that:
 - A. is as efficient and non-disruptive as reasonably practicable;
 - B. integrates, where applicable, with the services, works and deliverables that the Supplier and any Other Suppliers will provide; and
 - C. minimises the need for the Customer to be involved in resolving service problems or managing the tasks that the Supplier and Other Suppliers perform;
 - (iv) carry out the Supplier's Activities in a manner that minimises disruption or delay to the work of Other Suppliers; and
 - (v) comply with any additional requirements with respect to Other Suppliers or interfacing arrangements as specified in the Order Documents.

6.5 Project management

- (a) The parties must perform their obligations in accordance with any initial project plan that is included in the Order Documents or such other project plan that is approved by the Customer pursuant to this clause 6.5 (**Project Plan**).
- (b) Where specified in the Order Form, the Supplier must prepare and submit to the Customer's Representative for the Customer's approval a Project Plan that contains the details specified in the Order Form or in an Order Document.
- (c) The Supplier must submit the Project Plan by the date specified in the Order Documents or, where no date is specified, within 20 Business Days following the Commencement Date.
- (d) The Supplier agrees to update the Project Plan at the times or intervals set out in the Order Documents or at such other times as reasonably required by the Customer, including to reflect any Change Requests.
- (e) For clarity, the Project Plan is a Document Deliverable. Clause 8 therefore applies to the Project Plan, including any updates to it.

6.6 Staged implementation

- (a) Where the Order Documents specify that the Supplier's Activities will be carried out in different Stages, the Supplier must:
 - (i) carry out each Stage in accordance with the requirements and staging so specified in the Order Documents; and
 - (ii) not commence work on a Stage until it receives written notice from the Customer to proceed with the work in that Stage. Unless otherwise agreed by the parties in writing, the execution of this Agreement by the

Supplier and the Customer is deemed to be sufficient notice to proceed with work on any first Stage described in the Order Documents.

- (b) Without limiting the Customer's rights under clause 6.6(c), at any time during the Term, the parties may:
 - (i) change the order of any Stages; or
 - (ii) vary the Supplier's Activities by removing one or more Stages from the scope of the Supplier's Activities,by following the Change Control Procedure under this Agreement.
- (c) The Customer may, at any time during the Term, and without having to comply with clause 6.6(b) and the Change Control Procedure, by written notice to the Supplier, remove from the scope of this Agreement any future Stages in respect of which approval to commence work has not been given by the Customer under clause 6.6(a)(ii).
- (d) The Customer will have no liability to the Supplier in respect of any Stage(s) that may be removed from the scope of the Supplier's Activities, except for those costs stated in Item 28 of the Order Form (if any) as being recoverable by the Supplier in such circumstance or as otherwise agreed by the parties in writing.
- (e) Nothing in this clause 6.6 will prevent the parties adopting a different project delivery methodology to that described in clause 6.6 (including involving agile, iterative and/or parallel development activities or other project methodology which is not Stage-based). Where an alternative project delivery methodology is specified in the Order Form, the Supplier must carry out the Supplier's Activities in accordance with the requirements for that alternative methodology as specified in the Order Form.

6.7 Delays

- (a) The Supplier must manage the Supplier's Activities, including to:
 - (i) anticipate and identify potential failures to meet a Date for Delivery, Key Milestone or other timeframe under this Agreement (**Delay**) (including, to the extent known or able to be reasonably anticipated, those Delays that may arise due to the Customer or an Other Supplier); and
 - (ii) take all necessary steps within its reasonable control to avoid or mitigate those potential Delays.
- (b) The parties must keep each other informed of anything that they become aware of which is likely to cause a Delay.

6.8 Extension of time

- (a) If a Delay occurs and that Delay was beyond the reasonable control of the Supplier, the Supplier may request an extension of time on the terms of this clause 6.8.
- (b) To request an extension of time under clause 6.8(a), the Supplier must within five Business Days of the commencement of the occurrence of the Delay, give the Customer's Representative written notice of the:
 - (i) particulars of the Delay and the occurrence causing the Delay; and
 - (ii) extension of time claimed in days, together with the basis for calculating that period.

- (c) The Customer will reasonably consider any Supplier request to extend a Date for Delivery or Key Milestone where the applicable Delay was beyond the reasonable control of the Supplier, could not have been reasonably mitigated or worked around, and the Supplier has given notice as required by clause 6.8(b). The Customer may reduce any extension of time to the extent that the Supplier or its Personnel contributed to the Delay or the Supplier failed to take steps necessary both to preclude the cause of the Delay and to avoid or minimise the consequences of the Delay. In all other circumstances, the Customer may grant, decline or impose conditions on the granting of such request in its sole discretion.
- (d) Where the Supplier requests an extension of time under clause 6.8(b) and that Delay has arisen because of:
- (i) the Customer's breach of this Agreement;
 - (ii) a failure to provide any Critical CSI; or
 - (iii) the acts or omissions of an Other Supplier,
- the Customer must grant an extension of time, of a duration reasonably determined by the Customer having regard to the extent to which the Delay was attributable to the relevant breach, failure, acts or omissions.
- (e) Whether or not the Supplier has made, or is entitled to make, a Claim for an extension of time under clause 6.8(a), the Customer may, in its sole discretion, at any time by written notice to the Supplier, unilaterally extend a Date for Delivery or Key Milestone by written notice to the Supplier. For clarity, no extension of time granted by the Customer will result in an increase or decrease to the Price, unless separately agreed pursuant to an agreed Change Request.
- (f) Notwithstanding clause 35.1, where:
- (i) any dispute or difference arises between the parties in relation to this clause 6.8 or its subject matter; and
 - (ii) a project management committee or other governance forum, which meets at least monthly, is provided for in the Order Documents,
- then the party claiming the dispute or difference has arisen must not issue a Dispute Notice pursuant to clause 35.1(b) in relation to that dispute or difference unless it has first raised and sought to resolve that dispute or difference in the next occurring meeting of that committee or forum, without resolution at such meeting.

6.9 Delay costs

- (a) To the extent a Delay arises which is attributable to the Customer's breach of this Agreement, a failure to provide any Critical CSI or the acts or omissions of an Other Supplier, the Supplier:
- (i) may advise the Customer of any proposed changes to the Price, the quantum of which must not exceed any additional, incremental cost and expense (calculated on a cost-only basis) directly attributable to:
 - A. undertaking and implementing any workarounds or remedial measures which are within the Supplier's control to implement or adopt, and which would minimise or lessen the impact of that Delay; and
 - B. any increase in the Supplier's Activities, or in the cost of the Supplier's Activities, as a result of that Delay,

(Additional Activities);

- (ii) must accompany any advice under clause 6.9(a)(i) with sufficient supporting evidence to substantiate the calculation of its proposed changes to the Price in accordance with the principles set out in that clause; and
- (iii) may prepare and submit to the Customer a Change Request Form, which complies with clause 10, in respect of the Additional Activities referred to in clause 6.9(a)(i).
- (b) The parties will comply with the Change Control Procedure in relation to the Change Request initiated by that Change Request Form, including any approval, rejection or request for further information. For clarity, however (and subject to clause 6.9(c)), the Supplier is not required to perform any of the Additional Activities unless the Change Request is approved by the Customer.
- (c) Nothing in clause 6.9(b) will prevent the parties reaching some other written agreement in relation to the Additional Activities, for example, the Supplier performing aspects of the Additional Activities on an urgent and/or interim time and materials basis, subject to the subsequent formalisation of a detailed Change Request.

6.10 Site

- (a) Where specified in Item 16 of the Order Form, the Supplier must carry out the Supplier's Activities at the locations or sites specified in that Item (**Site**).
- (b) Where physical delivery of any Deliverables to a Site is required, the Supplier must, at no additional cost to the Customer, deliver any Deliverables:
 - (i) to the delivery area at the Site specified in the Order Form; and
 - (ii) on the Date for Delivery and between the hours stated in the Order Form,

or as otherwise agreed in writing between the parties.
- (c) The Supplier warrants, represents and undertakes that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced supplier in assessing the risks which it is assuming under this Agreement in relation to carrying out the Supplier's Activities at the Site, including visiting and inspecting the Site and its surroundings and making its own assessment of the risks associated with the conditions at the Site and its surroundings.
- (d) Any failure of the Supplier to do any of the matters mentioned in clause 6.10(c) will not relieve the Supplier of its obligations to carry out the Supplier's Activities in accordance with this Agreement.
- (e) The Customer:
 - (i) is not obliged to:
 - A. provide the Supplier with sole access to the Site; or
 - B. carry out any work or provide any facilities or Materials to the Supplier (other than CSI or such other items specified in the Order Form) which may be necessary to enable the Supplier

to obtain adequate access to carry out the Supplier's Activities; and

- (ii) may engage Other Suppliers to work upon, or in the vicinity of, the Site at the same time as the Supplier.
- (f) In carrying out the Supplier's Activities, the Supplier must:
 - (i) minimise disruption or inconvenience to:
 - A. the Customer, occupiers, tenants and potential tenants of the Site in their occupation, use of or attendance upon any part of the Site; and
 - B. others having a right of access to the Site;
 - (ii) comply with all Policies, Codes and Standards of the Customer applicable to access to and attendance at the Site and any additional requirements specified in Item 16 of the Order Form;
 - (iii) at all reasonable times give the Customer's Representative, the Customer and any person authorised by the Customer access to the Supplier's Activities located at, or being carried out at, the Site (as applicable) or any location where the Supplier's Activities are being carried out; and
 - (iv) facilitate the Customer's supervision, examination or assessment of the Supplier's Activities at the Site or any location where the Supplier's Activities are being carried out.

7. Transition-In

7.1 Application

This clause 7 applies if specified in the Order Form that the Supplier is required to provide any Transition-In Services as part of any Stage or part of the Supplier's Activities.

7.2 Transition-In Plan

- (a) If the Order Form specifies that a Transition-In Plan must be prepared with respect to the Supplier's Activities, by the date specified in the Order Documents, the Supplier must prepare, and submit to the Customer's Representative for the Customer's approval, a plan setting out how the Supplier will carry out the Transition-In Services.
- (b) For clarity, the Transition-In Plan is a Document Deliverable. Clause 8 therefore applies to the Transition-In Plan, including any updates to it.

7.3 Transition-In Services

- (a) The Supplier must supply any Transition-In Services specified in the Order Documents or in any Transition-In Plan that is developed pursuant to clause 7.2.
- (b) The Transition-In Services must be provided by the Supplier for the period specified in the Order Documents. Where no period is specified in the Order Documents, the Transition-In Services must be provided in a prompt and timely manner that will ensure that the Supplier can meet the Dates for Delivery, Key Milestones and other timeframes under this Agreement.

8. Document Deliverables

8.1 General

- (a) The process in this clause 8.1 applies to all Deliverables that comprise written, printed, digital or electronic Materials on which there is writing or other text or symbols, including all Plans (**Documents**) and which are subject to the Customer's approval under this Agreement.
- (b) The Supplier must submit all Document Deliverables to the Customer for approval in accordance with this clause 8 and by the dates specified in this Agreement or the Order Documents.
- (c) Document Deliverables must be submitted to the Customer's Representative, unless otherwise directed by the Customer in writing.
- (d) The Document Deliverables must:
 - (i) be in English;
 - (ii) be fit for their intended purpose;
 - (iii) be free of Defects;
 - (iv) in relation to any User Documentation, be current, complete, accurate and sufficient to enable the Customer and its Personnel to make full and proper use of the applicable Services and/or Deliverables; and
 - (v) comply with any applicable Specifications and any other requirements in the Order Documents.
- (e) A Document Deliverable will not be deemed approved by the Customer until the Customer notifies the Supplier in writing that it approves the relevant Document Deliverable, except where clause 8.2(f) applies.

8.2 Review

- (a) The Customer may:
 - (i) review any Document Deliverable (including any resubmitted Document Deliverable) prepared and submitted by the Supplier; and
 - (ii) within 15 Business Days of the submission by the Supplier of such Document Deliverable or resubmitted Document Deliverable (or any alternative timeframe set out in the Order Documents or otherwise agreed between the parties in writing):
 - A. approve the Document Deliverable; or
 - B. reject the Document Deliverable if, in its reasonable opinion, the Document Deliverable does not comply with the Specifications and other requirements of this Agreement.
- (b) The Customer will accompany any rejection under clause 8.2(a)(ii)B with a description of why the relevant Document Deliverable does not comply with the Specifications and other requirements of this Agreement.
- (c) A Document Deliverable does not fail to comply with the Specifications and other requirements of this Agreement exclusively because of:

- (i) any opinion expressed in the Document Deliverable, provided that the opinion expressed is the professional opinion held by the Supplier;
 - (ii) the style, formatting or layout of the Document Deliverable, unless the style, formatting or layout is of a nature that it:
 - A. fails to meet the requirements in clause 8.1(d); or
 - B. affects the readability or useability of the Document Deliverable; or
 - (iii) semantics which do not impact the interpretation of the substantive matters conveyed in the Document Deliverable.
- (d) If the Customer gives the Supplier a notice rejecting a Document Deliverable under clause 8.2(a)(ii)B, the Supplier must, within five Business Days (or any alternative timeframe set out in the Order Documents or otherwise agreed between the parties in writing), prepare a revised version of the Document Deliverable which addresses all of the amendments and issues required by the Customer.
- (e) The parties must repeat the process in this clause 8.2 until the Customer approves each Document Deliverable in accordance with clause 8 or terminates this Agreement.
- (f) Where the period referred to in clause 8.2(a)(ii) elapses without the Customer approving or rejecting the Document Deliverable, the Supplier must submit to the Customer's Representative a written reminder notice identifying the Document Deliverable in respect of which it requires a decision by the Customer. If the Customer does not approve or reject the relevant Document Deliverable or otherwise communicate with the Supplier in relation to that reminder notice within 10 Business Days of its receipt, then the relevant Document Deliverable will be deemed to have been approved by the Customer.

8.3 No obligation

- (a) The Customer does not assume or owe any duty of care to the Supplier to review any Document or Document Deliverable for errors, omissions or compliance with this Agreement.
- (b) No review, acceptance or approval of, comments upon, rejection of, or failure to review or comment upon or reject, any Document or Document Deliverable provided by the Supplier to the Customer under this Agreement or any other direction by the Customer about that Document or Document Deliverable will:
 - (i) relieve the Supplier from, or alter or affect, the Supplier's liabilities or responsibilities whether under this Agreement or otherwise at Law; or
 - (ii) prejudice the Customer's rights against the Supplier whether under this Agreement or otherwise at Law.

8.4 User Documentation

- (a) The Supplier must, at its sole cost, provide the User Documentation to the Customer's Representative except where otherwise specified in the Order Form.
- (b) The User Documentation must be supplied in an electronic format and by the time specified in the Order Documents or, where no timeframe is specified, where reasonably required by the Customer.

- (c) Where it is specified in the Order Form that the Customer also requires any User Documentation in a hard copy format (or where otherwise requested by the Customer), the Supplier must provide the Customer's Representative with at least one copy of the User Documentation at no additional charge to the Customer.
- (d) The Supplier must ensure that any User Documentation that is supplied to the Customer's Representative:
 - (i) provides adequate instructions on how to enable the Customer and Customer Users to utilise the Services and Deliverables (as applicable) without reference to the Supplier; and
 - (ii) complies with the same requirements as specified in clause 8.1(d) in relation to Document Deliverables.
- (e) The Supplier must update the User Documentation as is needed for the Customer and Customer Users to be able to use the Services and Deliverables (as applicable) in an efficient and effective manner.

9. Defects

- (a) If, prior to the expiry of the Warranty Period, the Customer discovers or is informed that there is a Defect, the Customer may give the Supplier an instruction (with which the Supplier will comply) specifying the Defect and doing one or more of the following:
 - (i) requiring the Supplier to correct the Defect, or any part of it;
 - (ii) advising the Supplier that the Customer will accept the Deliverable or Service, or any part thereof, despite the Defect; or
 - (iii) advising the Supplier that the Customer will accept the Deliverable or Service, or any part thereof, despite the Defect, in exchange for a reasonable reduction in, or adjustment to, the cost of the Deliverables or Services which were impacted by the Defect,

and pursuing any other remedy it may have at Law or under this Agreement subject to compliance with the dispute resolution procedure in clause 35.
- (b) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect, the Supplier must notify the Customer in writing within one Business Day of identifying the Defect.
- (c) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect or an instruction is given under clause 9(a)(i), the Supplier must, at no cost to the Customer, correct the Defect:
 - (i) in accordance with all applicable Service Levels, or if no applicable Service Levels apply, within 15 Business Days after the date on which the non-compliance was notified to, or identified by, the Supplier (or such other timeframe as agreed between the parties in writing); and
 - (ii) in a manner which will cause as little inconvenience to the Customer and Customer Users as is reasonably possible.
- (d) The parties acknowledge that where the Defect relates to any Services, the Customer may request that the Supplier, and the Supplier must, supply the affected Services again.

- (e) If multiple Defects are identified, the Customer may request the Supplier to prioritise the rectification of such Defects, and the Supplier must comply with any such request. However, for clarity, any prioritisation must remain consistent with any applicable Service Levels.
- (f) Unless otherwise agreed between the parties in writing, the Warranty Period will be increased by a period of time equivalent to the time that the relevant Services and Deliverables were unavailable or their functionality materially decreased due to a Defect.
- (g) The Customer's rights under this Agreement and at Law will not be affected or limited by:
 - (i) the rights conferred upon the Customer by this clause;
 - (ii) the failure by the Customer or the Customer's Representative to exercise any such rights; or
 - (iii) any instruction of the Customer under this Agreement.
- (h) For clarity, the Warranty Period will not be deemed to exclude or restrict any guarantee that is provided at Law with respect to any Deliverable or Service.

10. Change Control Procedure

10.1 Change Requests

- (a) Either party may request a variation to the Supplier's Activities, including:
 - (i) varying the Specifications or the nature, quality or scope of the Deliverables and Services, the sequence or time in which they are performed or substituting alternative Materials (if applicable);
 - (ii) varying the order of any Stages or removing one or more Stages from the scope of the Supplier's Activities;
 - (iii) increasing, decreasing, omitting, deleting or removing any Deliverables and/or Services;
 - (iv) varying the CSI and/or any responsibilities or dependencies attributable to the Customer; and/or
 - (v) any change resulting in the Supplier providing services and/or deliverables that are materially different to the Services and Deliverables specified in the Order Form,

(Change Request).
- (b) Except to the extent expressly specified in the Module Terms, no Change Request is binding on either party or to be carried out by the Supplier until the Change Control Procedure specified in this clause 10 is followed.

10.2 Process for submitting and agreeing to Change Requests

- (a) Each Change Request must be submitted in a form substantially similar to the Change Request Form included at Schedule 5 (or such other form approved by the Customer) and containing the details specified in that Change Request Form or such other details as may be reasonably required by the Customer.

- (b) Where rates and charges for any Change Requests, and/or a pricing methodology, have been specified in the Payment Particulars, then the Prices in the relevant Change Request must not exceed those rates and charges and must be based on any applicable pricing methodology specified in the Payment Particulars. Where no rates, charges or methodology are specified, prices must be based on those costs and expenses reasonably and necessarily incurred by the Supplier to implement the relevant Change Request.
- (c) The party receiving the draft Change Request Form must notify the other party in writing as to whether it:
 - (i) approves or rejects the Change Request; or
 - (ii) requires further information in relation to any aspect of the Change Request.
- (d) The parties must respond to Change Requests and requests for information regarding Change Requests within seven Business Days of receiving the request or such other timeframe as reasonably agreed between the parties having regard to the nature and substance of the work required by the relevant request.
- (e) Each party will act reasonably in preparing, submitting, reviewing, considering and assessing Change Requests.
- (f) If a Change Request is approved, the:
 - (i) parties must promptly execute the relevant Change Request Form; and
 - (ii) Supplier must perform the Supplier's Activities in accordance with the executed Change Request Form.
- (g) No Change Request is binding on either party or to be carried out by the Supplier until the relevant Change Request Form is executed by both parties in accordance with this clause 10.

10.3 Electronic transactions

- (a) The parties may submit and execute Change Request Forms electronically (including through an electronic platform) and in one or more counterparts.
- (b) Unless otherwise directed by the Customer, either party may also submit Change Request Forms through its designated electronic ordering portal to which it may give the other party access from time to time.

10.4 Acknowledgements

The parties acknowledge and agree that:

- (a) the Change Control Procedure does not apply to changes to the Core Terms, the Module Terms or any Additional Conditions, which must be effected in accordance with the variation procedure specified in clause 39.6;
- (b) the Customer does not need to follow the Change Control Procedure with respect to:
 - (i) Additional Orders submitted in accordance with clause 3.3; or
 - (ii) the Customer's exercise of its unilateral right to:

- A. remove from the scope of this Agreement any future Stages pursuant to clause 6.6(c); or
 - B. reduce the scope of this Agreement pursuant to clause 29;
 - (c) the Customer is not obliged to pay the Supplier for implementing any Change Request unless the parties have complied with this clause 10;
 - (d) the Customer is under no obligation to place Change Requests;
 - (e) if any Change Request made pursuant to the Change Control Procedure omits or removes any part of the Supplier's Activities, the Customer may thereafter either provide those Supplier's Activities itself or employ or engage third parties to do so;
 - (f) the Customer may, in its sole discretion, agree or reject a Change Request;
 - (g) no Change Request will invalidate, or amount to a repudiation of, this Agreement; and
 - (h) each party must bear its own costs in preparing, submitting and negotiating any Change Request.
-

11. Personnel

11.1 Nominated Personnel

- (a) The Supplier must ensure that:
 - (i) each of its Nominated Personnel is made available to perform their role/responsibilities as set out in Item 18 of the Order Form; and
 - (ii) it immediately notifies the Customer's Representative if the Supplier becomes unable or unwilling to comply with this clause 11.1 or otherwise breaches this clause 11.1.
- (b) The Supplier must not remove or replace any of the Nominated Personnel unless the:
 - (i) Customer requests that the Nominated Personnel are replaced pursuant to clause 11.3(e); or
 - (ii) Nominated Personnel are no longer available to carry out the Supplier's Activities due to a substantial change in the relevant Nominated Personnel's personal circumstances (including compassionate leave, carers' leave or other extended leave, serious illness, injury, death, termination of employment by the Supplier or resignation).

11.2 Replacement of Nominated Personnel

If the Supplier is required to replace any Nominated Personnel in accordance with clauses 11.1(b) or 11.3(e), the Supplier must ensure that any replacement is:

- (a) approved by the Customer. The Customer must act reasonably in granting or withholding approval, or granting approval subject to conditions. If requested by the Customer, the Supplier must provide the Customer with such information as the Customer requires concerning any proposed replacement of any Nominated Personnel (including a resume and an opportunity to interview them); and

- (b) of equal or superior ability to, and has the required experience of, the original Nominated Personnel and meets the Personnel requirements specified in this Agreement.

11.3 Supplier's Personnel

- (a) The Supplier must ensure that all of its Personnel engaged or employed by the Supplier in carrying out the Supplier's Activities:
 - (i) are aware of, and comply with, the Supplier's obligations under this Agreement as if they were the Supplier;
 - (ii) prior to carrying out any part of the Supplier's Activities, are properly trained and qualified and have the requisite competencies, skills, qualifications and experience to:
 - A. perform the duties allocated to them; and
 - B. understand the Supplier's obligations under this Agreement, including with respect to privacy, security, confidentiality and safety; and
 - (iii) are provided with regular training to ensure that the Supplier's Personnel's skills and qualifications are maintained in accordance with all applicable Best Industry Practice.
- (b) On the Customer's request or as part of any audit conducted pursuant to clause 37.2, the Supplier must promptly provide the Customer or its nominee with evidence that the obligations under this clause 11.3 have been complied with (including with respect to the training of the Supplier's Personnel).
- (c) The Supplier must ensure that all of its Personnel, when on the Customer's premises or when accessing Customer Data or the Customer's systems, equipment or facilities, comply with the reasonable requirements and directions of the Customer (including with regard to the Customer's safety and security requirements).
- (d) The Supplier must ensure that its Personnel when entering any Site comply with any conditions of entry or other Site specific requirements as specified in the Order Documents or notified by the Customer to the Supplier from time to time.
- (e) The Customer may, acting reasonably and in its discretion, give notice in writing requiring the Supplier to remove any of its Personnel (including Nominated Personnel) from work in respect of this Agreement, together with its reasons for removal. The Supplier must promptly arrange for the removal of such Personnel and their replacement with Supplier Personnel reasonably acceptable to the Customer.
- (f) The Supplier must ensure that it (and where appropriate, its outgoing Personnel) effects a process that:
 - (i) minimises any adverse impact on, or delay in, the performance of the Supplier's Activities; and
 - (ii) effects a smooth transition between the outgoing and replacement Personnel, including by identifying and recording:
 - A. any processes and systems in place (or proposed) to manage the provision of the Supplier's Activities; and

- B. the detail of any outstanding issues in relation to the Supplier's Activities,

for which any of the outgoing Supplier's Personnel were responsible.

- (g) The process for transition to the replacement Personnel by the Supplier must be performed as expeditiously as possible with regard to the Supplier's Activities, the Dates for Delivery and other timeframes under this Agreement, and to the reasonable satisfaction of the Customer.
- (h) The Supplier will be solely responsible, at its sole cost, for compliance with clause 11.2, including finding and replacing Supplier's Personnel in accordance with clause 11.3(e).
- (i) The Supplier must properly manage its Personnel resourcing (including any planned absences) to maintain a sufficient level of Personnel engaged or employed in the provision of the Supplier's Activities (both in terms of quality and quantity of such Personnel) to ensure that all relevant roles are, and continue to be, adequately resourced and that the Supplier's Activities are provided in accordance with this Agreement.

11.4 Deed of Confidentiality and Privacy

- (a) If specified in Item 19 of the Order Form or at the request of the Customer's Representative, the Supplier's Personnel involved in the provision of the Supplier's Activities (or who may receive or have access to the Customer's Confidential Information or Personal Information in connection with this Agreement), must sign a deed in substantially the same form as the document in Schedule 6 or such other deed as required by the Customer (**Deed of Confidentiality and Privacy**).
- (b) Where the Customer requires an alternate Deed of Confidentiality and Privacy to that specified in Schedule 6, it must include obligations that are consistent with the privacy and confidentiality obligations under this Agreement.
- (c) Unless otherwise agreed by the Customer in writing, the Deed of Confidentiality and Privacy must be signed and returned to the Customer's Representative prior to the Supplier's Personnel commencing the Supplier's Activities or being provided with access to the Customer's Confidential Information or Personal Information.

11.5 Subcontracting

- (a) The Supplier must not subcontract any of its obligations under this Agreement unless specified in Item 20 of the Order Form (or otherwise pre-approved by the Customer in writing). Such approval may also be given in respect of classes or categories of subcontractor or types of subcontracted activities and made subject to any applicable conditions. The use of permitted subcontractors may be withheld or given on such conditions as specified in the Order Form or otherwise notified by the Customer to the Supplier in writing.
- (b) If the Customer consents to the engagement of any subcontractor on a conditional basis, then the Supplier must comply with those conditions when it engages that subcontractor.
- (c) A permitted subcontractor may not further subcontract the relevant obligations to another person without the Customer's prior written consent.
- (d) The Customer may, by written notice to the Supplier, revoke its consent to any permitted subcontractor if the Customer, acting reasonably, has concerns about that permitted subcontractor's or its personnel's:

- (i) performance of the Supplier's Activities; or
 - (ii) compliance with (or ability to comply with) the terms of this Agreement.
- (e) Where practicable to do so, the Customer must engage in reasonable advance consultation with the Supplier in relation to its concerns regarding a permitted subcontractor's (or its personnel's) performance or compliance, including whether those concerns may be otherwise addressed or remediated, before the Customer gives a notice of revocation under clause 11.5(d).
- (f) The Supplier is solely responsible for managing its supply chains and any risks in its supply chains, including ensuring any permitted subcontractor's compliance with clause 13.
- (g) Any subcontracting by the Supplier does not relieve the Supplier of any of its obligations under this Agreement.
- (h) The Supplier must ensure that each of its subcontractors comply with all of the terms of this Agreement to the extent that they are relevant to the subcontractor.
- (i) The Supplier is responsible for its subcontractors, and liable for their acts and omissions, as though they were the acts and omissions of the Supplier.
- (j) If specified in the Order Form or if required by the Customer as a condition of granting consent to the Supplier's use of any subcontractor, the Supplier must arrange for its subcontractors to enter into a subcontractor deed on terms consistent with, and no less onerous than, the parts of this Agreement applicable to the subcontractor's activities.
- (k) The Order Form may specify additional procurement policy requirements which the parties have agreed will apply to, or be prioritised in, any subcontracting arrangement by the Supplier, including the Policies, Codes and Standards. The parties agree to comply with any such requirements.

11.6 Background checks

- (a) The Supplier must:
 - (i) prior to involving any of its Personnel in carrying out the Supplier's Activities, undertake all necessary background checks of those Personnel to ensure that they are fit and proper to provide the Supplier's Activities; and
 - (ii) monitor and assess its Personnel throughout their involvement in the Supplier's Activities to ensure that they remain fit and proper to provide the Supplier's Activities.
- (b) Without limiting the generality of clause 11.6(a), if specified in Item 22 of the Order Form or where not so specified in that Item but reasonably required by the Customer, the Supplier must:
 - (i) carry out any specific background checks of its Personnel as specified in Item 22 of the Order Form or as requested by the Customer, including criminal record and "Working with Children" checks; and
 - (ii) provide the results of those checks to the Customer's Representative within the timeframe specified in Item 22 of the Order Form, or if no time is specified, within five Business Days of receipt (or within such other time as reasonably required by the Customer).

- (c) Where the outcome of a background check reveals that any of the Supplier's Personnel are not fit and proper to be involved in the provision of the Supplier's Activities, the Supplier must not use those Personnel with respect to such activities.
- (d) The Supplier acknowledges and agrees that:
 - (i) all background checks will be undertaken at the Supplier's sole cost, unless otherwise agreed by the Customer in writing;
 - (ii) the Customer may provide the results of any background checks to the Contract Authority or any other Government Agency; and
 - (iii) the Supplier is solely responsible for obtaining all necessary consents, in accordance with the Privacy Laws, in connection with the conduct of any background checks and the sharing and use of those background checks as contemplated under this clause 11.6.

11.7 Compliance with employment Laws

- (a) The Supplier undertakes to comply with all applicable employment Laws in relation to itself and its Personnel, including in relation to workers' compensation, payroll tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, leave entitlements and any other employment or related benefit or entitlement.
- (b) The Supplier acknowledges and agrees that:
 - (i) it is solely responsible for the obligations under clause 11.7(a); and
 - (ii) neither the Supplier, nor its Personnel have, pursuant to this Agreement, any entitlement from the Customer in relation to any form of employment or related benefit.

11.8 Non-solicitation

- (a) Neither party may, without the prior written consent of the other party, engage, employ, induce or cause a third party to induce the other party's Personnel engaged in the performance of this Agreement to enter into a contract for service or a contract of employment with it.
- (b) The restrictions in clause 11.8(a) will apply during the Term and for a period of six months after the end of the Term.
- (c) General solicitation for employment which is placed in good faith, such as on a jobs website or in a newspaper advertisement, will not constitute a breach of this clause 11.8.
- (d) The parties agree that the restrictions in this clause 11.8 are necessary to protect the legitimate interests of each party.

12. Compliance

12.1 Compliance with Laws and directions

While carrying out the Supplier's Activities, the Supplier must:

- (a) acquire and maintain all Authorisations necessary for the performance of the Supplier's Activities;

- (b) ensure that the Supplier's Activities comply with all applicable Laws (including all applicable Australian Laws, even if the Supplier is not domiciled in Australia); and
- (c) comply with any reasonable directions made by the Customer in relation to the Supplier's Activities.

12.2 Policies, Codes and Standards

- (a) Without limiting the generality of clause 12.1, the Supplier must, in performing its obligations under this Agreement, comply with all Policies, Codes and Standards.
- (b) Where it is specified in Item 17 of the Order Form that this clause 12.2(b) applies, the Supplier:
 - (i) must comply with the Aboriginal Participation Plan and all relevant Aboriginal participation and reporting requirements under the Aboriginal Procurement Policy and clause 37.1(b)(ii);
 - (ii) acknowledges and agrees that Training Services NSW has established the Aboriginal participation fund to receive payments when the Supplier does not meet contracted Aboriginal participation requirements; and
 - (iii) acknowledges and agrees that where the Supplier does not meet its Aboriginal participation requirements under this Agreement, the Agency may, in accordance with the Aboriginal Procurement Policy, withhold payments due to the Supplier pursuant to this Agreement and direct the funds to an account held by Training Services NSW.

12.3 Policy Changes

- (a) If there is:
 - (i) any change to any of the Policies, Codes and Standards specified in this Agreement (including with respect to any security requirements); or
 - (ii) the introduction of any new Policies, Code and Standards in addition to those specified in this Agreement,with which the Customer requires the Supplier to comply (**Policy Change**), then (without limiting any other express rights of the Customer or obligations of the Supplier under this Agreement) where:
 - (iii) the Supplier's compliance with that Policy Change can, with the Supplier's best efforts, be achieved without the incurrence of material additional cost and expense to the Supplier; or
 - (iv) irrespective of the cost of complying with the Policy Change, the Supplier's compliance with its obligations under clause 12.1 would involve the Supplier complying with that Policy Change in any event,then the Supplier must comply with the Policy Change at no additional cost to the Customer.
- (b) If neither clauses 12.3(a)(iii) nor 12.3(a)(iv) apply and the Supplier cannot comply with a Policy Change without incurring material additional cost and expense, then:
 - (i) the Supplier must promptly notify the Customer in writing of the additional, incremental cost and expense (calculated on a cost-only and zero-margin basis) that would be directly attributable to its compliance with the Policy Change, accompanied with evidence to substantiate the

additional, incremental costs and expenses (including information as to how those costs and expenses have been calculated); and

- (ii) following receipt of such notification, the Customer may:
 - A. approve the incurrence of the costs and expenses notified to it under clause 12.3(b)(i), in which case the Supplier must comply with the relevant Policy Change and, subject to so complying, will be entitled to invoice the Customer for such costs and expenses;
 - B. reject the incurrence of the costs and expenses notified to it under clause 12.3(b)(i), in which case, the Supplier will not be required to incur those costs or to comply with the Policy Change; or
 - C. require the Supplier to, in which case the Supplier must, participate in reasonable good faith discussions with the Customer in relation to an alternative approach to managing the Policy Change.

12.4 Work health and safety

Without limiting the Supplier's obligations under any other provision of this Agreement, the Supplier must:

- (a) comply, and must ensure that its Personnel comply, with the WHS Legislation (including any obligation under the WHS Legislation to consult, co-operate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);
- (b) if requested by the Customer's Representative or required by the WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
- (c) notify the Customer's Representative promptly (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Supplier's Activities;
- (d) insofar as the Supplier, in carrying out the Supplier's Activities, is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty;
- (e) ensure that it does not do anything or fail to do anything that would cause the Customer to be in breach of the WHS Legislation; and
- (f) comply with any additional work health and safety requirements specified in the Order Form or as otherwise reasonably required by the Customer from time to time.

12.5 Work health and safety where Supplier's Activities include construction work

- (a) This clause applies where construction work forms part of the Supplier's Activities.
- (b) In this clause 12.5, the terms "**construction work**", "**principal contractor**" and "**workplace**" have the same meanings assigned to those terms under the WHS Legislation.
- (c) Where the Customer engages the Supplier as the principal contractor:

- (i) the Customer authorises the Supplier to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;
- (ii) the Supplier accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
- (iii) the Supplier's engagement and authorisation as principal contractor will continue until:
 - A. the Supplier delivers the Supplier's Activities in accordance with this Agreement;
 - B. the Supplier achieves Acceptance in respect of each Deliverable subject to Acceptance Testing under this Agreement; and
 - C. any rectification work that is "construction work" that is carried out during the Warranty Period is completed,

unless sooner revoked by the Customer, including by terminating this Agreement at Law or pursuant to this Agreement.

12.6 The environment

Where applicable to the performance of the Supplier's Activities, the Supplier must:

- (a) provide all Supplier's Activities in a manner that does not cause or threaten to cause pollution, contamination or environmental harm to, on or outside a Site or other location;
- (b) ensure that it and its Personnel comply with all applicable environmental Laws and Policies, Codes and Standards; and
- (c) follow New South Wales Government policies and guidelines concerning the safe disposal of any hazardous substances.

12.7 Conflicts of Interest

- (a) The Supplier must:
 - (i) promptly notify the Customer in writing if a Conflict of Interest arises or is likely to arise during its performance of the Supplier's Activities; and
 - (ii) take all necessary action as may be reasonably required by the Customer to avoid or minimise such a Conflict of Interest.
- (b) If such a Conflict of Interest, in the Customer's view, significantly affects the interests of the Customer, and the Supplier is unable to resolve the Conflict of Interest to the satisfaction of the Customer within 14 days of receipt of a notice from the Customer, then the Customer will be entitled to terminate this Agreement under clause 29.1(d).

13. Modern Slavery

13.1 Compliance

The Supplier represents, warrants and undertakes that, as at the date of its execution of this Agreement, neither the Supplier, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery offence under the Modern Slavery Laws.

13.2 Information

- (a) For the purpose of this clause, "**Information**" may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes Personal Information.
- (b) The Supplier must:
 - (i) subject to any restrictions under any applicable Laws by which it is bound, provide to the Customer any Information and other assistance, as reasonably requested by the Customer, to enable the Customer to meet any of its obligations under the Modern Slavery Laws and associated regulatory requirements (for example, any applicable annual reporting requirements and New South Wales Procurement Board Directions), including co-operating in any Modern Slavery audit undertaken by the Customer or the NSW Audit Office and providing reasonable access to the Customer's and/or Audit Office's auditors to interview the Supplier's Personnel; and
 - (ii) notify the Customer in writing as soon as it becomes aware of either or both of the following:
 - A. a material change to any of the Information it has provided to the Customer in relation to Modern Slavery; and
 - B. any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- (c) The Supplier may provide any Information or report requested by the Customer in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer the Customer to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Customer.
- (d) The Supplier must, during the Term and for a period of seven years thereafter:
 - (i) maintain; and
 - (ii) upon the Customer's reasonable request, give the Customer access to, and/or copies of,

records in the possession or control of the Supplier to trace, so far as practicable, the supply chains of all Services and Deliverables provided under this Agreement and to enable the Customer to assess the Supplier's compliance with this clause 13.

13.3 Modern Slavery due diligence

The Supplier must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Supplier and any entity that it owns or controls.

13.4 Subcontractors

In respect of any subcontracts that relate to the Supplier's Activities, or the whole or any part of this Agreement (and without limiting the Supplier's obligations under any Modern Slavery Laws), the Supplier must take reasonable steps to ensure that those subcontracts contain:

- (a) in relation to subcontracts that relate exclusively to the Customer, provisions in relation to Modern Slavery that are substantially the same provisions as this clause 13; and
- (b) in all other cases, Modern Slavery provisions that are reasonably consistent with the provisions in this clause 13.

13.5 Response to Modern Slavery Incident

- (a) If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Supplier and any relevant policies, codes and standards (including any code of practice or conduct) or other guidance issued by any relevant Authority or (if the Customer notifies the Supplier that it requires the Supplier to comply with any relevant New South Wales Procurement Board Code/guidance) by the New South Wales Procurement Board.
- (b) Any action taken by the Supplier under clause 13.5(a) will not affect any rights of the Customer under this Agreement, including its rights under clause 13.6.

13.6 Termination

In addition to any other rights or remedies under this Agreement or at Law, the Customer may terminate this Agreement, upon written notice and with immediate effect if, in the Customer's reasonable view, the Supplier has:

- (a) failed to notify the Customer as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
- (b) failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or
- (c) otherwise committed a substantial breach or multiple minor (non-trivial) breaches of its obligations under clause 13 and the breach (or breaches) is not remedied within 15 days of the Supplier receiving a notice to remedy.

14. Acceptance Testing

14.1 General

- (a) Unless otherwise specified in the Order Form, this clause 14 will apply in relation to the supply of any Deliverables that are not Documents.

- (b) Where the parties have agreed further details as to the form or the conduct of Acceptance Tests in the Order Documents, those details apply in addition to this clause 14, except to the extent expressly stated in the Order Form.

14.2 Testing by Supplier

- (a) Before delivery by the Supplier to the Customer of any Deliverable (or any component thereof) that is subject to Acceptance Testing, the Supplier must:
 - (i) carry out the tests in accordance with any Test Plan and to ensure that the Deliverable meets the Acceptance Criteria for the Deliverable;
 - (ii) following testing, supply the Customer with the test results in accordance with the requirements and timeframes in the Test Plan and Order Documents, or where no requirements or timeframes are specified in those documents, promptly on completion of each test;
 - (iii) if the Supplier determines that a Deliverable (or component thereof) does not meet any Acceptance Criteria, promptly remedy that non-compliance; and
 - (iv) when appropriate, notify the Customer that the relevant Deliverable (or applicable component thereof) is ready for Acceptance Testing by the Customer.
- (b) Where directed by the Customer, the Supplier must:
 - (i) permit the Customer or its nominee to witness any tests conducted pursuant to this clause 14.2; and
 - (ii) provide the Customer with evidence as reasonably required by the Customer,

to demonstrate that the tests have been successfully completed in accordance with clause 14.2.

14.3 Testing by the Customer

- (a) The Customer may carry out Acceptance Tests in respect of each Deliverable to which Acceptance Testing applies and the Supplier must provide all reasonable assistance required by the Customer in connection with the Customer's Acceptance Testing.
- (b) If the Customer carries out Acceptance Tests, the Customer must conclude the Acceptance Tests in accordance with any timeframes specified in the Order Documents or, where no timeframes are specified, within a time reasonably determined by the Customer.
- (c) Following completion of the Customer's Acceptance Testing in respect of a Deliverable, the Customer must either:
 - (i) provide to the Supplier an Acceptance Certificate in respect of that Deliverable; or
 - (ii) notify the Supplier that the Acceptance Criteria in respect of that Deliverable have not been met.
- (d) Neither the full or partial Acceptance of any Deliverable nor any exercise by the Customer of any option or other right under this clause 14 will:

- (i) operate as a sole or exclusive remedy; or
 - (ii) limit or prejudice any rights or remedies of the Customer under this Agreement or at Law.
- (e) Where the Deliverable meets the Acceptance Criteria, the Customer must issue the Acceptance Certificate no later than 10 Business Days from completion of the Acceptance Testing, or within such other timeframe specified in the Order Documents.
- (f) Where the period referred to in clause 14.3(e) elapses without the Customer either providing an Acceptance Certificate to the Supplier in respect of that Deliverable or notifying the Supplier that the Acceptance Criteria have not been met, the Supplier must submit to the Customer's Representative a written reminder notice identifying the Deliverable in respect of which it requires a decision by the Customer. If the Customer does not take one of the actions referred to in clause 14.3(c) or otherwise communicate with the Supplier in relation to that reminder notice within 15 Business Days of its receipt, then the relevant Deliverable will be deemed to have been Accepted by the Customer.

14.4 Effect of failure to meet Acceptance Criteria

- (a) If the Acceptance Criteria in respect of a Deliverable have not been met, the Customer may, at its option, do any of the following:
- (i) issue a notice to the Supplier that requires the Supplier to comply with clause 14.4(b), accompanied with a description of the areas in which the relevant Deliverable has failed to meet the Customer's Acceptance Testing;
 - (ii) Accept the Deliverable subject to a reasonable reduction in the Price as reasonably agreed between the parties or, in the absence of agreement, as reasonably determined by the Customer to reflect the greater of the:
 - A. cost to the Customer of correcting the Defects in the Deliverable; or
 - B. reduced features, functionality or quality of operation as a result of those Defects; or
 - (iii) if the Deliverable contains a Material Defect that, in the Customer's reasonable opinion, is incapable of remedy or the Supplier has failed to remedy that Material Defect within 20 Business Days after delivery of the Deliverable (or such other time as specified in the Order Form or agreed between the parties in writing), immediately terminate this Agreement or reduce its scope pursuant to clause 29.1(d).
- (b) If the Supplier receives a notice under clauses 14.4(a)(i) or 14.4(c)(i), the Supplier must, at its cost, within 20 Business Days (or such other time as specified in the Order Form or agreed between the parties in writing) after the date of the notice:
- (i) supply such additional services to rectify any Defect in the Deliverable as may be necessary to enable the Deliverable to meet the Acceptance Criteria, including, if necessary, replacing the Deliverable;
 - (ii) co-operate with the Customer with respect to any repeat Acceptance Testing; and
 - (iii) provide all assistance required by the Customer in relation to the repeated Acceptance Tests.

- (c) If the Acceptance Criteria in respect of a Deliverable have not been met following repeat Acceptance Testing, the Customer may, at its option, do any of the following:
 - (i) require the Supplier to again comply with clause 14.4(b);
 - (ii) Accept the Deliverable subject to a reduction in the Price as reasonably agreed between the parties or, in the absence of agreement, as reasonably determined by the Customer in accordance with the same principles as described in clause 14.4(a)(ii); or
 - (iii) immediately terminate or reduce the scope of this Agreement pursuant to clause 29.1(d).
- (d) The Customer reserves the right to remedy any Defects or to appoint third parties to do so if the Supplier fails to correct any Defect that has been notified by the Customer to the Supplier and which the Supplier has not corrected within the timeframe required by this clause 14.4. At the Customer's request, the Supplier must reimburse the Customer for the costs incurred by the Customer in relation to the remediation of the relevant Defects, based on commercially reasonable rates and charges.

14.5 Effect of Acceptance Certificate

An Acceptance Certificate will constitute Acceptance for the purposes of this clause 14, but will not be taken as an admission or evidence that the Deliverables comply with, or that the Supplier has performed its obligations under, this Agreement.

15. Performance

15.1 Performance obligations

The Supplier must:

- (a) carry out the Supplier's Activities:
 - (i) in accordance with this Agreement, including the Order Documents;
 - (ii) with all due skill, care and diligence and in a proper, regular and timely manner;
 - (iii) in a manner that encourages the most efficient use of resources and promotes the achievement of any Customer objectives specified in the Order Documents;
 - (iv) to a high standard and in accordance with Best Industry Practice for work of a similar nature to the Supplier's Activities;
 - (v) in a manner that is safe to both people and the environment;
 - (vi) in a manner that minimises any disruption, interference or inconvenience to the Customer or its operations, Personnel or Other Suppliers;
 - (vii) to enable all Deliverables to operate in accordance with this Agreement, and to meet the Acceptance Criteria applicable to them;
 - (viii) to ensure that all timeframes under this Agreement are met, including all Key Milestones and Dates for Delivery;
 - (ix) in accordance with any relevant Statement of Work;

- (x) in accordance with the Specifications; and
- (xi) otherwise in accordance with the other requirements of this Agreement; and
- (b) provide Deliverables to the Customer which:
 - (i) are of high quality and are fit for the purpose for which they are required as detailed in, or reasonably ascertainable from, the Order Documents;
 - (ii) achieve Acceptance;
 - (iii) where applicable, will (on delivery, or at the time of performance of the relevant Supplier's Activities in relation to the applicable Deliverable(s)):
 - A. have been tested and verified, in accordance with Best Industry Practice, to be free from any Viruses; and
 - B. be compatible and interoperable with those features or characteristics of the Customer Environment described in the Order Documents and will not detrimentally affect the operation or performance of the Customer Environment or any part thereof.

15.2 Service standards and Service Levels

- (a) The Supplier must carry out the Supplier's Activities in a manner that meets or exceeds any Service Levels or, if none are specified in the Order Documents, in a timely and efficient manner taking into account the Supplier's obligations under this Agreement.
- (b) Unless otherwise specified in the Order Documents, the Supplier agrees to:
 - (i) measure its performance under this Agreement against any Service Levels;
 - (ii) provide the Customer with the results of all performance reviews;
 - (iii) use appropriate measurement and monitoring tools and procedures to measure performance accurately; and
 - (iv) provide the Customer with sufficient information in relation to the Supplier's assessment and monitoring of its performance pursuant to this clause 15.
- (c) The Supplier's liability under clause 15.2(a) is reduced to the extent that the failure to meet or exceed a Service Level was caused or contributed to by the:
 - (i) breach or negligence of the Customer;
 - (ii) unavailability or failure of any Critical CSI; or
 - (iii) acts or omissions of an Other Supplier.

15.3 Consequences for failing to meet a Service Level

- (a) If the Supplier fails to meet any applicable Service Levels, it will:
 - (i) notify the Customer of the Service Level failure in accordance with clause 15.6;

- (ii) provide timely updates to the Customer's Representative, in accordance with the incident notification requirements in the Service Levels or on request by the Customer, in relation to the progress being made in rectifying the failure;
 - (iii) promptly take whatever action that is commercially reasonable to minimise the impact of the failure;
 - (iv) correct the failure as soon as practicable;
 - (v) promptly take all necessary actions to prevent the recurrence of the failure and any other failure resulting from the same facts, circumstances or root cause(s); and
 - (vi) where requested by the Customer or specified in the Order Documents, promptly investigate the facts, circumstances or root cause(s) of the failure and promptly following conclusion of the investigation, deliver to the Customer a written report identifying such facts, circumstances or root cause(s) in the form requested by the Customer.
- (b) Without limiting any right or remedy available to the Customer under this Agreement or at Law, if the Supplier does not meet a Service Level, then the consequences for failing to meet a Service Level will be as set out in the Order Documents (such as service credits, service rebates or termination rights).
- (c) The parties acknowledge and agree that any service credits or service rebates calculated in accordance with the Order Documents:
 - (i) reflect the provision of a lower level of service than is required under this Agreement; and
 - (ii) are reasonable and represent a genuine pre-estimate of the diminution in value the Customer will suffer, as represented by an adjustment to the Price, as a result of the delivery by the Supplier of a lower level of service than that required by the applicable Service Level, but are not an exclusive remedy with respect to other categories of Loss.

15.4 Performance reports

The Supplier must provide to the Customer's Representative the following written or electronic reports and reporting tools:

- (a) a monthly (unless a different frequency is specified in the Order Form) report on the performance and availability of the Services and/or Deliverables in respect of the immediately preceding month, including detail relating to:
 - (i) the quantity of Services and/or Deliverables supplied to the Customer (including, where applicable, the rates of utilisation);
 - (ii) the total Price paid by the Customer in respect of that reporting period and cumulatively over the Term to date, tracked over time and usage, including any applicable discounts, credits, rebates and other benefits; and
 - (iii) any other matters specified in the Order Form;
- (b) a monthly report of the Supplier's performance against any Service Levels, including any accrued service credits or service rebates;

- (c) the additional reports specified in the Module Terms and Order Form for the time period specified in those documents (which may include, where so specified, access to real-time or near-real time reporting capability); and
- (d) any other reports as reasonably requested by the Customer from time to time, including as may be required by the Customer to enable the Customer to meet its internal or New South Wales Government compliance, regulatory and operational reporting obligations.

15.5 Performance reviews

- (a) If it is stated in Item 25 of the Order Form that the parties must conduct a service and performance review of the Supplier's performance under this Agreement, then the parties must conduct such reviews at the intervals and in accordance with any requirements in the Order Form (or as otherwise agreed between the parties).
- (b) All reviews must be undertaken by representatives of both parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review. Where this Agreement is made under a MICTA, either party may request the involvement of the Contract Authority in any review.

15.6 Notice

The Supplier must notify the Customer immediately if it becomes aware that it is not able to, or reasonably anticipates that it is not able to, perform the Supplier's Activities in accordance with the performance standards and requirements specified in this Agreement.

15.7 Meetings

- (a) The Supplier's Representative must meet with the Customer's Representative or other Personnel at the times and at the locations specified in the Order Form or as otherwise agreed between the parties in writing.
- (b) The parties agree that meetings may be held by video or teleconference if required by the Customer.

16. Liquidated Damages

- (a) This clause 16 applies if Item 29 of the Order Form provides for Liquidated Damages to be payable in relation to a failure by the Supplier to meet a Key Milestone.
- (b) If the Supplier fails to meet a Key Milestone, the Supplier must pay the Customer the amount of Liquidated Damages set out in, or otherwise calculated in accordance with, Item 29 of the Order Form in relation to the period between the relevant Key Milestone and the date on which the:
 - (i) Supplier achieves the relevant Key Milestone; or
 - (ii) Customer terminates the relevant Order (or this Agreement),
 but subject always to the maximum number of days (if any) for which Liquidated Damages are payable, or maximum percentage of the value of applicable Prices, as may be specified in Item 29 of the Order Form.
- (c) The Supplier acknowledges that the Liquidated Damages payable under this clause 16 are a reasonable and genuine pre-estimate of the Loss likely to be suffered by the Customer in respect of a failure by the Supplier to meet the relevant Key

Milestone. However, they do not limit the rights or remedies of the Customer to claim Loss from the Supplier in the event that the amount of Loss actually incurred by the Customer exceeds such genuine pre-estimate, in the amount of the difference between such Loss actually incurred and the Liquidated Damages payable under this clause 16.

- (d) The Supplier will not be liable to pay Liquidated Damages to the extent that the Supplier's failure to achieve a Key Milestone was caused or contributed to by the:
 - (i) breach or negligence of the Customer;
 - (ii) unavailability or failure of any Critical CSI; or
 - (iii) acts or omissions of an Other Supplier.

17. Intellectual Property

17.1 Ownership of Existing Materials

Unless otherwise specified in Item 37 of the Order Form, the parties agree that nothing in this Agreement will affect the ownership of the Intellectual Property Rights in any Existing Materials.

17.2 Licence to use Existing Materials

- (a) Unless otherwise specified in the applicable Module Terms or in Item 37 of the Order Form, the Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate and distribute any Intellectual Property Rights in the Supplier's Existing Materials for any purpose in connection with the:
 - (i) Customer performing its obligations and exercising its rights under this Agreement;
 - (ii) full use of any Services and/or Deliverables in which the Supplier's Existing Material is incorporated, including installing, operating, upgrading, modifying, supporting, enhancing and maintaining the Deliverables or integrating them with any other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (iii) performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Deliverables and systems that may integrate or interoperate with the Deliverables; or
 - (iv) carrying out, or exercise, of the functions or powers of the Customer, a Government Agency or the Crown, including any statutory requirements concerning State records or auditing.
- (b) Where:
 - (i) the Supplier's Existing Material is incorporated into any New Materials; and
 - (ii) clause 17.4(b) applies in respect of those New Materials,

then the licence granted in clause 17.2(a) will also include, in respect of the Supplier's Existing Materials, an equivalent right and licence to that described in clause 17.4(b), to the extent required to support the exploitation and

commercialisation of the Intellectual Property Rights in the relevant New Materials under that clause (but excluding commercial exploitation of the Supplier's Existing Materials independently of the New Materials in which they are incorporated).

- (c) The rights and licences granted by the Supplier to the Customer under clause 17.2(a):
 - (i) do not permit the Customer to sell, monetise or commercialise the Supplier's Existing Materials, except as otherwise stated in Item 37 of the Order Form; and
 - (ii) are sub-licensable by the Customer (on the same terms, for the same period and for the same purposes as set out in clause 17.2(a)), without additional charge to any:
 - A. contractor, subcontractor or outsourced service provider (subject to such persons being under reasonable obligations of confidentiality owed to the Customer or another Government Agency) acting on behalf of, or providing products and/or services for the benefit of, the Customer or a Government Agency; or
 - B. Government Agency.
- (d) Unless otherwise specified in Item 37 of the Order Form, the Customer grants to the Supplier, a non-exclusive, non-transferable, revocable, worldwide, royalty-free licence to use the Intellectual Property Rights in the Customer's Existing Materials, to the extent required for the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this Agreement.

17.3 Ownership of New Materials

- (a) Unless otherwise specified in Item 37 of the Order Form, where the Supplier creates New Materials in carrying out the Supplier's Activities, the ownership of all Intellectual Property Rights in those New Materials vests in, or is transferred or assigned to, the Supplier immediately on creation.
- (b) If the parties agree in Item 37 of the Order Form that the Intellectual Property Rights in any New Materials will be owned by the Customer, then ownership of all Intellectual Property Rights in those New Materials vests in the Customer immediately on creation or is transferred or assigned by the Supplier to the Customer immediately on creation, free of any encumbrances, security interests and third party rights.

17.4 Customer licence to use Supplier owned New Materials

- (a) Where the Supplier owns the Intellectual Property Rights in any New Materials, unless otherwise specified in the applicable Module Terms or in Item 37 of the Order Form, the Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate and distribute the Intellectual Property Rights in such New Materials, for any purpose in connection with the:
 - (i) Customer performing its obligations and exercising its rights under this Agreement;
 - (ii) full use of any Services and/or Deliverables in which New Material is incorporated, including installing, operating, upgrading, modifying, supporting, enhancing and maintaining the Deliverables or integrating them with any other software, systems, equipment or infrastructure

owned, operated or maintained by the Customer or a Government Agency;

- (iii) performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Deliverables and systems that may integrate or interoperate with the Deliverables; or
 - (iv) carrying out, or exercise, of the functions or powers of the Customer, a Government Agency or the Crown, including any statutory requirements concerning State records or auditing.
- (b) Where specified in Item 37 of the Order Form, the licence granted in clause 17.4(a) will also include the right and licence to exploit and commercialise the Intellectual Property Rights in New Materials for the purposes specified in clause 17.4(a) or such other purposes specified in Item 37 of the Order Form.
- (c) The rights and licences granted by the Supplier to the Customer under clauses 17.4(a) and 17.4(b) are sub-licensable by the Customer (on the same terms and for the same purposes as set out in those clauses) to any person, without additional charge, including to any:
- (i) contractor, subcontractor or outsourced service provider (subject to such persons being under reasonable obligations of confidentiality owed to the Customer or another Government Agency (as applicable)) acting on behalf of, or providing products and/or services for the benefit of, the Customer or a Government Agency; or
 - (ii) Government Agency.

17.5 Licence term

Except where otherwise specified in Item 37 of the Order Form or in the applicable Module Terms, the licences granted under clauses 17.2 and 17.4 will be perpetual in relation to the purposes specified in those clauses.

17.6 Supplier Licence to use Customer owned New Materials

Where it is specified in Item 37 of the Order Form that Intellectual Property Rights in any New Materials are owned by the Customer, then to the extent required to enable the Supplier to perform its obligations under this Agreement, the Customer grants to the Supplier, a non-exclusive, non-transferable, revocable, worldwide, royalty-free licence to use the Intellectual Property Rights in those New Materials, to the extent required for the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this Agreement.

17.7 Third party Intellectual Property Rights

Unless stated otherwise in Item 37 of the Order Form or the applicable Module Terms, the Supplier must, in respect of any third party Intellectual Property Rights used in the production of Deliverables, included in any Deliverables, or required by the Customer to receive the Services:

- (a) ensure that it procures for the Customer a licence on terms no less favourable than:
 - (i) the terms set out in this clause 17 or any applicable Module Terms; or
 - (ii) on such other terms specified in Item 37 of the Order Form;
- (b) ensure that the use of such third party Intellectual Property Rights does not constrain the Customer's use of the Services or any Deliverables; and

- (c) otherwise, not use any third party Intellectual Property Rights in the provision of the Services or the production of any Deliverables.

17.8 Open Source Software

- (a) The Supplier must not, without the prior written consent of the Customer:
 - (i) develop or enhance any Deliverable using Open Source Software; or
 - (ii) incorporate any Open Source Software into any Deliverable.
- (b) In requesting any consent from the Customer under clause 17.8(a), the Supplier must provide the Customer with:
 - (i) complete and accurate copies of any licence agreement, the terms and conditions of which would apply to the proposed use or incorporation of the Open Source Software into a relevant Deliverable; and
 - (ii) a description of how such use or incorporation may affect the provision of the Supplier's Activities, the Customer's licence rights under this Agreement and the Customer's and Customer Users' uses or other dealings with the relevant Deliverable,for the Customer's review and consideration.
- (c) Where the Customer provides its consent in relation to the use or incorporation of any Open Source Software under clause 17.8(a) the:
 - (i) Customer must comply with the terms and conditions notified to it in clause 17.8(b)(i) in relation to the use of that Open Source Software: and
 - (ii) Supplier must ensure that the use of that Open Source Software will not:
 - A. result in an obligation to disclose, licence or otherwise make available any part of the Customer Environment, software of the Customer, Customer Data or Confidential Information to any third party; or
 - B. diminish the Supplier's obligations or the Customer's rights under this Agreement.

17.9 Consents and Moral Rights

- (a) Prior to provision to the Customer or use in connection with this Agreement, the Supplier must ensure that it obtains all necessary consents from all authors of all Materials and Deliverables provided or licenced to the Customer under this Agreement to any use, modification or adaptation of such Materials and Deliverables to enable the Customer to fully exercise its Intellectual Property Rights under this Agreement, including:
 - (i) the use, modification or adaptation of the Materials or Deliverables; or
 - (ii) any other dealing which might otherwise constitute an infringement of the author's Moral Rights.
- (b) To the extent the Customer provides any CSI for use by the Supplier and that CSI incorporates any Intellectual Property Rights, the Customer must procure all necessary:
 - (i) licences of Intellectual Property Rights in that CSI; and

- (ii) Moral Rights consents from all authors of that CSI,

to the extent required to enable the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this Agreement with respect to that CSI.

17.10 Prohibited activities

The licences granted to the Customer under clauses 17.2 and 17.4 do not permit the Customer to disassemble, decompile or reverse engineer any software-based elements of the materials licensed under those clauses, provided that this restriction shall not apply to the extent it would not be permissible under the *Copyright Act 1968* (Cth) in relation to particular acts conducted for certain purposes, as specified in that legislation.

17.11 Additional obligations

The Supplier must, at its cost, do all acts (and procure that all relevant persons do all acts) as may be necessary to give effect to the intellectual property provisions in this clause 17, including by executing (or procuring the execution of) any required documents or effecting any required registrations.

17.12 Warranties and acknowledgements

- (a) The Supplier represents, warrants and undertakes that:
 - (i) it has all the Intellectual Property Rights and has procured the necessary Moral Rights consents required to:
 - A. carry out the Supplier's Activities; and
 - B. enable the Customer and each Customer User (or other permitted licensee) to use the requisite Services and/or Deliverables in the manner envisaged by this Agreement; and
 - (ii) its supply of the requisite Services and/or Deliverables to the Customer, and the Customer's, Customer Users' (and other permitted licensees') use of them in the manner envisaged by this Agreement will not infringe any Intellectual Property Rights or Moral Rights.
- (b) The Supplier acknowledges and agrees that the Intellectual Property Rights and licences (as applicable) granted under this Agreement (including this clause 17) do not limit or reduce the Supplier's or its Personnel's obligations under this Agreement with respect to the Customer's Confidential Information, Personal Information and Customer Data.

17.13 Replacement of Deliverables

Without limiting the Customer's rights under clause 34.1(c), if any Claim of the kind described in that clause is made or brought in respect of Intellectual Property Rights or Moral Rights, the Supplier must, at its election and at no additional cost to the Customer:

- (a) procure for the Customer the right to continue to use the Services and/or Deliverables on terms no less favourable than those set out in this Agreement;
- (b) promptly replace or modify the Services and/or Deliverables so that the alleged infringement ceases and the replaced or modified Services and/or Deliverables provides the Customer with no less functionality and performance as that required by this Agreement; or

- (c) only where the options in paragraphs (a) and (b) are not reasonably possible and subject to prior consultation with and receipt of approval from the Customer, accept return of the affected Deliverable or cease to provide the affected Service (as applicable) and, within 30 days, refund the Customer any fees paid for the relevant Service and/or Deliverable, subject to any reasonable deduction for any in-production use already made by the Customer of the relevant Service and/or Deliverable.

18. Escrow

- (a) If specified in Item 38 of the Order Form (or if otherwise agreed between the parties in writing) that any Escrow Materials are to be held in escrow, the Supplier must arrange for:
 - (i) itself, the Customer and an escrow agent approved by the Customer to enter into an escrow agreement in substantially the same form as Schedule 7 (or such other form as may be prescribed by the relevant escrow agent and agreed by the parties in writing); or
 - (ii) the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.
- (b) Any escrow arrangement to which the Customer becomes a party under clause 18(a) must continue in effect for at least the period stated in Item 38 of the Order Form, unless otherwise agreed between the parties in writing.
- (c) The Supplier must consult with, and comply with the reasonable directions of, the Customer in any negotiations with the escrow agent arising under clause 18(a).
- (d) Any escrow arrangement must be entered into by the timeframe specified in Item 38 of the Order Form, or if no timeframe is specified, as otherwise reasonably required by the Customer.

PART C: DATA AND SECURITY

19. Customer Data

19.1 Obligations in relation to Customer Data

- (a) This clause 19 applies where the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Customer Data in connection with this Agreement.
- (b) The Supplier acknowledges and agrees that it obtains no right, title or interest with respect to any Customer Data, other than a right to use Customer Data for the sole purpose of, and only to the extent required for, the carrying out of the Supplier's Activities in accordance with this Agreement.
- (c) As between the Supplier and Customer, all rights in and in relation to Customer Data remain with the Customer at all times and the Supplier assigns all rights, title and interest in the Customer Data to the Customer on creation. The Supplier agrees to do all things necessary to assign or vest ownership of all rights in Customer Data to the Customer on creation.
- (d) The Supplier must:

- (i) not use any Customer Data for any purpose other than for the sole purpose of, and only to the extent required for, carrying out the Supplier's Activities in accordance with this Agreement;
- (ii) not sell, assign, lease or commercially transfer or exploit any Customer Data;
- (iii) not perform any data analytics on Customer Data, except to the sole extent permitted by this Agreement;
- (iv) ensure that all of its Personnel who access, or have the ability to access, Customer Data are appropriate to do so, including passing any background or security checks as required by this Agreement;
- (v) apply to the Customer Data the level of security and (if applicable) encryption that is required under this Agreement;
- (vi) apply technical and organisational controls which are appropriate to ensure that all Customer Data is at all times protected from any unauthorised access, modification or disclosure and only handled and processed in accordance with the terms of this Agreement and any other security requirements reasonably specified by the Customer; and
- (vii) ensure that Customer Data is at all times managed in accordance with the *State Records Act 1998* (NSW) (to the extent applicable); and
- (viii) ensure that its Personnel (including subcontractors) comply with this clause 19.1(d) and manage and safeguard Customer Data in accordance with all other requirements of this Agreement.

19.2 Security of Customer Data

- (a) The Supplier must comply with the security requirements set out in this Agreement, including in the Order Documents (**Information Security Requirements**) in carrying out the Supplier's Activities.
- (b) The Supplier must establish, maintain, enforce and continuously improve its safeguard and security measures, and take all reasonable steps, to ensure that Customer Data is protected against misuse, interference and loss, and from unauthorised access, modification or disclosure.
- (c) The Supplier must immediately notify the Customer where it is or may be required by Law to disclose any Customer Data to any third party contrary to the terms of this Agreement.

19.3 Location of Customer Data

- (a) The Supplier must not:
 - (i) transfer, store, process, access, disclose or view Customer Data; or
 - (ii) perform any of its obligations under this Agreement which could involve Customer Data being stored, processed, accessed, disclosed or viewed, outside of New South Wales, Australia, except in accordance with clause 19.3(b).
- (b) Notwithstanding clause 19.3(a), the Supplier may transfer, store, process, access, disclose or view Customer Data outside of New South Wales:
 - (i) if permitted under the Order Form or any relevant Module Terms;

- (ii) at the locations specified in the Order Documents (or as otherwise agreed to in writing in advance by the Customer); and
- (iii) subject to the Supplier's and its Personnel's compliance with the Data Location Conditions.

19.4 Backup of Customer Data

- (a) If specified in the Order Documents that the Supplier is required to make and store backup copies of Customer Data as part of the Services, the Supplier must make and store backup copies of the Customer Data in accordance with all requirements (including as to frequency, maturity of backup and approved locations) set out or referenced in this Agreement (including the Module Terms and Order Form) or as otherwise reasonably required by the Customer by notice to the Supplier.
- (b) Where clause 19.4(a) applies, the Supplier must check the integrity of all backup Customer Data annually (or at such other time required by the Order Form).

19.5 Restoration of lost Customer Data

Notwithstanding any other rights the Customer may have under this Agreement, if as a result of any act or omission of the Supplier or its Personnel in the carrying out of the Supplier's Activities or in discharging their privacy or security obligations under this Agreement:

- (a) any Customer Data is lost; or
- (b) there is any unauthorised destruction or alteration of Customer Data,

the Supplier must take all practicable measures to immediately restore the Customer Data (including, where applicable, in accordance with any requirements specified in the Order Documents). Any such measures will be at the Supplier's sole cost where and to the extent such loss, destruction or alteration to the Customer Data was caused or contributed to by an act or omission of the Supplier or any of its Personnel.

19.6 Rights to access, use, extract and retrieve Customer Data

Where Customer Data is in the Supplier's possession or control, the Supplier must enable the Customer to:

- (a) access, use and interact with the Customer Data (which may be through access controls identified in the Order Documents); and
- (b) extract, retrieve and/or permanently and irreversibly delete those copies of the Customer Data which are in the Supplier's possession or control (which may be performed by self-service tools), or otherwise provide the Customer Data to the Customer:
 - (i) in accordance with all applicable timeframes and requirements under this Agreement;
 - (ii) at no additional charge to the Customer;
 - (iii) in a human readable, commonly accepted format which does not require the Customer to purchase additional licences it does not already hold, or in the same format as the Customer Data was uploaded (for example, a semi-structured format); and
 - (iv) in order to maintain the relationships and integrity of those copies of the Customer Data.

19.7 Record, retention, return and destruction of the Customer Data

- (a) If specified in the Order Form, the Supplier must:
 - (i) establish, keep and maintain complete, accurate and up-to-date records of all Customer Data accessed, collected or changed by it; and
 - (ii) make copies of the records referred to in clause 19.7(a)(i) available to the Customer immediately upon request.
- (b) On the date that any Customer Data is no longer needed for the purposes of the Supplier carrying out the Supplier's Activities (or should the Customer notify the Supplier that the Customer Data is no longer needed), the Supplier must at its sole cost:
 - (i) immediately stop using the relevant Customer Data (except as permitted under this Agreement); and
 - (ii) at the Customer's direction (subject to clause 19.7(c)):
 - A. securely and permanently destroy all records and backups of the Customer Data in accordance with the timeframes under this Agreement and supply the Customer's Representative with a certificate of destruction that confirms that this has occurred; or
 - B. securely return all records of Customer Data to the Customer in accordance with the timeframes under this Agreement.
- (c) The Supplier will be entitled to retain copies of records of Customer Data to the extent, and only for the period, that such retention is mandated by any Laws to which the Supplier is subject.
- (d) The Supplier acknowledges and agrees that:
 - (i) where the Order Documents specify additional requirements for the capture and retention of audit log data, including categories of data and periods of retention, the Supplier must comply with those requirements; and
 - (ii) notwithstanding anything to the contrary in this Agreement, no Customer Data should be destroyed until the Supplier has met the data retrieval requirements under clause 32.1.

19.8 General

- (a) If requested by the Customer, the Supplier must provide the Customer with a report setting out how it will comply, and has complied, with its obligations under this clause 19.
- (b) Where applicable, the Supplier must comply with any additional obligations relating to Customer Data as may be specified in the Order Documents.
- (c) For clarity, nothing in this clause 19 relieves the Supplier of its obligations under clause 20.

20. Privacy

20.1 Protection and use of Personal Information

- (a) If the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Personal Information in connection with this Agreement (regardless of whether or not that Personal Information forms part of the Customer Data), the Supplier must (and must ensure that its Personnel):
- (i) comply with all Privacy Laws, as though it were a person subject to those Privacy Laws;
 - (ii) only use that Personal Information for the sole purpose of carrying out the Supplier's Activities;
 - (iii) not disclose the Personal Information to any other person without the Customer's prior written consent, which may be given in respect of classes or categories of subcontractors or types of subcontracted activities and made subject to any applicable conditions;
 - (iv) not transfer the Personal Information outside New South Wales, Australia or access it, or allow it to be accessed, from outside New South Wales, Australia unless permitted in the Order Form or relevant Module Terms and subject to the Supplier's and its Personnel's compliance with the Data Location Conditions;
 - (v) protect the Personal Information from loss, unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Agreement;
 - (vi) if it becomes aware, or has reasonable grounds to suspect, that there has been a Security Incident involving Personal Information:
 - A. immediately make all reasonable efforts to contain the Security Incident involving Personal Information;
 - B. comply with clause 22;
 - C. unless otherwise directed by the Customer, comply with the Customer's published data breach policy and any data breach procedures and documentation specified in the Order Form, as well as any other Policies, Codes and Standards relevant to the management, mitigation and response to a Security Incident;
 - D. comply with any reasonable direction (including as to timeframes) from the Customer with respect to a Security Incident involving Personal Information (which may include, for example, activities to support the Customer's response to the incident and compliance with the New South Wales mandatory notification of data breach scheme); and
 - E. take all reasonable steps to prevent such Security Incident involving Personal Information from recurring; and
 - (vii) notify the Customer as soon as reasonably possible if the Supplier is approached by any privacy commissioner or other Authority concerning any Personal Information.

- (b) Where the Supplier is required by Law to produce or disclose any information or to develop or provide any response or explanation to an Authority in relation to any incident (including any privacy breach) concerning the handling, management, safekeeping or protection of any Personal Information in connection with this Agreement, it must (to the extent such action is permitted by Law), provide notice to the Customer as soon as reasonably possible of the nature and content of the information to be produced or disclosed and, prior to providing a response to the Authority or disclosing any Personal Information, engage in reasonable consultation with the Customer regarding its proposed response or explanation.

20.2 Data Management and Protection Plan

- (a) Where the Supplier or its Personnel collects, uses, discloses, holds or otherwise processes any Personal Information in connection with this Agreement, the Supplier must, for the duration of those activities, have and maintain (and prepare and implement, if not already in existence) a Data Management and Protection Plan that caters for the handling of that Personal Information.
- (b) The Data Management and Protection Plan must be provided to the Customer's Representative within five Business Days following the Commencement Date or such other time as agreed between the parties in writing.
- (c) The Data Management and Protection Plan must:
 - (i) set out measures for how the Supplier and its Personnel will:
 - A. comply with the Privacy Laws; and
 - B. protect Personal Information;
 - (ii) be consistent with the Privacy Laws and the security and privacy requirements under this Agreement, provided that, where the Privacy Laws and the security and privacy requirements under this Agreement both address standards in respect of same subject matter, the Data Management and Protection Plan must reflect the higher standard; and
 - (iii) cover such other matters as reasonably required by the Customer.
- (d) The Supplier must review and update the Data Management and Protection Plan annually or at such other times as reasonably required by the Customer to address a Security Incident or breach of this Agreement.
- (e) The Supplier must comply with its latest Data Management and Protection Plan and provide the latest copy of that Plan to the Customer's Representative on request.

20.3 No limitation of obligations

Nothing in this clause 20 is intended to limit any obligations that the Supplier has at Law with respect to privacy and the protection of Personal Information.

21. Security

21.1 Scope of the Supplier's security obligations

- (a) Without limiting any other security obligation under this Agreement, the Supplier's security obligations under this clause apply to:
 - (i) the Supplier's Activities; and

- (ii) Customer Data and Personal Information, where and to the extent that the Supplier or its Personnel is in the possession of, controls, or is able to control, such data and information.
- (b) For the purposes of this clause 21, "**control**" includes controlling, managing, processing, generating, capturing, collecting, transferring, transmitting, deleting and destroying.

21.2 Supplier's security obligations

- (a) The Supplier must implement, maintain and enforce a formal program of technical and organisational security measures (including an audit and compliance program) relating to ICT security and cyber security that is in accordance with:
 - (i) this clause 21; and
 - (ii) the standards or requirements specified in Item 40 of the Order Form,

(Security Program), provided that, where clause 21 and the standards or requirements specified in the Order Form both address standards in respect of the same subject matter, the Security Program must reflect the higher standard.
- (b) The Security Program must be designed to:
 - (i) monitor, audit, detect, identify, report and protect against Security Incidents, Viruses, and any other threats or hazards to the security or integrity of the Customer's operations or the Services and Deliverables in carrying out the Supplier's Activities;
 - (ii) ensure the security (including the confidentiality, availability and integrity) of the Services and Deliverables in accordance with the requirements of this Agreement;
 - (iii) ensure the continuity of the Customer's access to, and use of, the Services and Deliverables and in a manner that achieves any applicable Service Levels. This includes continuity of access and use during any business continuity event, Disaster recovery event, scheduled or unscheduled maintenance and similar events;
 - (iv) manage any potential security risks in the Supplier's supply chains that bear upon the Supplier's Activities;
 - (v) monitor, detect, identify and protect against fraud and corruption by the Supplier's organisation and the Supplier's Personnel; and
 - (vi) ensure that the Security Program is comprehensive in covering all components of the Supplier's Activities and protects data in accordance with this Agreement.
- (c) Without limiting its obligations under clause 21.2(a), the Supplier must ensure its Security Program complies, and is consistent, with the Policies, Codes and Standards (to the extent applicable to security).
- (d) The Supplier must regularly review and continuously improve the Security Program to ensure it remains current and up-to-date and continues to satisfy the requirements of this clause 21.2 and is in accordance with Best Industry Practice.
- (e) If specified in Item 40 of the Order Form, the Supplier must have, obtain and maintain from the Commencement Date and for the duration of the Supplier's Activities the security certifications specified or referenced in Item 40 of the Order

Form from an accredited, independent, third party register or accredited, independent third party certification body. Unless otherwise specified in Item 40 of the Order Form, the certifications must be updated at least annually and must comply with any specific certification requirements set out in the Order Form.

- (f) Without limiting this clause 21.2, the Supplier must comply with any additional security obligations or standards specified in the Order Form.

21.3 Audits and compliance

- (a) The Supplier must audit its compliance with its Security Program and security obligations under this Agreement in accordance with any timeframes specified in the Order Documents and, where no such timeframes are specified, on an annual basis.
- (b) The Supplier must provide the Customer, at the Customer's request, with electronic copies of:
 - (i) any security certifications required by this clause 21 and a copy of each renewal of these certifications;
 - (ii) a description of the Supplier's information security management system and cyber security management system;
 - (iii) all reports relating to:
 - A. any external or internal audits of the Supplier's security systems (to be provided for the most recent period available), including follow-up reports on audit action items; and
 - B. where applicable, the integrity of any data backups required to be undertaken as part of the Supplier's Activities;
 - (iv) evidence that a vulnerability and security management process is in place within its organisation that includes ongoing and routine vulnerability scanning, patching and coverage verification, with a frequency commensurate with any applicable security requirements specified in the Order Form, or where no requirements are specified, Best Industry Practice. This can include copies of relevant policies, scan results, vulnerability reports, registers of vulnerabilities and patch reports;
 - (v) evidence that (if applicable) penetration and security testing (including any Acceptance Tests set out in the Order Form) are carried out:
 - A. prior to, and directly after, new systems are moved into production or in the event of a significant change to the configuration of any existing system; or
 - B. at such other times specified in the Order Form; and
 - (vi) evidence that high and extreme Inherent Risks identified in audits, vulnerability scans and tests have been remediated,

which must contain (at a minimum) full and complete details of information and reports insofar as they relate to the Supplier's Activities. Where the Supplier is not permitted to provide the Customer with any of the foregoing (due to confidentiality obligations to third parties or because to do so would cause the Supplier to breach any Law or relevant security certification that the Supplier is subject to), the Supplier may (acting reasonably) redact those components that it is not permitted to provide

to the Customer but only to the fullest extent needed to prevent the Supplier's non-compliance.

- (c) Without limiting clause 11.3(a)(ii), the Supplier must run initial and annual mandatory security awareness training for all of the Supplier's Personnel involved in carrying out the Supplier's Activities under this Agreement and ensure that those Personnel have completed the initial training prior to carrying out the Supplier's Activities.
- (d) At the Customer's request, the Supplier must implement any audit findings or recommendations arising from an audit conducted under clause 21.3(a) and reasonably demonstrate to the Customer the implementation of such findings and recommendations.

22. Security Incidents

22.1 Notification of Security Incidents

- (a) If the Supplier becomes aware, or has reasonable grounds to suspect, that there has been a Security Incident, the Supplier must immediately:
 - (i) notify the Customer, and also notify the Contract Authority where this Agreement is made pursuant to a MICTA; and
 - (ii) at the same time as providing notice pursuant to clause 22.1(a)(i) provide to the Customer, to the extent known at the time, the following information:
 - A. date of the Security Incident;
 - B. a description of the Security Incident (including whether the Security Incident involved any Personal Information);
 - C. how the Security Incident occurred;
 - D. where the Security Incident involves Personal Information, the following:
 - 1) the type of breach that occurred;
 - 2) the amount of time the Personal Information was disclosed for; and
 - 3) the total (or estimated total) number of individuals affected or likely to be affected by the breach;
 - E. whether the Security Incident is a cyber incident, and if so, details of the cyber incident; and
 - F. such other information relating to the Security Incident that the Customer or its Personnel requires to comply with the Privacy Laws (and as notified to the Supplier).
- (b) Where the information set out under clause 22.1(a)(i) is not known by the Supplier at the time of providing notice pursuant to clause 22.1(a)(i), the Supplier must expeditiously take steps to investigate and identify the information and promptly provide the outstanding information to the Customer's Representative once known.

22.2 Actions required in relation to a Security Incident

(a) Where the:

- (i) Supplier becomes aware, or has reasonable grounds to suspect, that there has been a Security Incident; or
- (ii) Customer notifies the Supplier that the Customer has reasonable grounds to suspect that a Security Incident has occurred or is about to occur,

then, the Supplier must:

- (iii) comply with clause 22.1;
- (iv) expeditiously assess, investigate and diagnose the Security Incident (including to identify the root cause of the Security Incident, the risks posed by the Security Incident and identify how these risks could be addressed) and, on the Customer's request, provide the results of that assessment and investigation to the Customer's Representative within the timeframe requested by the Customer;
- (v) manage and contain the Security Incident and mitigate the impact of the Security Incident (working on a 24 x 7 basis if required);
- (vi) develop and adopt a remediation Plan addressing the rectification of, and the prevention of the future recurrence of the facts and circumstances giving rise to, the Security Incident (**Remediation Plan**);
- (vii) cooperate with the Customer, the Customer's Personnel or any assessor appointed by the Customer in connection with the assessment, investigation, diagnosis, response and resolution of the Security Incident (including so as to ensure the Customer is able to satisfy its notification and reporting obligations within the timeframes and requirements under the Privacy Laws); and
- (viii) comply with any additional plans, actions and requirements relating to the Security Incident as specified in Item 42 of the Order Form, the Order Documents or as required by Law or any Authority.

(b) The Supplier must:

- (i) within 48 hours after the Supplier's initial awareness or notification of the Security Incident in accordance with clause 22.1(a)(i) (or such earlier period agreed by the parties to enable the Customer to comply with Laws), provide to the Customer, to the extent known at that time:
 - A. a list of actions taken by the Supplier to date to mitigate the impact of the Security Incident;
 - B. a summary of the records impacted, or which may be impacted, and any Customer Data and other information that has been or may have been lost, accessed or disclosed as a result of the Security Incident; and
 - C. the estimated time to resolve the Security Incident;
- (ii) provide any assistance reasonably required by the Customer or any Authority in relation to any criminal, regulatory or other investigation or inquiry relating to the Security Incident;

- (iii) promptly update the Remediation Plan to address any concerns reasonably raised by the Customer, following which the Supplier must implement the Remediation Plan in accordance with the timeframes agreed by the Customer;
 - (iv) following implementation of the Remediation Plan (or upon the earlier resolution of the Security Incident), provide to the Customer:
 - A. a list of all actions taken by the Supplier to mitigate and remediate the Security Incident; and
 - B. evidence verifying (where applicable) that the remediation activities undertaken have successfully resolved the underlying cause of the Security Incident (for example, by sharing the results of relevant penetration tests or vulnerability scans); and
 - (v) review and learn from the Security Incident to improve security and data handling practices and prevent future Security Incidents from occurring.
- (c) For clarity, nothing in this clause 22:
- (i) requires the Supplier to provide the Customer with specific details that relate to the Supplier's other customers or would breach any applicable Laws; and
 - (ii) limits the Supplier's obligations at Law with respect to the notification and resolution of Security Incidents.

23. Confidentiality

- (a) Where either party (**Recipient**) receives or otherwise possesses Confidential Information of the other party (**Discloser**), the Recipient must:
 - (i) keep it confidential;
 - (ii) in the case of the Supplier or its Personnel, only use it where required to exercise its rights or perform its obligations under this Agreement; and
 - (iii) not disclose it to anyone other than:
 - A. with the prior consent of the Discloser and on the condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements as specified in this Agreement;
 - B. where required by the GIPA Act (or any other similar Laws) which may require the Customer to publish or disclose certain information concerning this Agreement;
 - C. where required by any other Laws, provided that the Recipient gives the Discloser reasonable notice of any such legal requirement or order to enable the Discloser to seek a protective order or other appropriate remedy (unless it would be in violation of a court order or other legal requirement);
 - D. in the case of the Customer, to:

- 1) the Contract Authority or responsible Minister (where this Agreement is made under a MICTA); or
 - 2) any Government Agency or Eligible Customer or responsible Minister for a Government Agency or an Eligible Customer; or
- E. to its Personnel and directors, officers, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the party's exercise of its rights or performance of its obligations under this Agreement.
- (b) The Supplier must not issue any press release or make any other public statement regarding this Agreement or the Supplier's Activities without the prior written consent of the Customer, except as required by Law.
- (c) This clause 23 does not preclude the Customer from disclosing any information (including Confidential Information) of the Supplier to the extent that this Agreement otherwise permits the disclosure of such information.

PART D: FEES AND PAYMENT

24. Payment and invoicing

24.1 Price

- (a) In consideration for the performance of the Supplier's Activities in accordance with this Agreement, the Customer agrees to pay to the Supplier the Price set out in the Payment Particulars, subject to any additional discounts, rebates, credits or other similar benefits specified in the Payment Particulars. Other than as expressly set out in this Agreement, such amounts are the only amounts payable by the Customer in respect of the Supplier's performance of the Supplier's Activities and its other obligations under this Agreement.
- (b) Subject to clause 1.4(b), the Price and any rates or charges specified in the Payment Particulars will be fixed for the Term, unless otherwise specified in the Payment Particulars.

24.2 Benchmarking

- (a) Clauses 24.2 and 24.3 apply if it is specified in the Order Form that benchmarking applies.
- (b) No more than once per annum during the Term and commencing on the first anniversary of the Commencement Date, the Customer may, in its sole discretion, notify the Supplier in writing (**Benchmarking Notice**) that the Customer is seeking to implement a formal independent benchmarking of the cost of the Supplier's Activities in order to consider whether the rates and prices under this Agreement are competitive with the current Australian market for like deliverables and services (**Benchmarking Activities**).
- (c) An independent benchmarker may be agreed between the parties. If the parties cannot agree upon an independent benchmarker within 10 Business Days of the Benchmarking Notice, the Customer may appoint an independent third party benchmarker which the Customer reasonably considers to possess the adequate expertise to carry out the Benchmarking Activities, subject to such third party not being a direct competitor of the Supplier.

- (d) The parties will work together in good faith to expeditiously develop terms of reference which will form the basis of joint instructions for the benchmarker to follow in conducting the Benchmarking Activities. Those terms of reference must, unless otherwise agreed by the parties, be based on the following principles:
 - (i) a "like-for-like" comparison in respect of the Supplier's Activities, conducted by reference to one or both of:
 - A. a "whole of offering" basis in relation to all Services and Deliverables; and
 - B. a product and service category basis; and
 - (ii) appropriate normalisation, including with respect to volumes, method of delivery, quality of service and, in respect of clause 24.2(d)(i)B, taking into account any cross-subsidies offered between different product and service categories.
- (e) The parties will instruct the benchmarker to:
 - (i) conduct the Benchmarking Activities on an objective and independent basis; and
 - (ii) use reasonable efforts to access and rely on recent, accurate and verifiable data in respect of its Benchmarking Activities.
- (f) The parties must ensure that the benchmarker signs a confidentiality deed in favour of the Supplier and the Customer (in a form acceptable to the Customer) prior to undertaking any Benchmarking Activities pursuant to this Agreement.
- (g) Unless otherwise agreed by the parties in writing, the Customer will bear the cost of engaging a benchmarker to undertake the Benchmarking Activities under this clause.
- (h) The parties must each appoint a reasonable number of Personnel to work under the direction of the benchmarker in collecting data necessary for the purposes of the benchmarking exercise.
- (i) The parties agree that the benchmarker may, in its own discretion, determine the information required to carry out the Benchmarking Activities and may carry out the benchmark as he or she sees fit (including by determining the benchmarking methodology).
- (j) The parties must reasonably co-operate with the benchmarker in connection with the Benchmarking Activities carried out under this clause 24.2.

24.3 Outcome of benchmarking

- (a) The benchmarker will be required to deliver a benchmarking report (**Benchmarking Report**) to the parties within 60 days of the Benchmarker's appointment, or within such other period as agreed by the parties in writing.
- (b) If the Benchmarking Report concludes that the rates and prices (or certain rates and prices) under this Agreement exceed the rates and prices offered by the current Australian market for comparable goods, services and activities, then the parties must use all reasonable endeavours to agree on an adjustment to the Payment Particulars to reduce the relevant rates and/or prices to align with the conclusions of the Benchmarking Report.

- (c) If the parties are unable to agree on adjustments to the rates and prices in the Payment Particulars in accordance with clause 24.3(b) within 20 Business Days of the issue of the Benchmarking Report, then, subject to the Supplier's rights under clause 24.3(g), the Customer may, acting reasonably, determine the adjustments required to reduce the rates and prices in the Payment Particulars to reflect the conclusions contained in the Benchmarking Report.
- (d) If the Customer determines that an adjustment to the rates and prices in the Payment Particulars is required in accordance with clause 24.3(c), the Customer may issue a notice to the Supplier notifying it of the adjustment (**Adjustment Notice**).
- (e) The parties acknowledge and agree that if an adjustment to the rates and prices in the Payment Particulars is determined under clauses 24.3(b) or 24.3(c), the Payment Particulars will be deemed to have been amended to reflect the relevant adjustment, on and from the date:
 - (i) on which the parties reach an agreement in respect of the adjustment to the rates and prices under clause 24.3(b); or
 - (ii) specified in an Adjustment Notice issued by the Customer under clause 24.3(d), provided that the Customer will not specify a retrospective date in the Adjustment Notice.
- (f) A party may dispute the results of the Benchmarking Report if it reasonably considers that the findings in, and/or the conclusions of, the Benchmarking Report are based on incorrect facts, assumptions or comparisons. Any such dispute must be notified within 20 Business Days of the issue of the Benchmarking Report and must be resolved in accordance with clause 35.
- (g) The Supplier may dispute an Adjustment Notice if it reasonably considers that the adjustment to the rates and prices proposed in that notice are materially inconsistent with the conclusions contained in the Benchmarking Report. Any such dispute must be notified within 20 Business Days of the issue of the relevant Adjustment Notice and must be resolved in accordance with clause 35.

24.4 Invoicing

- (a) The Supplier must Invoice the Customer at the time stated in the Order Form or Payment Particulars or, if the time for payment is not stated, then the Supplier must Invoice the Customer within 30 days from the end of the calendar month in which the relevant Deliverables or Services are provided to the Customer in accordance with this Agreement.
- (b) The Supplier must:
 - (i) ensure that its Invoice is a valid tax invoice for the purposes of the GST Law;
 - (ii) together with any Invoice provided under clause 24.4(a), provide the Customer with a subcontractor's statement regarding workers' compensation, payroll tax and remuneration in the form specified at <https://www.revenue.nsw.gov.au/help-centre/resources-library/forms/payroll/opt011.pdf> (or such other site or form as advised by the Customer from time to time); and
 - (iii) provide any further details in regard to an Invoice that are set out in the Order Form or reasonably required by the Customer.

24.5 Payment

- (a) Subject to the Supplier satisfying any conditions precedent to payment specified in Item 46 of the Order Form, the Customer will pay any Correctly Rendered Invoice:
 - (i) by electronic funds transfer to the bank account details nominated by the Supplier in Item 46 of the Order Form, or as otherwise stipulated in writing by the Supplier from time to time; and
 - (ii) within 30 days following receipt of the Correctly Rendered Invoice, or such other time as specified in the Order Form.
- (b) The making of a payment is not an acknowledgment that the Supplier's Activities have been provided in accordance with this Agreement.
- (c) If the Supplier has overcharged the Customer in any Invoice, the Supplier must promptly refund any amounts that the Supplier has overcharged the Customer, and adjust current Invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount.

24.6 Payment disputes

If the Customer disputes or is unable to reconcile part of an Invoice, the Customer may withhold payment for the amount in dispute or in discrepancy until such dispute or discrepancy is resolved. In such case, the Customer must promptly notify the Supplier of the amount in dispute and the reasons for disputing it.

24.7 Set off

- (a) The Customer may, on notice to the Supplier, deduct from any amount otherwise due to the Supplier and from any security held by the Customer:
 - (i) any debt or other liquidated amount due from the Supplier to the Customer; or
 - (ii) any Claim to money which the Customer may have against the Supplier whether for damages (including Liquidated Damages) or otherwise,

under or in connection with this Agreement.
- (b) The rights given to the Customer under this clause 24.7 are in addition to and do not limit or affect any other rights of the Customer under this Agreement or at Law. Nothing in this clause 24.7 affects the right of the Customer to recover from the Supplier the whole of the debt or Claim in question or any balance that remains owing.

24.8 Taxes

- (a) Subject to clause 24.8(b), the Price is inclusive of, and the Supplier is responsible for paying, all Taxes levied or imposed in connection with the provision of the Supplier's Activities under this Agreement.
- (b) Unless otherwise specified, all amounts specified in this Agreement are exclusive of GST.
- (c) The Customer must, subject to receipt from the Supplier of a Correctly Rendered Invoice, pay any GST that is payable in respect of any taxable supply made under this Agreement in addition to the amount payable (exclusive of GST) for the taxable supply. GST is payable at the same time as the amount payable for the taxable supply to which it relates.

- (d) Where the Customer is required by any applicable Law to withhold any amounts from the payments made by it to the Supplier under this Agreement, the Customer:
 - (i) may withhold such amounts and will not be required to gross-up its payments to the Supplier for any amounts withheld; however
 - (ii) will provide the Supplier with a certificate of withholding or such other reasonable evidence of such withholding, to facilitate the Supplier's claims or deductions with the relevant taxing authority.

PART E: RISK ALLOCATION AND MANAGEMENT

25. Business contingency and Disaster recovery

25.1 Business contingency

While carrying out the Supplier's Activities, the Supplier must have reasonable business continuity and contingency measures and procedures in place to ensure business continuity and no disruption to the Customer or any Customer User.

25.2 Business Contingency Plan

- (a) If stated in the Order Form that a business contingency plan is required, the Supplier must, within the timeframe stated in the Order Form or as otherwise agreed in writing by the parties, have in place (and prepare and implement, if not already in existence) a Business Contingency Plan for the approval of the Customer (**Business Contingency Plan**).
- (b) The Business Contingency Plan must:
 - (i) specify the procedures and plans to predict, avoid, remedy and mitigate internal or external problems (including any Disasters) that may have an adverse effect on the Supplier's Activities;
 - (ii) comply with the security standards, requirements and certifications required by this Agreement, including under clause 21; and
 - (iii) include any other details specified in the Order Documents or as otherwise reasonably required by the Customer.
- (c) In developing the Business Contingency Plan, the Supplier must undertake a careful and informed assessment of the likely events and circumstances which may affect the Supplier's ability to carry out its obligations under this Agreement (including those in existence at the Commencement Date or notified by the Customer to the Supplier in writing).
- (d) The Business Contingency Plan must be reviewed and tested by the Supplier in accordance with the timeframes stated in the Order Form, or if no timeframes are stated, at least annually. The Supplier must provide the results of any review or test of its Business Contingency Plan to the Customer upon request.
- (e) If any updates to the Business Contingency Plan are required as a result of any review or test of the Business Contingency Plan, the Supplier must make those updates and re-submit the Business Contingency Plan to the Customer for approval.
- (f) The Supplier must comply with the latest Business Contingency Plan that has been approved by the Customer pursuant to clause 8.

- (g) For clarity, the Business Contingency Plan is a Document Deliverable. Clause 8 therefore applies to the Business Contingency Plan, including any updates to it.

25.3 Disasters

On the occurrence of a Disaster, the Supplier must immediately:

- (a) notify the Customer's Representative that a Disaster has occurred; and
- (b) implement any measures set out in the Business Contingency Plan or such other measures as reasonably required by the Customer to mitigate and respond to the Disaster.

26. Step-in

26.1 Step-In Rights

- (a) This clause 26 applies where specified in Item 48 of the Order Form that the Customer may exercise Step-In Rights.
- (b) Without limiting any other right or remedy under this Agreement or at Law, if the Customer reasonably forms the opinion that:
 - (i) the Supplier is unable or unwilling to provide any of the Supplier's Activities in accordance with this Agreement;
 - (ii) a Disaster or emergency has occurred, which the Supplier is unable to prevent or overcome and which will or does materially affect the operations of the Customer;
 - (iii) a Security Incident has occurred and the Supplier has failed to take, or delayed in taking, the actions required in relation to the Security Incident under clause 22.2; or
 - (iv) the Supplier has materially breached its obligations under this Agreement or there is a real and reasonable prospect of the Supplier materially breaching its obligations under this Agreement,

the Customer may give written notice to the Supplier that it intends to exercise its rights under this clause 26 (**Step-In Rights**).
- (c) To the extent reasonably practicable, before exercising Step-In Rights the Customer agrees to consult with the Supplier in relation to measures to mitigate or manage the impact of events and circumstances giving rise to the Step-In Rights.
- (d) For the purpose of exercising Step-In Rights, the Customer:
 - (i) will be entitled to act as the Supplier's agent under all contracts entered into by the Supplier that relate to the Supplier's Activities and are necessary for the Customer to exercise the Step-In Rights; and
 - (ii) may:
 - A. give reasonable instructions to any employee of the Supplier (and the Supplier must ensure that such requests are complied with); and
 - B. contract with any of the subcontractors engaged by the Supplier,

as is reasonably required by the Customer to exercise the Step-In Rights.

- (e) Upon receiving notice from the Customer stating that the Customer is exercising the Step-In Rights, the Supplier must:
 - (i) at the Customer's request, allow the Customer or a third party engaged by the Customer to provide part or all of the Supplier's Activities; and
 - (ii) maintain all third party agreements, consents and approvals necessary to enable the Customer to exercise its rights under this clause 26.
- (f) If the Customer exercises its Step-In Rights under this clause 26:
 - (i) the Customer will be relieved from paying any component of the Price that relates to those Supplier's Activities in respect of which it has exercised Step-In Rights, for the period of such exercise, however will continue to pay those components of the Price which relate to Supplier's Activities unaffected by the Step-In Rights; and
 - (ii) the Supplier must pay to the Customer on demand an amount equal to:
 - A. any costs incurred by the Customer in connection with the exercise of its Step-In Rights (including any costs relating to the Customer or its Personnel providing any part or all of the Supplier's Activities) under clause 26.1(e)(i)); and
 - B. the quantum of any increase in the fees or costs paid by the Customer to any third party (including any substitute supplier) in respect of the period of the exercise of the Step-In Rights.
- (g) The Customer will use its reasonable efforts to minimise the quantum of any increase under clause 26.1(f)(ii)B.
- (h) The Supplier will not be responsible for any default or delay in the delivery of the Supplier's Activities to the extent that it was caused by the Customer or any third party providing part or all of the Supplier's Activities as contemplated in clause 26.1(e)(i), except to the extent contributed to by the Supplier or any of its Personnel.
- (i) If the Customer exercises its Step-In Rights for 60 days or more (or such other period as specified in Item 48 of the Order Form), then the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 29.1(d).

26.2 Conclusion of Step-In

- (a) The Customer may cease to exercise its Step-In Rights at any time by giving the Supplier at least five Business Days written notice or such other period specified in Item 48 of the Order Form (**Step-Out Notice**).
- (b) Upon the Customer ceasing to exercise a Step-In Right, the Supplier must recommence performance of the Supplier's Activities on the date specified in the Step-Out Notice.
- (c) The Customer must relinquish the control and possession of any of the Supplier's resources utilised for the performance of the Step-In Rights and must provide the Supplier with details of its actions taken during the period in which the Customer was exercising its Step-In Rights.

26.3 No prejudice

The parties acknowledge and agree that:

- (a) except as specified in clause 26.1(g), nothing in this clause 26 will prejudice the rights of the Customer (including with respect to termination) or relieve the Supplier of its liabilities or responsibilities whether under this Agreement or otherwise according to Law; and
- (b) the Customer is under no obligation to exercise Step-In Rights before it exercises any termination rights under this Agreement.

27. Insurance

- (a) Unless otherwise specified in Item 49 of the Order Form, the Supplier must hold and maintain each of the following types of insurances, for the periods and in the amounts specified below:
 - (i) public liability insurance with a limit of cover of at least \$20 million in respect of each occurrence, to be held for the duration of the Supplier's Activities;
 - (ii) product liability insurance with a limit of cover of at least \$20 million in respect of each occurrence and in the aggregate, to be held for the duration of the Supplier's Activities and for at least seven years thereafter;
 - (iii) workers' compensation insurance as required by Law;
 - (iv) professional indemnity insurance with a limit of cover of at least \$20 million in respect of each occurrence and in the aggregate, to be held for the duration of the Supplier's Activities and for at least seven years thereafter; and
 - (v) such other insurances as specified in Item 49 of the Order Form.
- (b) Without limiting clause 27(a), where specified in the Order Form, the Supplier must hold and maintain:
 - (i) cyber security insurance with a limit of cover of at least \$20 million in respect of each claim (or such other amount specified in Item 49 of the Order Form), to be held for the duration of the Supplier's Activities; and
 - (ii) insurance that covers Losses that may be suffered as a result of a data security breach or the wrongful disclosure and use of Personal Information by the Supplier or its Personnel.
- (c) Within 10 Business Days following a request from the Customer, the Supplier must provide the Customer with:
 - (i) a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all insurance policies required by this Agreement are current and that the insurance has the required limits of cover; and
 - (ii) any information reasonably requested by the Customer regarding the policies for each of the insurances required to be held and maintained by the Supplier under clauses 27(a) and 27(b) (which may include reasonably redacted policy provisions or summarised policy terms where

disclosure of the full policy terms is restricted by confidentiality obligations owed by the Supplier to third parties).

28. Performance Guarantee and Financial Security

28.1 Performance Guarantee

If specified in Item 50 of the Order Form, the Supplier must arrange for a guarantor approved in writing by the Customer to enter into an agreement with the Customer in substantially the same form as the document in Schedule 8 or such other document reasonably acceptable to the Customer. This Performance Guarantee must be provided to the Customer within 15 Business Days following the Commencement Date or at such other time as specified in Item 50 of the Order Form.

28.2 Financial Security

- (a) If specified in Item 51 of the Order Form, the Supplier must provide a financial security in the amount stated in the Order Form and in substantially the same form as the document in Schedule 9 or such other document reasonably acceptable to the Customer (**Financial Security**). The Financial Security must be provided to the Customer within 15 Business Days following the Commencement Date or at such other time as specified in Item 51 of the Order Form.
- (b) If the Prices payable for the Supplier's Activities are increased pursuant to this Agreement (including due to a Change Request approved under clause 10), the Customer may, acting reasonably, direct the Supplier to provide additional security in an amount that is proportionate to the increase in Price, and the Supplier must promptly comply with such a direction.
- (c) Subject to its rights to have recourse to the Financial Security, the Customer must release the Financial Security on the sooner of:
 - (i) one year from the date of issue of the Acceptance Certificate for the last Deliverable under the Order Form, or if no Acceptance Tests were required, one year following the termination or expiry of this Agreement (or such other period specified in the Order Documents);
 - (ii) the date the Customer and the Supplier agree in writing to release the issuer of the Financial Security; and
 - (iii) the date the Customer notifies the issuer of the Financial Security in writing that the Financial Security is no longer required.

28.3 Costs

Unless otherwise specified in the Order Form, the Supplier will be responsible for the costs that it incurs in complying with its obligations under this clause 28.

29. Termination

29.1 Termination for cause by the Customer

The Customer may (in its sole discretion) immediately terminate this Agreement or reduce its scope by written notice to the Supplier:

- (a) if the Supplier breaches a term of this Agreement which is:
 - (i) not capable of remedy; or

- (ii) capable of remedy, but the Supplier fails to remedy it within 30 days of receiving a notice to do so;
- (b) if an Insolvency Event occurs in respect of the Supplier, to the extent there is no prohibition at Law in respect of such termination;
- (c) if the Supplier or any parent company of the Supplier involved in the performance of the Supplier's Activities undergoes a Change in Control or Other Changes, without the Customer's prior written consent; or
- (d) in any of those circumstances specified in clauses 12.7(b), 13.6, 14.4(a)(iii), 14.4(c)(iii), 26.1(i) and 36.4 or as otherwise set out in this Agreement, including the Additional Conditions,

in which circumstances the Customer's sole liability will be to pay the Supplier (subject to substantiation by the Supplier and the Supplier submitting a Correctly Rendered Invoice in accordance with this Agreement) for work carried out prior to the date of termination or reduction in scope.

29.2 Termination for convenience by the Customer

- (a) Without prejudice to the Customer's other rights, the Customer may for its sole convenience, and for any reason, by written notice to the Supplier immediately terminate this Agreement or reduce its scope, effective from the time stated in the Customer's notice, or if no such time is stated, at the time notice is given to the Supplier.
- (b) If the Customer terminates this Agreement or reduces its scope under clause 29.2(a), the Supplier:
 - (i) must take all reasonably practicable steps to mitigate the costs referred to in clause 29.2(b)(ii); and
 - (ii) will be entitled to payment of the following amounts, subject to substantiation by the Supplier, being:
 - A. for:
 - 1) work carried out prior to the time of termination or reduction in scope; and
 - 2) third party costs and disbursements duly incurred, with the authorisation of the Customer, but only to the extent referable to the period prior to the effective time of termination,

which would have been payable if this Agreement had not been terminated or reduced in scope and the Supplier submitted an Invoice for the work carried out prior to this date; and
 - B. such other specific costs itemised in Item 52 of the Order Form (if any),

but in no case will the total amount payable to the Supplier be more than the total Price that would have been payable by the Customer had this Agreement not been terminated.
- (c) The amount to which the Supplier is entitled under this clause 29.2 will be a limitation on the Customer's liability to the Supplier arising out of, or in connection

with, the termination or reduction in scope of this Agreement and the Supplier may not make any Claim against the Customer with respect to this, other than for the amount payable under this clause 29.2.

29.3 Consequences of reduction of scope

If the Customer exercises its right to reduce the scope of this Agreement pursuant to clause 29, the parties agree that the Price will be reduced proportionately and in accordance with any methodology specified in the Payment Particulars.

29.4 Termination for cause by the Supplier

- (a) The Supplier may immediately terminate this Agreement by written notice to the Customer if:
 - (i) the Customer has not paid an amount due and payable by it under this Agreement and the:
 - A. amount has been properly invoiced in a Correctly Rendered Invoice and is not the subject of any unresolved dispute under clause 24.6;
 - B. Supplier has issued a notice to the Customer, stating that the amount is overdue and that the Supplier intends to terminate unless the amount is paid; and
 - C. Customer does not pay the amount within 90 days of the date it receives the Supplier's notice under clause 29.4(a)(i)B; or
 - (ii) the Customer has:
 - A. breached this Agreement in a manner which results in the Supplier being in breach of a Law; or
 - B. intentionally and wilfully:
 - 1) breached clauses 17.10 or 23; or
 - 2) misappropriated the Intellectual Property Rights of the Supplier in its Existing Materials in a manner that is contrary to the Intellectual Property Rights granted or licenced to the Customer under this Agreement,

and the Customer does not cease the relevant conduct within 60 days of receiving a written notice from the Supplier requesting it to do so.
- (b) This clause 29.4 exhaustively sets out the Supplier's rights to terminate this Agreement.

29.5 Dispute resolution

For clarity, the processes described in clause 35 are independent of, may be undertaken contemporaneously with, and do not constrain or delay, a party exercising its rights under this clause 29.

29.6 Survival of rights on termination or reduction in scope

Termination of this Agreement will be without prejudice to any other rights or obligations which may have accrued under this Agreement on or before termination.

30. Suspension

- (a) The Customer may direct the Supplier in writing to:
 - (i) suspend the performance or carrying out of; and/or
 - (ii) after a suspension has been instructed, re-commence the performance or carrying out of,

all or part of the Supplier's Activities, at any time. Any such suspension will be effective on and from the date specified in the Customer's direction.
- (b) The Supplier must comply with any direction issued by the Customer under clause 30(a).
- (c) If a suspension under this clause 30 is instructed by the Customer as a result of any breach by the Supplier, the Supplier's failure or delay in carrying out any of its obligations in accordance with this Agreement or because of any event of the kind described in clause 29.1, such suspension will be without any liability to the Customer and the Supplier will not be entitled to make any Claim against the Customer arising out of, or in connection with, the suspension.
- (d) If a suspension is instructed by the Customer under clause 30(a) other than for the reasons described in clause 30(c), then:
 - (i) unless otherwise agreed by the parties, the Supplier will be entitled to Invoice the Customer the direct, reasonable and substantiated costs (excluding any profit, profit component or overheads) necessarily incurred by the Supplier as a result of implementing the suspension as directed by the Customer, to the extent such costs could not have been reasonably mitigated or avoided;
 - (ii) the Supplier must take all reasonable steps to mitigate those costs incurred by it as a result of such suspension; and
 - (iii) the Supplier will not be entitled to make any Claim against the Customer arising out of or in connection with the suspension other than as described in clause 30(d)(i).

31. Transition-Out Services

31.1 Application of this clause

This clause 31 applies if it is specified in the Order Form that the Supplier is required to provide Transition-Out Services as part of any Stage or part of the Supplier's Activities.

31.2 Transition-Out Plan

- (a) If the Order Form specifies that a Transition-Out Plan must be prepared by the Supplier with respect to the Supplier's Activities, by any date specified in the Order Form or otherwise promptly on request, the Supplier must prepare, and submit to the Customer's Representative for the Customer's approval in accordance with clause 8, a plan setting out how the Supplier will effect:
 - (i) the orderly disablement of the Supplier's Activities; or
 - (ii) where applicable, the transfer of the performance of the Supplier's Activities under this Agreement to the Customer or a third party, including complying with the obligations set out in this clause 31.

- (b) The Supplier must ensure that the Transition-Out Plan sets out:
 - (i) the timeframes within which the Supplier will perform its obligations under the Transition-Out Plan;
 - (ii) any specific transition-out or disengagement obligations specified in the Order Documents; and
 - (iii) any charges, or the basis or methodology for the calculation of charges, which the Customer will pay the Supplier to perform the Services described in the Transition-Out Plan (if not otherwise specified in the Order Documents).
- (c) The Supplier must:
 - (i) review and update the Transition-Out Plan periodically throughout its engagement under this Agreement or at the Customer's reasonable request; and
 - (ii) make any updates to the Transition-Out Plan that are reasonably requested by the Customer.
- (d) For clarity, the Transition-Out Plan is a Document Deliverable. Clause 8 therefore applies to the Transition-Out Plan, including any updates to it.

31.3 General

The Supplier must for the duration of the Transition-Out Period (or such other period as agreed between the parties in writing):

- (a) carry out all transition-out or disengagement Services specified in the Module Terms and other Order Documents or that are necessary to ensure the smooth transition of the Supplier's Activities to the Customer or its nominee;
- (b) if a Transition-Out Plan has been approved by the Customer, perform its obligations as set out in the Transition-Out Plan; and
- (c) co-operate with the Customer and its Personnel in relation to the performance of all Transition-Out Services.

32. Consequences of expiry or termination

32.1 Extracting or retrieving Customer Data

The Supplier must enable the Customer to extract or retrieve Customer Data, or otherwise provide the Customer Data to the Customer, in accordance with the requirements of this Agreement, for a minimum period of up to six months after the expiry or termination of this Agreement (or such other period as specified in the Order Documents or agreed between the parties in writing).

32.2 Confidential Information and intellectual property

Subject to clauses 23 and 32.1 and any requirements at Law applicable to the parties, on the expiry or termination of this Agreement, the Supplier and its Personnel must cease to access, and at the Customer's election, securely:

- (a) return; or
- (b) destroy,

the Customer's:

- (c) Confidential Information; and
- (d) Existing Materials, New Materials and other Materials that comprise the Customer's Intellectual Property Rights.

33. Warranties

33.1 Mutual warranties

Each party represents, warrants and undertakes to the other party that:

- (a) as at the date that this Agreement is entered into, it is properly constituted and has sufficient power, capacity and authority to enter into this Agreement and perform the activities required under it;
- (b) in so far as it uses Personnel to perform activities on its behalf under this Agreement, those Personnel are duly authorised by it; and
- (c) it will reasonably co-operate with the other party and its respective Personnel to promote timely progress and fulfilment of this Agreement.

33.2 General Supplier warranties

Without limiting any other warranty under this Agreement, the Supplier represents, warrants and undertakes to the Customer that:

- (a) to the best of its knowledge and belief after making due and reasonable enquiries, there is no Conflict of Interest in respect of itself and its Personnel, which relates to the Supplier's ability to perform its obligations under this Agreement;
- (b) the information that is provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier and its Personnel is, to the best of the Supplier's knowledge and belief, correct and not misleading as at the date it was (or is to be) supplied to the Customer;
- (c) it is not aware of any information which, if it had provided that information to the Customer, may reasonably be expected to have had a material effect on the decision made by the Customer to enter into this Agreement;
- (d) the office holders of the Supplier and any associate of the Supplier (as defined under section 11 of the Corporations Act) or its Related Body Corporate are of good fame and character; and
- (e) the Supplier has all the Authorisations necessary to perform its obligations under this Agreement.

33.3 Warranties in relation to Supplier's Activities

Without limiting any other warranty under this Agreement, the Supplier represents and warrants to the Customer that:

- (a) the Supplier's Activities will be carried out with due skill, care and diligence;
- (b) the Supplier's Activities (including Deliverables repaired or replaced or Services re-performed under this Agreement) will meet the Specifications and other requirements of this Agreement;

- (c) the Supplier's Activities will only be carried out by Supplier's Personnel who meet the Personnel requirements under this Agreement; and
- (d) it will perform the Supplier's Activities in accordance with all applicable Laws.

33.4 Implied warranties

The express warranties given by the Supplier under this Agreement are provided by the Supplier to the exclusion of any implied representations or warranties not set out in this Agreement, provided that this Agreement (including clause 33.4) does not operate to exclude any statutorily implied representations, warranties, conditions or guarantees which cannot legally be excluded. To the extent that any such statutorily non-excludable representations, warranties, conditions or guarantees apply, the Supplier limits its liability for their breach to the maximum amount permitted by Law.

34. Indemnities and liability

34.1 Indemnities

The Supplier indemnifies the Indemnified Entities against any Loss arising out of, or connected with any:

- (a) personal injury or death to any person or damage to, or loss of any real or tangible property to the extent caused or contributed to by an act or omission of the Supplier or any of the Supplier's Personnel;
- (b) breach of the Supplier's or its Personnel's obligations under clauses 19.1 (Obligations in relation to Customer Data), 19.2 (Security of Customer Data), 20 (Privacy), 21 (Security), 22 (Security Incident notification) or 23 (Confidentiality);
- (c) Claim brought by a third party arising out of, or in connection with, any actual or alleged infringement of Intellectual Property Rights or Moral Rights in the Deliverables or Services or associated with the Supplier's Activities, or any breach by the Supplier of the warranties in clause 17.12; or
- (d) of the Supplier's or its Personnel's fraud, recklessness or Wilful Misconduct.

34.2 Third Party IP Claims

In relation to Claims of the kind referred to in clause 34.1(c), the parties agree that the Supplier's liability under the indemnity under that sub-clause is reduced to the extent that Loss arising under that indemnity is caused or contributed to by:

- (a) the Customer's combination, operation or use of a Deliverable or Service with any other product, equipment, software or document of the Customer or a third party, except where:
 - (i) such combination, operation or use is authorised under this Agreement;
 - (ii) the Supplier supplied the Deliverable or Service on the basis that it can be combined, operated or used with the Customer's or the relevant third party's products; or
 - (iii) such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Deliverable or Service;
- (b) the Customer's unauthorised modification of a Deliverable without the knowledge of the Supplier, except where such modification was contemplated in the Order

Documents or reasonably anticipated having regard to the nature and purpose of the Deliverable; or

- (c) in relation to Licensed Software:
 - (i) the Supplier following the Customer's written technical directions in relation to the coding and configuration of the Licensed Software, to the extent that verifying or validating such directions is not within the scope of the Supplier's Activities; or
 - (ii) the Customer's continued use of old versions of the Licensed Software after the Supplier has notified the Customer in writing of the relevant infringement and provided the Customer (at no additional cost) a remedial software version, patch or correction, or a replacement part or other correction, that would have overcome the relevant infringement without affecting the performance or availability of the Licensed Software.

34.3 Indemnities not affected by insurance

For clarity, the Supplier's obligations and liability to indemnify the Indemnified Entities under this Agreement or otherwise, will not be affected in any way by any terms of insurance or any refusal by the insurer to indemnify the Supplier under the policies of insurance.

34.4 Status of indemnities

The Supplier's obligations to indemnify any Indemnified Entities who are not the Customer, under this Agreement or otherwise, are held on trust by the Customer and may be fully and effectively enforced by the Customer on behalf of those other entities.

34.5 Liability cap

- (a) Subject to clauses 34.5(c) and 34.5(d), the liability of each party under this Agreement, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action is limited to the Limitation Amount.
- (b) In clause 34.5(a), the "**Limitation Amount**" means the amount specified in Item 53 of the Order Form, which may be:
 - (i) a fixed amount;
 - (ii) a multiple of the total amounts paid or payable by the Customer under this Agreement; or
 - (iii) an amount determined by reference to any other mechanism,

in the aggregate or otherwise, provided that where no such amount is specified or Item 53 of the Order Form is left blank, the Limitation Amount (in that case, being the aggregate liability of a party under this Agreement), will be the Default Amount. The "**Default Amount**" will be determined in accordance with the table below:

Total Fees Paid or Payable*	Default Amount
Under \$1,000,000 (including GST)	\$2,000,000

\$1,000,000 and above (including GST)	Two times the total fees paid or payable by the Customer under this Agreement.
* "Paid or payable" includes amounts that at the relevant time have not been paid but which would have become payable if the parties performed all of their obligations under this Agreement. It is not limited to amounts that at the relevant time have become due and payable.	

- (c) The Supplier's liability under this Agreement is uncapped, and the limitation of liability set out in clause 34.5(a) does not apply in relation to each of the following:
- (i) liability arising:
 - A. under any of the indemnities in clause 34.1; or
 - B. in respect of any of the matters referenced in that clause, except to the extent that the parties expressly agree to, in Item 53 of the Order Form, an alternative approach in relation to regulating the quantum of any such liability; or
 - (ii) the Supplier's abandonment or repudiation of its obligations under this Agreement.
- (d) Where the Supplier is a current member of a relevant scheme approved under the Professional Standards Legislation, and that scheme applies to limit the liability of the Supplier in accordance with that scheme, then the Supplier's liability will not be regulated by clauses 34.5(a) and 34.5(c) but will instead be limited only to the extent specified under that scheme. For clarity, to the extent that any such scheme does not apply, the Supplier's liability will continue to be determined in accordance with the other provisions of this clause 34.

34.6 Exclusions of liability

- (a) In no event will either party's liability to the other party, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for special, indirect, incidental or consequential loss or damage.
- (b) Nothing in clause 34.6(a) will preclude a party from recovering:
- (i) Loss which may fairly and reasonably be considered to arise naturally, in the usual course of things, from the breach or other act or omission giving rise to the relevant liability; and
 - (ii) any kinds of Loss which the parties expressly agree, in Item 53 of the Order Form, will be treated as Loss of the kind referred to in clause 34.6(b)(i),
- and where the Customer is the recovering party:
- (iii) any Loss against which the Supplier is required to indemnify the Indemnified Entities under clause 34.1, to the extent such Loss relates to monies, amounts or liabilities owed, due, paid or payable, or obligations owed, to a third party; and
 - (iv) subject to applicable common law tests in respect of the recovery of Loss, any costs and expenses relating to any of the following activities

(which, for clarity, will be treated as loss of the kind referred to in clause 34.6(b)(i)):

- A. repairing or replacing the relevant Deliverable or Licensed Software or re-supplying any Services, including the cost of procuring replacement deliverables or services of equivalent functionality and performance internally or from a third party;
- B. implementing any reasonably necessary temporary workaround in relation to the Licensed Software, Services or Deliverables;
- C. engaging labour resources to reload any lost or corrupt data to the extent caused or contributed by the Supplier, from the last backup made of such data (regardless of whether the Supplier is responsible for backup of that data as part of the Supplier's Activities); and
- D. activities undertaken by, or on behalf of, the Customer in connection with the mitigation of Loss.

34.7 Application and contribution

- (a) Each party's liability will be reduced proportionately to the extent caused or contributed by the other party.
- (b) The limitations and exclusions of liability in this clause 33.4 only apply to the extent permitted by Law.

34.8 Mitigation

The Supplier's obligation to indemnify the Indemnified Entities against Loss under clause 34.1 is reduced to the extent that the relevant Loss arose due to a failure of the relevant Indemnified Entity to take reasonable steps to mitigate that Loss.

35. Dispute resolution

35.1 General

- (a) The parties agree to resolve any dispute between them that arises out of, or in connection with, this Agreement in accordance with the procedure set out in clauses 35.2 to 35.3 or such other procedure set out in Item 54 of the Order Form.
- (b) Either party may give written notice of a dispute to the other party setting out the particulars of the dispute and, where the notice is issued by the Customer, indicating whether the Contract Authority is to be involved in the dispute resolution process (**Dispute Notice**).
- (c) Nothing in this clause 35 limits the ability of either party to commence legal action against the other party for urgent interlocutory relief.

35.2 Escalation

- (a) Within 10 Business Days of a party receiving a Dispute Notice, the Customer's Representative and the Supplier's Representative must meet and try to resolve the dispute in good faith.
- (b) If the parties have not:

- (i) resolved the dispute; or
- (ii) met,

within the period specified in clause 35.2(a), a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other period as may be agreed by the parties in writing.

35.3 Alternative dispute resolution

- (a) Unless otherwise specified in the Order Form, if the dispute remains unresolved after 20 Business Days of the date of the Dispute Notice (or such longer period as may be agreed by the parties in writing), then either party may issue a notice in writing to the other party requiring the dispute to be determined by mediation in accordance with, and subject to, the Resolution Institute Mediation Rules or any equivalent and replacement rules.
- (b) If the dispute still remains unresolved 20 Business Days after a party becomes entitled to issue a notice in writing under clause 35.3(a) requiring the dispute to be determined by mediation, and by that time:
 - (i) *neither party has referred the dispute to mediation*: then either party may commence any other form of dispute resolution, including court proceedings, to determine the dispute; or
 - (ii) *the dispute has been referred to mediation*: then neither party may commence any other form of dispute resolution to determine the dispute, until a further 10 Business Days has elapsed following the commencement of mediation.

35.4 Acknowledgment

The parties acknowledge and agree that neither party may commence any other form of dispute resolution to determine the dispute, until the procedure set out in clauses 35.2 to 35.3 (or such other procedure set out in Item 54 of the Order Form) has been complied with in relation to the dispute.

35.5 Costs

Each party will bear its own costs in respect of complying with this clause 35.

35.6 Continue to perform

Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under this Agreement.

36. Force Majeure

36.1 Force Majeure Event

Subject to clauses 36.2 and 36.3, non-performance as a result of a Force Majeure Event by a party of any obligation required by this Agreement to be performed by it will, during the time, and to the sole extent, that such performance is prevented, wholly or in part, by that Force Majeure Event:

- (a) be excused; and
- (b) not give rise to any liability to the other party for any Losses arising out of, or in any way connected with, that non-performance.

36.2 Notification and diligence

A party which is, by reason of a Force Majeure Event, unable to perform any obligation required by this Agreement to be performed will:

- (a) notify the other party as soon as possible giving:
 - (i) full particulars of the event or circumstance of the Force Majeure Event;
 - (ii) the date of commencement of the Force Majeure Event and an estimate of the period of time required to enable it to resume full performance of its obligations where these particulars are available at the time of the Force Majeure Event notice; and
 - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
- (b) use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible;
- (c) resume performance as expeditiously as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent which permits resumption of performance;
- (d) notify the other party when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur; and
- (e) notify the other party when resumption of performance will occur.

36.3 Liability not relieved

A Force Majeure Event affecting a party's performance under this Agreement will not relieve that party of liability in the event, and to the extent that:

- (a) its negligence, failure to comply with any applicable Business Contingency Plan or breach of this Agreement (which was not caused by the Force Majeure Event) caused or contributed to its failure to perform under this Agreement; or
- (b) it failed to use all reasonable endeavours to remedy the situation and to remove the event or circumstances giving rise to the Force Majeure Event.

36.4 Prolonged Force Majeure Event

If a Force Majeure Event prevents or inhibits the Supplier's performance of any obligation required to be performed under this Agreement for 60 days or more (or such other period as specified in the Order Form), then the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 29.1(d).

37. Reports and audits

37.1 Records and reports

- (a) The Supplier must keep and maintain true and accurate records and accounts of:
 - (i) all of the Supplier's Activities performed under this Agreement, including all records specified in the Module Terms;
 - (ii) the Supplier's compliance with its obligations under this Agreement; and

- (iii) all associated records and accounts, including all supporting material, used to generate and substantiate the Invoices that it submits under this Agreement.
- (b) Without limiting clause 37.1(a), the Supplier must provide the Customer with quarterly reports containing details of:
 - (i) the Supplier's compliance with the SME Policies, including (to the extent that the SME Policies apply):
 - A. the SMEs (as defined in the SME Policies) engaged in the Supplier's Activities;
 - B. the amounts paid to any such SMEs;
 - C. the Supplier's compliance with any plans developed or updated in accordance with the SME Policies; and
 - D. such other matters as required under the SME Policies; and
 - (ii) the Supplier's compliance with the Aboriginal Procurement Policy, including identifying (to the extent that the Aboriginal Procurement Policy applies) the:
 - A. Aboriginal-owned businesses engaged to perform the Supplier's Activities under this Agreement;
 - B. Supplier's compliance with the Aboriginal Participation Plan; and
 - C. amounts paid to any Aboriginal owned businesses under this Agreement.

37.2 Audits and inspections

- (a) The Customer or its nominee (which may be an advisor, consultant or other third party engaged by the Customer) may conduct audits and inspections of the Supplier's and its Personnel's performance of its obligations under this Agreement, including the:
 - (i) Supplier's and any of the Supplier's subcontractors' operational practices and procedures as they relate to this Agreement;
 - (ii) accuracy of the Supplier's Invoices and reports submitted under this Agreement; and
 - (iii) Supplier's and its Personnel's compliance with its other obligations under this Agreement.
- (b) For the purpose of conducting an audit or inspection under clause 37, or for the purposes of an inspection, examination or audit undertaken by or on behalf of the Auditor-General in accordance with its powers to assess the expenditure of public money related to this Agreement, the Customer, Auditor-General or their nominees may, on giving reasonable advance notice to the Supplier (at reasonable times and during Business Hours where practicable):
 - (i) access the premises and facilities of the Supplier to the extent reasonably required to carry out the audit or inspection;

- (ii) to the extent relating to the Supplier's Activities, access, inspect and copy documents, resources and books and records, however stored, in the possession or control of the Supplier or its Personnel; and
 - (iii) require assistance in respect of any inquiry into or concerning the Supplier's Activities, including any parliamentary or statutory review or inquiry.
- (c) If an audit will involve the Supplier being required to produce documents, resources or books and records, the Customer will accompany its notice under clause 37.2(b) with a general description of the scope and purpose of the audit.
- (d) To the extent an audit involves physical access to the premises or facilities of the Supplier the:
 - (i) Customer will limit the exercise of its audit or inspection rights to no more than once per calendar year, unless the audit arises from the Supplier's breach of this Agreement or the Customer forming, on a reasonable basis, a view that such breach may have occurred; and
 - (ii) Customer or its nominee must comply with the Supplier's reasonable security requirements during such physical access.
- (e) The Supplier must provide all reasonable access, assistance and co-operation required by the Customer or its nominee in carrying out an audit under this clause 37.2.
- (f) Without limiting any rights or remedies of the Customer, if an audit shows that the Supplier or its Personnel has:
 - (i) breached, or is in breach of, this Agreement, the Supplier must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Customer; or
 - (ii) overcharged the Customer in any Invoice, the Supplier must promptly refund any amounts that the Supplier has overcharged the Customer, and adjust all of the current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount. Where the overcharging discrepancy identified exceeds 10% of the amount that should have been correctly invoiced, the Supplier must also promptly reimburse the Customer for the reasonable costs (including internal costs) of conducting the audit.
- (g) Subject to clause 37.2(f)(ii), each party must bear its own costs of executing its rights under, or complying with, this clause 37.

37.3 Conduct of audits and inspections

The Customer and its nominee must, in conducting an audit or inspection under this clause 37:

- (a) to the extent it obtains any Confidential Information of the Supplier as a result of such audit or inspection, treat that information in accordance with clause 23; and
- (b) not delegate the conduct of an audit or inspection under this clause to any person who may reasonably be considered to be a direct competitor of the Supplier in relation to the Supplier's Activities (unless such person is otherwise approved by the Supplier, acting reasonably).

37.4 Survival

This clause 37 survives for the Term and a period of seven years following the termination or expiry of this Agreement.

38. Proportionate liability

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 38(a), the rights, obligations and liabilities of the Customer and the Supplier under this Agreement with respect to proportionate liability are as specified in this Agreement and are not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort or otherwise.

PART F: GENERAL PROVISIONS

39. General

39.1 Government information

- (a) The Supplier acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Agreement on its nominated website established for GIPA Act disclosures. The Supplier irrevocably consents to the Customer acting in accordance with this clause 39.
- (b) To the extent that section 121 of the GIPA Act applies, the Supplier must, upon receipt of a written request by the Customer, provide the Customer with immediate access to the following information contained in records held by the Supplier:
 - (i) information that relates directly to the performance of the Supplier's Activities;
 - (ii) information collected by the Supplier from members of the public to whom it provides, or offers to provide, any aspect of the Supplier's Activities; and
 - (iii) information received by the Supplier from the Customer to enable it to carry out the Supplier's Activities.
- (c) For the purposes of clause 39.1(b), information does not include information that:
 - (i) discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) the Supplier is prohibited from disclosing to the Customer by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (iii) if disclosed to the Customer, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Customer whether at present or in the future.
- (d) The Supplier must provide copies of any of the information referred to in clause 39.1(b), as requested by the Customer, at the Supplier's own expense and in such medium as the Customer may reasonably require.

- (e) Without limiting any other provision of this clause 39.1, the Supplier:
- (i) authorises the Customer to make information concerning the Supplier available to other Government Agencies or Eligible Customers (including to the relevant head of any Government Agency or Eligible Customer and any responsible Minister of a Government Agency) for any purpose in connection with facilitating the Customer's exercise of its rights under this Agreement or the carrying out, or exercise, of the functions or powers of the Customer, any Government Agency, Eligible Customer or the Crown. Such information may include any information provided by the Supplier to the Customer and any information relating to the Supplier's performance under this Agreement (including any reports provided under clause 15.4);
 - (ii) acknowledges that information about the Supplier from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any officers or associates of the Supplier or a Related Body Corporate may be taken into account by Government Agencies and Eligible Customers considering whether to offer the Supplier future opportunities for working with those entities, for assessing the terms of their own contracts (or proposed contracts) with the Supplier or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;
 - (iii) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (iv) releases and indemnifies the Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

39.2 Personal Property Securities Act

To the extent the *Personal Property Securities Act 2009* (Cth) applies to any Materials or Deliverables supplied by the Supplier to the Customer, the Supplier represents, warrants and undertakes that the supply of the Materials and Deliverables to the Customer:

- (a) does not breach any security agreement the Supplier has with a third party; and
- (b) is within the ordinary course of the Supplier's business.

39.3 No use of the Customer's name or logo

The Supplier must not use the Customer's name or any of the Customer's logos, trade marks or branding, without the prior written consent of the Customer.

39.4 Prior work

Except as otherwise agreed between the parties in writing:

- (a) the terms of this Agreement apply to all of the work performed by the Supplier in connection with the Supplier's Activities even if it was performed prior to entry into this Agreement; and
- (b) any payment made to the Supplier by the Customer in connection with this Agreement or the Supplier's Activities prior to entry into this Agreement will be

treated as a payment under this Agreement and will be in part discharge of the Customer's obligation to pay the Price.

39.5 Entire agreement

This Agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

39.6 Variation

No variation to this Agreement is effective unless made in writing and executed by each party.

39.7 Survival and merger

- (a) No term of this Agreement merges on completion of any transaction contemplated by this Agreement.
- (b) The following provisions survive the termination and expiry of this Agreement:
 - (i) 9, 13, 17, 18, 19, 20, 21, 23, 27(a)(iv), 29.5, 31, 32, 33.4, 34.8, 37, 38 and this clause 39; and
 - (ii) any other provisions that are expressed to or which by their nature survive termination or expiry.

39.8 Severability

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

39.9 Waiver

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or a delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

39.10 Cumulative rights

Except as expressly provided in the Additional Conditions, the rights and remedies of a party under this Agreement (including under an indemnity) are in addition to and do not exclude or limit any other rights or remedies provided by Law.

39.11 Further assurances

Each party must do all things, and execute all further documents, necessary to give full effect to this Agreement.

39.12 Assignment, novation and other dealings

- (a) The Supplier must not, in whole or in part, assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so without

obtaining the prior written consent of the Customer, which consent may be withheld at the Customer's sole discretion.

- (b) The Supplier acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take an assignment or novation of this Agreement before determining whether or not to give consent to an assignment or novation.
- (c) Subject to clause 39.12(d), the Customer must not, in whole or in part, assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Supplier, which consent may not be unreasonably withheld.
- (d) Notwithstanding clause 39.12(c), the Customer may, at its sole discretion, assign or novate this Agreement in whole or in part:
 - (i) to any other Eligible Customer, by notice in writing to the Supplier; or
 - (ii) for machinery of government changes, including if, by operation of Law, the Customer is reconstituted into a new body or legal entity or the functions of the Customer, relevant to this Agreement, are transferred to a different body or legal entity.
- (e) The Supplier agrees to co-operate in good faith and provide all reasonable assistance to the Customer in respect of any such assignment or novation made by the Customer under this clause 39.12.
- (f) The Supplier must (to the extent permitted by Law):
 - (i) notify the Customer if the Supplier or any parent company of the Supplier is about to undergo a Change in Control or Other Changes, as soon as it becomes aware that the Change in Control or Other Changes will or may occur; and
 - (ii) provide the Customer with all information reasonably requested by the Customer in respect of the Change in Control or Other Changes, including in respect of any incoming owner or other person who is to obtain control over the Supplier or any parent company.

39.13 Notices

- (a) A notice, consent or other communication under this Agreement (**Notice**) is only effective if it is in writing and received in full and legible form at the addressee's address or email address.
- (b) For the purposes of this clause 39.13, a party's address and email address is that set out in the Order Form (as applicable), unless the party has notified a changed address, then the notice, consent, approval or other communication must be sent to that address.
- (c) A Notice will be regarded as received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5:00pm on a Business Day it is regarded as received at 9:00am on the following Business Day.
- (d) Unless there is evidence to the contrary:
 - (i) a letter sent by post will be taken to be received on the fifth Business Day after posting (or seventh, if posted to or from a place outside of Australia);

- (ii) in the case of email:
 - A. production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;
 - B. where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and
 - C. where a delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender must use an alternative method of giving that notice in accordance with this clause 39.13.

39.14 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement.

39.15 Expenses

Except as otherwise expressly provided in this Agreement, each party must pay its own costs and expenses in connection with the negotiation, preparation and execution of this Agreement.

39.16 English language

All communications between the parties and all documentation provided in connection with this Agreement and the Supplier's Activities must be in the English language.

39.17 Governing Law

This Agreement is governed by the Laws applicable in the State of New South Wales, Australia. The Supplier irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the courts of New South Wales, Australia and the courts entitled to hear appeals from those courts.

Executed as an agreement:

Signed for and on behalf of **the Crown in right of the State of New South Wales represented by NSW Police Force (ABN 43 408 613 180)** by its authorised representative, but not so as to incur personal liability, in the presence of:

Signature of witness

Signature of authorised representative

Name of witness in full

Name of authorised representative in full

Date

Executed by **[Insert name of Supplier]** **ABN [Insert ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Date

Date

Schedule 1 - Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

Aboriginal Participation Plan means the plan of that name developed pursuant to the Aboriginal Procurement Policy and attached to, or referenced in, the Order Form.

Aboriginal Procurement Policy means the New South Wales Government's Aboriginal Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> (or such other link as notified by the Customer).

Acceptance in respect of a Deliverable, means the issuing by the Customer of an Acceptance Certificate for that Deliverable. **Accept** and **Accepted** have a corresponding meaning.

Acceptance Certificate means an acceptance notice or certificate issued by the Customer pursuant to clause 14.3 to confirm that a Deliverable meets the Acceptance Criteria.

Acceptance Criteria in respect of a Deliverable, means the compliance of that Deliverable with any criteria set out in the Order Form and such other requirements as the Customer reasonably considers necessary to determine whether that Deliverable complies with the applicable Specifications and the other requirements set out in this Agreement.

Acceptance Tests or **Testing** in respect of a Deliverable, means acceptance tests carried out in accordance with clause 14 to verify whether the Acceptance Criteria in respect of that Deliverable has been met, including any such tests specified in the Order Documents.

Accessibility Standard has the meaning given to that term in clause 6.3(a)(i).

Additional Activities has the meaning given to that term in clause 6.9(a)(i).

Additional Conditions means any terms or conditions that vary or are additional to the terms and conditions set out in the Core Terms or Module Terms and which are stated or referenced in Items 11 or 66 of the Order Form.

Additional Order means an Additional Order for Services and/or Deliverables that is placed in accordance with clause 3.3.

Adjustment Notice has the meaning given to that term in clause 24.3(d).

Agreement means this agreement and includes any schedule and attachment to this agreement.

Authorisations means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency.

Authority includes any Government Agency, governmental or semi-governmental or local government authority, administrative, regulatory or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.

Benchmarking Activities has the meaning given to that term in clause 24.2(b).

Benchmarking Notice has the meaning given to that term in clause 24.2(b).

Benchmarking Report has the meaning given to that term in clause 24.3(a).

Best Industry Practice means a standard of service or deliverable, in terms of quality, productivity, performance, cost and timeliness of delivery, that, when considered collectively, is equal to or better than the commonly accepted best practice being provided at the relevant

time by a supplier of like or similar services, deliverables and activities to the Supplier's Activities throughout the world.

Business Contingency Plan has the meaning given to that term in clause 25.2(a).

Business Day means a day other than a Saturday, Sunday or gazetted public holiday in New South Wales, Australia.

Business Hours means the hours between 9:00am and 5:00pm on any Business Day.

Change Control Procedure means the procedure to be followed with respect to Change Requests as specified in clause 10.

Change in Control means, in respect of an entity, the occurrence of any circumstances or events following which the entity, who was not so controlled before, is controlled by another person, alone or together with any Related Body Corporate, and:

- (a) includes, in respect of the entity, a change of a direct holding of at least fifteen percent of the voting shares in that entity or a holding company of that entity; however
- (b) excludes an internal solvent corporate reorganisation occurring exclusively within the group of companies comprised of the Supplier and its Related Bodies Corporate.

Change Request has the meaning given to that term in clause 10.1(a).

Change Request Form means a document in substantially the same form as that in Schedule 5 or such other form approved by the Customer.

Claim means any allegation, cause of action, liability, claim, proceeding, suit or demand of any nature, whatsoever arising, and whether present or future, fixed or unascertained, actual or contingent and whether at Law, under statute or otherwise.

Commencement Date means the date specified as such in the Order Form.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is communicated by the discloser of the information (**Discloser**) to the recipient of the information (**Recipient**) as confidential;
- (c) the Recipient knows or ought to know is confidential; or
- (d) relates to or comprises the:
 - (i) financial, corporate or commercial information of any party;
 - (ii) affairs of a third party; or
 - (iii) strategies, practices or procedures of the State of New South Wales or any information in the Supplier's possession relating to a Government Agency,

but excludes information:

- (e) in the public domain, unless it came into the public domain due to a breach of confidentiality;

- (f) independently developed by the Recipient; or
- (g) in the possession of the Recipient without breach of confidentiality by the Recipient or other person.

Conflict of Interest means the Supplier or its Personnel:

- (a) engaging in any activity;
- (b) obtaining any interest, whether pecuniary or non-pecuniary; or
- (c) being involved in any actual or threatened litigation or investigation,

whether proven or alleged, which is likely to, has the potential to, or could be perceived to, present a conflict of interest in the Supplier or its Personnel performing its obligations under this Agreement.

Contract Authority means the entity named as such in the Order Form and who has entered into a MICTA.

Core Terms means clauses 1 to 39 of this Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Correctly Rendered Invoice means an Invoice which:

- (a) specifies an amount that is due for payment and correctly calculated in accordance with this Agreement;
- (b) is itemised and identifies the GST exclusive amount, the GST component and the GST inclusive amount (as applicable) and enables the Customer to ascertain what the Invoice covers and the amount payable;
- (c) includes (where available) the relevant purchase order number notified by the Customer to the Supplier and this Agreement reference number;
- (d) where relating to an amount that is payable subject to Acceptance, is accompanied by documentary evidence that signifies that Acceptance (where appropriate) has occurred in accordance with this Agreement;
- (e) is in the right form (which may be an electronic or digital form where agreed to by the Customer); and
- (f) complies with clauses 24.4(a) to 24.4(b) and satisfies any additional criteria relating to Invoices specified in the Order Form.

Critical CSI means any:

- (a) CSI that is critical to the Supplier's ability to carry out the Supplier's Activities and without which the Supplier would be materially restricted in its ability to carry out the Supplier's Activities in accordance with the requirements of this Agreement; or
- (b) any CSI specified as "Critical CSI" in the Order Form.

Crown means the Crown in right of the State of New South Wales.

Customer means the entity named as such in Item 1 of the Order Form.

Customer Data means all data (including metadata) and information relating to the Customer or any Government Agency and the operations, facilities, customers, clients, personnel, assets

and programs of the Customer and any Government Agency, including Personal Information, in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed or produced as part of carrying out the Supplier's Activities, but excluding any Performance Data.

Customer Environment means the combination of hardware, software, systems and network infrastructure and services used by the Customer from time to time, including those specified in the Order Documents.

Customer's Representative means the person nominated in Item 2 of the Order Form or as advised in writing by the Customer to the Supplier from time to time, to act on behalf of the Customer in connection with this Agreement.

Customer Supplied Items or **CSI** means the Materials, equipment, resources or items specified in the Order Form to be provided by the Customer to the Supplier.

Customer User(s) means any Personnel of the Customer or any other person that the Customer authorises to use the Deliverables or Services.

Data Location Conditions means:

- (a) compliance with the Information Security Requirements;
- (b) ensuring that Customer Data and Personal Information is at all times handled and processed in accordance with all applicable Laws, including the Privacy Laws and the *State Records Act 1998* (NSW) (to the extent applicable);
- (c) not transferring any Customer Data and Personal Information to a jurisdiction that is the subject of any sanction, embargo, export control or similar Laws;
- (d) ensuring that Customer Data and Personal Information is at all times protected in accordance with the terms of this Agreement including clauses 19, 20 and 21; and
- (e) compliance with any other requirements or conditions with respect to the location of Customer Data and Personal Information as specified in Item 39 of the Order Form or in the Module Terms.

Data Management and Protection Plan means the Supplier's written plan with respect to data management and protection that complies with clause 20.2.

Date for Delivery means the date(s) (including any Key Milestones) by which the Supplier must provide the relevant Deliverables and/or Services to the Customer or complete the relevant Supplier's Activities, as stated in the Order Documents and as may be adjusted under this Agreement.

Deed of Confidentiality and Privacy has the meaning given to that term in clause 11.4(a).

Default Amount means the amount determined as such according to clause 34.5(b).

Defect means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable or Service to not meet the Specifications and the other requirements of this Agreement or any other aspect of a Deliverable or Service that is not in accordance with the requirements of this Agreement.

Delay has the meaning given to that term in clause 6.7(a)(i).

Deliverable means all things or items (including Documents) to be supplied by the Supplier under this Agreement as set out in the Order Documents.

Denial of Service (DoS) Attack means an attack that shuts down or substantially degrades the Deliverables and/or Services, resulting in the Deliverables and/or Services (or any functionality forming part of the Deliverables and/or Services) being unable to be used by the Customer or Customer Users in the manner intended to be used under this Agreement, including as to any Service Levels or key performance indicators.

Disaster means any disaster, accident, emergency, degradation, damage, interruption or other event which impacts on the continuity of the Supplier's Activities (including any Force Majeure Event impacting the Supplier).

Dispute Notice has the meaning given to that term in clause 35.1(b).

Document has the meaning given to that term in clause 8.1(a).

Document Deliverable means any Deliverable which is, or is required to be, in the form of a Document.

Eligible Customer means any Government Agency or Eligible Non-Government Body.

Eligible Non-Government Body includes the following public bodies that are not Government Agencies (as identified under clause 6 of the *Public Works and Procurement Regulation 2019* (NSW)):

- (a) a private hospital;
- (b) a local council or other local authority;
- (c) a charity or other community non-profit organisation;
- (d) a private school or a college;
- (e) a university;
- (f) a public authority of the Commonwealth or any other State or Territory;
- (g) a public authority of any other jurisdiction (but only if it carries on activities in the State of New South Wales); or
- (h) any contractor to a public authority (but only in respect of things done as such a contractor).

Escrow Materials means the software code and programming Materials specified in Item 38 of the Order Form or otherwise specified as constituting "Escrow Materials" in Schedule 7.

Existing Materials means any Materials in which Intellectual Property Rights subsist (which, in the case of the Supplier, are incorporated into a Deliverable or Service or to which the Customer otherwise requires a licence in order to enjoy the benefit of this Agreement or any obligations performed for the Customer under it):

- (a) belonging to a party that are pre-existing as at the Commencement Date; or
- (b) that are brought into existence, by or on behalf of a party, other than in connection with the performance of that party's obligations under this Agreement,

and includes any enhancements, modifications and developments to such Materials, to the extent not comprising New Materials.

Financial Security has the meaning given to that term in clause 28.2(a).

Force Majeure Event means any of the following events or circumstances to the extent not within the reasonable control of the party affected by it (**Affected Party**):

- (a) acts of God, including storms, cyclones, landslides, epidemics, earthquakes, floods, and other natural disasters;
- (b) strikes, stoppages, labour restraints and other industrial disturbances, except for those only affecting the Personnel of the Affected Party;
- (c) acts of the public enemy, including wars, blockades and insurrections; and
- (d) riots, malicious damage, sabotage, civil disturbance and acts of terrorism,

the incidence of which is not (or would not be reasonably expected to be) generally known to the Affected Party as at the Commencement Date and which the Affected Party is not reasonably able to prevent or overcome, or the effects of which the Affected Party is not reasonably able to predict and take measures to avoid, by the exercise of reasonable diligence and prudence.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Governance Framework has the meaning given to that term in clause 4.3(a).

Government Agency means any of the following:

- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013* (NSW));
- (b) a New South Wales Government agency;
- (c) any other public authority that is constituted by or under an Act or that exercises public functions for or on behalf of the State of New South Wales (other than a State owned corporation); or
- (d) any State owned corporation prescribed by regulations under the *Public Works and Procurement Act 1912* (NSW).

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

ICT means information and communication technologies.

ICT Purchasing Framework means the suite of New South Wales Government template documents which sets out standard terms and conditions to be used by Eligible Customers for the procurement of ICT related goods and services.

Indemnified Entities means the Customer, Customer Users, the State of New South Wales, the Customer's Personnel and, in relation to a Government Agency, the relevant head of the Government Agency and its responsible Minister.

Information Security Requirements has the meaning given to that term in clause 19.2(a).

Inherent Risks means the level of risks that exists in an organisation prior to the adoption or implementation of internal security controls or measures designed to avoid or mitigate them.

Initial Term means the period specified as such in the Order Form.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver, or receiver and manager, be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under Law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (k) a writ of execution is levied against it or a material part of its property;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above clauses of this definition.

Intellectual Property Rights means all intellectual property rights, including:

- (a) copyright, patent, design, semi-conductor or circuit layout rights, registered design, trade marks or trade names and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right to use or grant the use of, or apply for the registration of, any of the rights referred to in paragraph (a),

but does not include the right to keep Confidential Information confidential, Moral Rights, business names, company names or domain names.

Invoice means a tax invoice issued under the GST Law.

Item means an item in Parts A to E of the Order Form.

Key Milestone means a Date for Delivery of a Deliverable, or for the completion of a particular Service or other Supplier's Activity, that is specified as such in the Payment Particulars or Order Documents, as may be adjusted under this Agreement.

Laws means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is

enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.

Licensed Software means the software set out in the Order Documents that the Supplier is to provide to the Customer, or provide the Customer access to (as applicable) under this Agreement and includes any Updates or New Releases of that software that may be provided to the Customer from time to time in accordance with this Agreement.

Limitation Amount has the meaning given to that term in clause 34.5.

Liquidated Damages means any damages specified as such in an Order Form which, where applicable, will be applied in accordance with clause 16.

Loss means any loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, Claim, outgoing, fine or payment of any nature or kind.

Material Defect means any Defect which represents a material departure from the Specifications or other requirements of this Agreement in respect of that Deliverable or prevents the proper operation of the Deliverable.

Materials means all property, materials, documents, information and items in whatever form, and includes equipment, hardware, computer software (including development tools and object libraries), concepts, approaches, tools, methodologies, processes, know-how, data, Documentation, manuals and anything else which is the subject matter of Intellectual Property Rights.

MICTA means (if any) the master ICT agreement between the Contract Authority and the Supplier under which there is a standing offer to provide particular ICT-related goods, services and/or other activities (including the Deliverables and Services) to Eligible Customers.

Modern Slavery has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.

Modern Slavery Statement means a modern slavery statement as required or volunteered under the Modern Slavery Laws.

Module means the applicable Module(s) which apply to the specific Services and/or Deliverables as identified in the Order Form.

Module Terms means the terms and conditions in respect of the applicable Module(s) as set out in the Module(s).

Moral Rights means a person's moral rights as defined in the *Copyright Act 1968* (Cth) and any other similar rights existing under any other laws.

New Materials means Materials in which Intellectual Property Rights subsist that are created or which arise in the course of performing this Agreement, excluding Customer Data.

New Releases means software (including the latest current version) which has been produced primarily to extend, alter or improve the Licensed Software by providing additional functionality or performance enhancement (whether or not Defects in that Licensed Software are also corrected) while still retaining the original designation of the Licensed Software. A New Release does not include any software that is generally licensed by the Supplier to its customers as a different product.

Nominated Personnel means the key Personnel of the Supplier who are required to undertake the provision of the Supplier's Activities or part of the work constituting the Supplier's Activities, as stated in Item 18 of the Order Form or otherwise agreed by the Customer in writing.

Notice has the meaning given to that term in clause 39.13.

Open Source Software means software available under a licence which:

- (a) meets the criteria of the Open Source Definition published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>; or
- (b) contains any term or condition which mandates the re-licensing or redistribution to the public (whether free of charge or for a fee) of any software code, in any circumstance.

Order means an order for the Services and/or Deliverables and other Supplier's Activities as set out in an Order Form, and includes an Additional Order.

Order Documents means:

- (a) the Order Form;
- (b) the Payment Schedule;
- (c) all applicable Plans; and
- (d) the relevant Module Terms identified as applicable in Item 13 of the Order Form.

Order Form means:

- (a) the document set out at Schedule 2;
- (b) any Additional Order;
- (c) any Statement of Work or Supplier's Documents incorporated within or attached to an Order Form in accordance with this Agreement; and
- (d) any schedules, annexures or attachments expressly incorporated into any of the above documents.

Other Changes means any actual or proposed change in the Supplier's circumstances, operations or supply chains (including a change to the Supplier's Personnel) that could reasonably be considered to:

- (a) create a security risk for the Customer or the State of New South Wales; or
- (b) adversely affect the:
 - (i) Supplier's ability to fulfil its obligations under this Agreement; or
 - (ii) reputation of the Customer or the State of New South Wales.

Other Supplier means any supplier, contractor, consultant or other person engaged to provide services or deliverables to the Customer, other than the Supplier or its subcontractors and suppliers.

Payment Particulars means the pricing and payment regime for the completion of the Supplier's Activities as set out in the Payment Schedule, the Statement of Work or in Item 43 of the Order Form.

Payment Schedule means the schedule of Prices and payment regime specified in Schedule 4.

Performance Data means automatically generated metadata, not including any Personal Information or Confidential Information of the Customer or a Government Agency that:

- (a) is incidentally generated by a computer system in the course of its normal operation;
- (b) relates to the performance or operation of that computer system; and
- (c) arises in the course of the performance of the Supplier's Activities.

Performance Guarantee has the meaning given to that term in clause 28.1.

Personal Information means:

- (a) information or an opinion about an identified individual (that is, a natural person) or an individual who is reasonably identifiable whether the information or opinion is:
 - (i) true or not; and
 - (ii) recorded in a material form or not; and
- (b) information defined as such under applicable Privacy Laws.

Personnel means a party's employees, officers, agents and subcontractors and:

- (a) in the case of the Supplier, includes any persons carrying out the Supplier's Activities on the Supplier's behalf; and
- (b) in the case of the Customer, includes any Customer Users permitted or enabled by the Customer to use the Deliverables and Services, but excludes the Supplier and its Personnel.

Plans means any:

- (a) Project Plan;
- (b) Business Contingency Plan;
- (c) Data Management and Protection Plan;
- (d) Test Plan;
- (e) Transition-In Plan and Transition-Out Plan; and
- (f) any additional plans specified in Item 27 of the Order Form or required to be complied with under this Agreement.

Policies, Codes and Standards means:

- (a) all applicable SME Policies and associated requirements;
- (b) the other policies, codes, standards and guidelines and associated requirements specified in this Agreement, including within:

- (i) clauses 12.2(b) and 37.1(b); and
- (ii) the Order Form; and
- (c) any Policy Changes with which the Supplier is or becomes required to comply with under clause 12.3.

Policy Change has the meaning given to that term in clause 12.3(a).

Price means the total amount payable by the Customer for the Deliverables and/or Services and the carrying out of the other Supplier's Activities under this Agreement as stated in the Payment Particulars, as may be adjusted under this Agreement.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the Customer or the Supplier or any other recipient of Personal Information) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that the Customer or any Personal Information or the Supplier is subject to the laws of that jurisdiction),affecting privacy or Personal Information, provided that the Supplier ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

Professional Standards Legislation means the *Professional Standards Act 1994* (NSW) or other equivalent Laws providing for the statutory limitation of liability of certain suppliers.

Project Plan has the meaning given to that term in clause 6.5(a).

Related Body Corporate has the meaning given to that term in the Corporations Act.

Remediation Plan has the meaning given to that term in clause 22.2(a)(vi).

Renewal Period means the renewal period specified in Item 9 of the Order Form.

Schedule means a Schedule to this Agreement. Those Schedules that are applicable to an Order will be identified in Item 13.

Security Incident means any one or more of the following:

- (a) any unauthorised (whether under this Agreement or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of Customer Data or Personal Information within the Supplier's or its Personnel's possession or control (including any data and information stored on the Supplier's equipment or in the facilities used by the Supplier to carry out the Supplier's Activities, or any unauthorised or unlawful access to such equipment or facilities);

- (b) any notifiable data breach under the Privacy Laws;
- (c) any Denial of Service Attack, Virus or other incident that compromises or adversely impacts the security, availability or integrity of Customer Data, the systems and technologies holding such data or the Customer Environment (or which has the intent to do so);
- (d) any security breaches, cyber security incidents or similar events relating to, or affecting Customer Data, Personal Information or the Customer Environment which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under this Agreement, at Law or under any of the Policies, Codes and Standards;
- (e) where there are reasonable grounds to suspect that any breaches or circumstances under paragraphs (a) to (d) have occurred or are likely to have occurred or will occur; or
- (f) any alleged occurrence of any of the above events or circumstances.

Security Program has the meaning given to that term in clause 21.2(a).

Service Levels means any minimum performance levels, key performance indicators and other service standards with respect to the Supplier's Activities to be achieved by the Supplier as specified, included or incorporated by reference (in accordance with this Agreement) in the Order Documents.

Services means:

- (a) the services that the Supplier is required to perform or provide under this Agreement as described in the Order Documents; and
- (b) any related or ancillary services which are required or reasonably incidental for the proper performance of the services, functions, processes and responsibilities referred to in paragraph (a).

Site has the meaning given to that term in clause 6.10(a).

SME Policies means:

- (a) the New South Wales Government's Small and Medium Enterprises and Regional Procurement Policy, published at <https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy> (or such other link as notified by the Customer);
- (b) the ICT/Digital Sovereign Procurement Commitments, published at <https://buy.nsw.gov.au/resources/ictdigital-sovereign-procurement-commitments> (or such other link as notified by the Customer);
- (c) the Small Business Shorter Payment Terms Policy, published at <https://buy.nsw.gov.au/policy-library/policies/small-business-shorter-payment-terms-policy> (or such other link as notified by the Customer); and
- (d) such other SME policies specified in the NSW Procurement Policy Framework, published at <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework> (or such other link as notified by the Customer).

Specifications in respect of a Deliverable or Service, means the technical or descriptive specifications of the functional, operational, performance or other characteristics relating to that Deliverable or Service as detailed or referred to in the Order Documents or as otherwise agreed by the parties in writing.

Stage means one or more stages or phases of the project as specified in the Order Documents.

Statement of Work means a statement of work incorporated within or attached to an Order Form, an illustrative form of which is set out in Schedule 3.

Step-In Right has the meaning given to that term in clause 26.

Step-Out Notice has the meaning given to that term in clause 26.2(a).

Supplier means the entity named as such in Item 4 of the Order Form.

Supplier's Activities means all things or tasks which the Supplier is, or may be, required to do to comply with its obligations under this Agreement and includes the supply of the Deliverables and Services and, where applicable, the carrying out of any Transition-In Services and Transition-Out Services.

Supplier's Documents means any product specifications, service-specific detail or other terms and conditions of the Supplier which comply with clause 1.5 and which the parties have expressly agreed to incorporate into this Agreement, as set out in Annexure A to the Order Form.

Supplier's Representative means the Supplier's employee nominated in Item 5 of the Order Form or as advised in writing by the Supplier from time to time to act on its behalf in connection with this Agreement.

Tax means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in connection with the Supplier's performance of its obligations under this Agreement, but excludes GST.

Term means the Initial Term of this Agreement and any Renewal Period, unless this Agreement is terminated earlier, in which case the Term ends on the date of termination of this Agreement.

Test Plan means the Plan with respect to the conduct of tests pursuant to clause 14, and which is referenced in or annexed to the Statement of Work or other Order Documents or agreed between the parties in writing.

Transition-In Plan means a transition-in Plan prepared by the Supplier and approved by the Customer in accordance with clause 7.

Transition-In Services means the transition-in Services specified in the Order Documents or in any Transition-In Plan that is approved by the Customer in accordance with clause 7.2.

Transition-Out Period means the period specified in the Order Documents or, if no period is specified in the Order Documents, the period commencing on the expiry or termination of this Agreement and continuing for six months.

Transition-Out Plan means a transition-out Plan prepared by the Supplier and approved by the Customer in accordance with clause 31.2.

Transition-Out Services means any transition-out or disengagement Services provided by the Supplier pursuant to clause 31, including under any Transition-Out Plan.

Updates means software which has been produced primarily to overcome Defects in, or to improve the operation of, the relevant part of the Licensed Software without significantly altering the Specifications whether or not that Licensed Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

User Documentation means any documentation (such as user manuals, operating manuals, technical manuals, published specifications, security configurations or other documentation) that:

- (a) is specified in the Order Documents; or
- (b) is reasonably required in order for the Customer or Customer Users to use, maintain, secure, operate or otherwise obtain the benefit of any Deliverable or Service.

Virus means a computer program, code, device, product or component that is designed to threaten the security or integrity of the Customer's operations or the Deliverables and/or Services, prevent, inhibit or impair the performance of the Customer's operations or the Deliverables and/or Services or pose a threat or hazard to the security or integrity of the Customer's operations, but does not include any code, mechanism or device that is included in software by the Supplier for the purpose of managing the licensed use of software.

Warranty Period means the period specified in Item 36 of the Order Form, or where no warranty period is specified:

- (a) 90 days from Acceptance of the relevant Deliverable or Service; or
- (b) if a Deliverable or Service is not subject to Acceptance, 30 days from the provision of the Deliverable or Service to the Customer in accordance with this Agreement.

WHS Legislation means legislation relating to health and safety, including the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

Wilful Misconduct means an act or omission of a party, deliberately performed or engaged in, which the relevant party knew (or ought to have known or predicted on due and reasonable consideration), would have a reasonable possibility of damaging, having a materially adverse effect on, or prejudicing, the other party.

1.2 Interpretation

In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (d) words that are gender neutral or gender specific include each gender;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) the words "such as", "including", "particularly" and similar expressions are not used as, nor are intended to be interpreted as, words of limitation;
- (g) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;

- (ii) a thing (including a chose in action or other right) includes a part of that thing;
- (iii) a party includes its successors and permitted assigns;
- (iv) a document includes all amendments or supplements to that document;
- (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to the relevant part of this Agreement in which that reference is located;
- (vi) a reference to a statute or other Law is a reference to that statute or other Law as amended, consolidated or replaced;
- (vii) a monetary amount is to Australian dollars or such other currency specified in the Order Documents; and
- (viii) time is to Australian Eastern Standard Time;
- (h) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of this Agreement.

1.3 Discretion

- (a) Subject to any express provision in this Agreement to the contrary:
 - (i) a provision of this Agreement which says that the Customer or the Customer's Representative "may" do or not do something is not to be construed as imposing an obligation on the Customer or the Customer's Representative to do or not do that thing; and
 - (ii) there will be no procedural or substantive limitation upon the manner in which the Customer or the Customer's Representative may exercise any discretion, power or entitlement conferred by this Agreement.
- (b) Without limiting clause 1.3(a) of this Schedule, neither the Customer nor the Customer's Representative will be under any obligation to exercise any such discretion, power or entitlement for the benefit of the Supplier or as required by any other legal doctrine which in any way limits the express words used in the provisions of this Agreement conferring the discretion, power or entitlement.

Schedule 2 - Order Form

PART A: ICTA

Complete this section in relation to parts of this Agreement which reference this Order Form.
Clause references below are references to clauses in this Agreement.

No	Item	Ref	Description or selection
KEY DETAILS			
1.	Customer	Generally Schedule 1	The Crown in right of the State of New South Wales represented by NSW Police Force (ABN 43 408 613 180)
2.	Customer's Representative	Generally Schedule 1	Name: insert name of the Customer's Representative. Position: insert position/title of Customer's Representative. Email: insert email address of Customer's Representative. Phone: insert phone number of Customer's Representative.
3.	MICTA	1.4 Generally Schedule 1	Is this Agreement entered into pursuant to a MICTA? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No.
4.	Supplier	Generally Schedule 1	insert the Supplier entity's full name and ABN (where applicable).
5.	Supplier's Representative	Generally Schedule 1	Name: insert the name and title of the Supplier's Representative. Position: insert position/title of Supplier's Representative. Email: insert email address of Supplier's Representative. Phone: insert phone number of Supplier's Representative.
6.	Notices for the Customer	39.13(b)	Customer's address: Choose an item or type over. Customer's email: Choose an item or type over.
	Notices for the Supplier	39.13(b)	Supplier's address: insert address. Supplier's email: insert email address.

No	Item	Ref	Description or selection
TERM			
7.	Commencement Date	5.1 Schedule 1	The Commencement Date is [insert the Commencement Date]
8.	Initial Term	5.1 Schedule 1	The Initial Term is [insert the Initial Term duration]
9.	Renewal Period	5.2 Schedule 1	There are [insert number] Renewal Periods and each Renewal Period is [insert number] months in length.
	Notice period for renewals	5.2	The default period for renewals applies (i.e. 15 Business Days prior to the end of the then-current Term).
ORDERING AND PURCHASING			
10.	Additional Orders	3.3 Schedule 1	Yes, the Customer is permitted to place Additional Orders to increase the volume or quantum of Services and/or Deliverables procured by the Customer under this Agreement, but only for Services and/or Deliverables that are procured on a volume/quantum basis and in respect of which all applicable terms and conditions (including Prices) are specified in this Agreement.
11.	Additional Conditions	3.5 Schedule 1	The Additional Conditions are as set out in Annexure C (Additional Conditions) to this Order Form.
12.	Reseller arrangements	3.6	Not applicable – the Supplier is not acting in the capacity of a reseller.

No	Item	Ref	Description or selection
13.	Schedules	Generally Schedule 1	<p>X Schedule 1 - Definitions and interpretation</p> <p>X Schedule 2 - Order Form</p> <p>Schedule 3 - Statement of Work Template (Note: If a Statement of Work is used, this should be included at Annexure B to Schedule 2 (Order Form). The template in Schedule 3 can be used for this purpose).</p> <p><input checked="" type="checkbox"/> Schedule 4 - Payment Schedule</p> <p>X Schedule 5 - Change Request Form (Note: The Change Request Form should be included for all Orders. However, note that, if approved by the Customer, an alternate form to the default provisions in Schedule 5 may be used).</p> <p><input checked="" type="checkbox"/> Schedule 6 - Deed of Confidentiality and Privacy</p> <p><input checked="" type="checkbox"/> Schedule 7 - Escrow Deed</p> <p><input checked="" type="checkbox"/> Schedule 8 - Performance Guarantee</p> <p><input checked="" type="checkbox"/> Schedule 9 - Financial Security</p>
	Modules	1.2(c)	<p><input checked="" type="checkbox"/> Cloud Module</p> <p><input checked="" type="checkbox"/> Services Module</p> <p><input checked="" type="checkbox"/> Software Module (Non-Cloud)</p> <p><input checked="" type="checkbox"/> Hardware and Other ICT Deliverables Module</p>
SUPPLIER'S ACTIVITIES			
14.	Scope	Generally	The Supplier must provide the Supplier's Activities in accordance with the Statement of Work.
15.	Requirements - Accessibility requirements	6.3(b)(ii)	The default accessibility requirements apply, unless additional requirements are specified in the Statement of Work (in which case, the default accessibility requirements apply in addition to the requirements specified in the Statement of Work).
	Requirements - Work health and safety	12.4(f)	The default work health and safety requirements apply, unless additional requirements are specified in the Statement of Work (in which case, the default work health and safety requirements apply in addition to the requirements specified in the Statement of Work).

No	Item	Ref	Description or selection
16.	Site attendance	6.10 Schedule 1	Will the Supplier be required to attend the Site to carry out any aspect of the Supplier's Activities (including the supply of any Deliverables)? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Site location		1 Charles Street, Parramatta, NSW, 2150; and/or a) such other premises or facilities of the Customer as nominated by the Customer from time to time or specified in the Statement of Work.'
	Physical delivery		To the extent applicable, the specific delivery area at the Site, the Date for Delivery and the hours for delivery will be nominated by the Customer from time to time.
	Requirements for attendance at the Site		Where applicable, the Supplier and its Personnel are permitted to attend the Site only at the times nominated by the Customer from time to time, and subject to such conditions as may be nominated by the Customer from time to time. Without limitation, the Supplier must comply (and must ensure that its Personnel comply) with the requirements set out in Items 17, 22 and 40 of this Order Form.
17.	Policies, Codes and Standards	12.2 Schedule 1	The Supplier must comply with (and must ensure that its Personnel comply with) and to the extent applicable, ensure that Deliverables and Services comply with: a) the NSW Police Force Code of Conduct (to the extent any of the Supplier's Personnel have access to the Customer's intranet), as available from time to time at http://intranet.police.nsw.gov.au/__data/assets/pdf_file/0004/113782/COCE_113782_01_Dec_14.pdf ; b) the NSW Police Force ICT Supplier Security Requirements document (or equivalent), a copy of which is attached at Annexure D to this Order Form; c) the NSW Procurement Policy Framework published at https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework in so far that it relates to the Supplier's Activities; d) the Supplier Code of Conduct published at https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct ;

No	Item	Ref	Description or selection
			<p>e) the NSW Government Cyber Security Policy published at https://www.digital.nsw.gov.au/policy/cyber-security-policy in so far as it relates to the Supplier's Activities and the Supplier is directed by the Customer to assist the Customer's compliance with that policy;</p> <p>f) the Aboriginal Procurement Policy published at https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy;</p> <p>g) where Services are provided under the Cloud Module, the NSW Government's cloud policies, including the NSW Government Cloud Policy published at https://www.digital.nsw.gov.au/sites/default/files/NSW%20Government%20Cloud%20Policy%20v1.1.pdf;</p> <p>h) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Products and Services have not been produced using the "worst forms of child labour" as defined;</p> <p>i) the NSW Government Internet of Things (IoT) Policy published at https://www.digital.nsw.gov.au/policy/internet-things-iot in so far as it relates to the Supplier's Activities;</p> <p>j) the following standards:</p> <ul style="list-style-type: none"> i. ISO/IEC/IEEE 29148:2018 - Systems and software engineering - Life cycle processes - Requirements engineering; ii. AS/NZS 31000:2009 – Risk Management – Principles and Guidelines; iii. ISO 29119 – Software testing; iv. AS 14764 – Software Maintenance; v. AS 15504 – Process Assessment; vi. AS 141432 – Software measurement; vii. AS 8015-2005-Corporate governance of information and communication technology; viii. AS 15910-2004-Software User Documentation process; ix. AS/NZS 14598:2000 Software product evaluation; x. AS 8001:2008 – Fraud control; xi. AS 4598 – documentation (software & Online); xii. ISO/IEC 27001.2022 – Information security, cybersecurity and privacy protection; xiii. ISO 9001:2000 - Quality management systems – Requirements; xiv. 15026-System and Software Integrity levels;

No	Item	Ref	Description or selection
			<ul style="list-style-type: none"> xv. 15910-2004-SW User Documentation process; xvi. ISO_16175-1:2020 and ISO16175-2:2020 - Information and documentation - Process and functional requirements for software for managing records; xvii. Web Accessibility standards WCAG 2.0, see: https://www.w3.org/WAI/standards-guidelines/wcag/; xviii. ISO Web UX/Usability standards; xix. Records management standards as per Australian Standard AS ISO 15489 - Records Management - The Standard represents recognised international best practice guidance on records management. The new standard is an Australian codification of the International Standard on Records Management, ISO 15489, approved in October 2001; and xx. Australian Government Record Keeping Metadata Standard (AGRkMS); <p>k) the principles and practices of the Commonwealth Government's Accessible Government Services for All; and</p> <p>l) any other policies, codes, guidelines and/or standards specified in this Agreement (including Item 40, the Statement of Work and/or the Specifications) or otherwise notified or made available to the Supplier or its Personnel by the Customer from time to time (including via the Customer's intranet to the extent the Supplier's Personnel have access to the Customer's intranet).</p>
	SME Policies	12.2 Schedule 1	<p>[Drafting Note: Where applicable, identify below any SME Policy specific requirements (including any SME specific commitments/targets) that apply to the Agreement. Note: Whether SME Policy specific requirements apply will depend on the nature and value of the procurement.</p> <p>Note: If this Agreement is valued at over \$3 million (ex. GST), the Government Agency will need to attach the current and agreed form of the SME and Local Participation Plan in accordance with the New South Wales Government's Small and Medium Enterprises and Regional Procurement Policy.]</p> <p>The Supplier must comply with the SME and Local Participation Plan as specified in attachment X of this Order Form.</p>

No	Item	Ref	Description or selection						
	Aboriginal Procurement Policy: Aboriginal participation	12.2(b)	<p>[Drafting Note: If this Agreement is valued at \$7.5 million (ex. GST) or above, the Government Agency will need to specify that clause 12.2(b) applies and will need to attach the current and agreed form of the Aboriginal Participation Plan as an attachment to this Order Form. A template Aboriginal Participation Plan is available at https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy.]</p> <p>The Supplier must comply with clause 12.2(b) and the Aboriginal Participation Plan as specified in attachment X of this Order Form.</p>						
18.	Nominated Personnel	11.1 Schedule 1	<p>The Supplier's Nominated Personnel and their roles and responsibilities are:</p> <table><tr><th>Nominated Personnel's name and position</th><th>Role/responsibility</th></tr><tr><td>insert name and position.</td><td>insert role/responsibility.</td></tr><tr><td>insert name and position.</td><td>insert role/responsibility.</td></tr></table>	Nominated Personnel's name and position	Role/responsibility	insert name and position.	insert role/responsibility.	insert name and position.	insert role/responsibility.
Nominated Personnel's name and position	Role/responsibility								
insert name and position.	insert role/responsibility.								
insert name and position.	insert role/responsibility.								
19.	Deed of Confidentiality and Privacy	11.4(a) Schedule 1	<p>The Supplier's subcontractors must sign a Deed of Confidentiality and Privacy in the form of Schedule 6. The Supplier must ensure that the Supplier's Personnel (other than subcontractors but including individual Personnel of subcontractors) sign an individual confidentiality deed poll in a form required by the Customer from time to time.</p>						
20.	Permitted subcontractors	11.5(a)	<p>Is the Supplier permitted to subcontract? Choose an item.</p> <p>The permitted subcontractors are specified below:</p> <table><tr><th>Subcontractor's full name and ABN</th><th>Role/responsibility</th></tr><tr><td>insert full name and ABN.</td><td>insert role/responsibility.</td></tr><tr><td>insert full name and ABN.</td><td>insert role/responsibility.</td></tr></table> <p>Without limitation, the Supplier must ensure that all subcontractors comply with the requirements of Items 17, 22 and 40 of this Order Form below.</p>	Subcontractor's full name and ABN	Role/responsibility	insert full name and ABN.	insert role/responsibility.	insert full name and ABN.	insert role/responsibility.
Subcontractor's full name and ABN	Role/responsibility								
insert full name and ABN.	insert role/responsibility.								
insert full name and ABN.	insert role/responsibility.								
21.	Subcontractor deed	11.5(j)	[may be required at Customer's discretion]						
	Additional subcontractor procurement policy requirements	11.5(k)	[may be required at Customer's discretion]						

No	Item	Ref	Description or selection
22.	Background checks	11.6(b)	<p>a) For the purposes of clause 11.6(b), the Supplier is not required to itself carry out background checks of its Personnel (unless otherwise reasonably requested by the Customer), however, prior to involving any of its Personnel in carrying out the Supplier's Activities (including permitting its Personnel to access Customer Data), the Supplier must:</p> <ul style="list-style-type: none"> i. obtain from the Supplier's Personnel any consent that is necessary to enable the Customer to conduct, at the Customer's own expense, a National Police Check and a probity clearance; and [additional checks to be added at customer discretion where required e.g. Baseline Australian Security Clearance] ii. receive written confirmation from the Customer that those the relevant Personnel of the Supplier are authorised to be involved in the carrying out of the Supplier's Activities. <p>b) If the Supplier is unable to obtain the consent of any of the Supplier's Personnel as required by paragraph a) above, then, without limiting the Supplier's obligations under this Agreement, the Supplier must ensure that the relevant Supplier Personnel does not carry out any work under or in connection with this Agreement and the Supplier must provide a suitable replacement Personnel as soon as reasonably possible. The Supplier must promptly notify the Customer in writing if the Supplier becomes aware of any change in the criminal record history, qualifications, job history or character of any of the Supplier's Personnel or any other matter that may adversely affect the suitability of any of the Supplier's Personnel to carry out any of the Supplier's Activities.</p> <p>c) The Supplier acknowledges that there is a lead time of approximately 10 Business Days for all clearances to be conducted and must ensure that it submits clearances within such a time to ensure that clearances are obtained prior the relevant Personnel being required to be involved in the carrying out of the Supplier's Activities.</p>
	Timeframes and time for background checks		No additional requirements apply.
PERFORMANCE AND DELIVERY			
23.	Timeframes and requirements for performance	6.1	As set out in the Statement of Work.
	Specifications	6.1	As set out in the Statement of Work.
		Schedule 1	

No	Item	Ref	Description or selection
24.	Service Levels	15.2 Schedule 1	As set out in the Statement of Work.
25.	Performance reports	15.4(a)(iii)	As set out in the Statement of Work.
	Additional performance reporting requirements	15.4(c)	As set out in the Statement of Work.
	Performance reviews	15.5(a)	Yes, the parties must conduct service and performance reviews in accordance with clause 15.5(a) as and when required by the Customer and in accordance with the requirements of the Customer.
26.	Meetings	15.7(a)	The Supplier's Representative must meet with the Customer's Representative or the Customer's other Personnel at the times and at the locations specified in the Statement of Work or as otherwise requested by the Customer from time to time.
27.	Project Plans	6.5(b)	As set out in the Statement of Work if applicable.
	Other Plans	Schedule 1	[As set out in the Statement of Work or to be inserted]
28.	Stages	6.6(a) Schedule 1	[As set out in the Statement of Work or to be inserted]
	Project methodology	6.6(e)	As set out in the Statement of Work.
	Costs of removing any Stage(s)	6.6(d)	No costs apply for the purposes of clause 6.6(d). The Supplier must provide a refund to the Customer for any part of the Price that is pre-paid in respect of any Stage that is removed from the scope of the Supplier's Activities.

No	Item	Ref	Description or selection												
29.	Liquidated Damages	16(a) 16(b) Schedule 1	<p>[Drafting Note: Specify whether Liquidated Damages apply in relation to the failure to meet a Key Milestone. If so, specify:</p> <ul style="list-style-type: none"> amount; method of calculation; and (if applicable) maximum number of days / percentage value of applicable Prices.] <p>The Supplier must pay Liquidated Damages to the Customer for each day of delay in meeting the following Key Milestones, in the following amounts:</p> <table border="1"> <thead> <tr> <th>Key Milestone</th><th>Date for Delivery</th><th>Supplier's Activities to be performed by Date of Delivery</th><th>Liquidated Damages</th></tr> </thead> <tbody> <tr> <td>Milestone 1 (insert description)</td><td>[insert date]</td><td>[insert Services/Deliverables]</td><td>[\$x] per day</td></tr> <tr> <td>Milestone 1 (insert description)</td><td>[insert date]</td><td>[insert Services/Deliverables]</td><td>[\$x] per day</td></tr> </tbody> </table>	Key Milestone	Date for Delivery	Supplier's Activities to be performed by Date of Delivery	Liquidated Damages	Milestone 1 (insert description)	[insert date]	[insert Services/Deliverables]	[\$x] per day	Milestone 1 (insert description)	[insert date]	[insert Services/Deliverables]	[\$x] per day
Key Milestone	Date for Delivery	Supplier's Activities to be performed by Date of Delivery	Liquidated Damages												
Milestone 1 (insert description)	[insert date]	[insert Services/Deliverables]	[\$x] per day												
Milestone 1 (insert description)	[insert date]	[insert Services/Deliverables]	[\$x] per day												
30.	Governance Framework	4.3	<p>[Drafting Note: Nominate if a Governance Framework applies. If so, specify:</p> <ul style="list-style-type: none"> the details it must cover; and the time within which it must be provided.] <p>Yes, a Governance Framework applies. The Governance Framework must be provided within [insert] date of the Commencement Date and must cover [insert].</p>												
31.	Customer Supplied Items	6.2 Schedule 1	Not applicable, unless otherwise specified in the Statement of Work.												
	Date for provision of CSI		Not applicable, unless otherwise specified in the Statement of Work.												
	CSI requirements		Not applicable, unless otherwise specified in the Statement of Work.												

No	Item	Ref	Description or selection
	Supplier's costs for CSI and time for payment		Not applicable, unless otherwise specified in the Statement of Work.
32.	Transition-In Plan	7.2 Schedule 1	As set out in the Statement of Work [or insert here].
	Transition-In Services	7.3 Schedule 1	<p>Yes, the Supplier must provide Transition-In Services as further described in the Transition-In Plan.</p> <p>The Transition-In Services that must be provided by the Supplier are as described in the Transition-In Plan, as updated from time to time in accordance with the terms of this Agreement.</p>
33.	Transition-Out Services	31.1 Schedule 1	<p>The Supplier must provide Transition-Out Services upon expiration or termination of this Agreement (regardless of the Stage during which this Agreement termination or expires).</p> <p>The Prices applicable to the Transition-Out Services will be agreed in writing in advance by the Parties, acting reasonably and in accordance with the rates set out in this Agreement (or if no such rates are set out, in accordance with commercially competitive rates).</p>
	Transition-Out Plan	31.2 Schedule 1	<p>The Supplier must submit the draft Transition-Out Plan to the Customer for its review, comment, and approval within 90 days of the Commencement Date.</p> <p>a) The Supplier must review and update the Transition-Out Plan:</p> <ul style="list-style-type: none"> i. at least annually during the Term; ii. if there is a material change to the Deliverables or the Services; and iii. at least 3 months prior to the expiration of this Agreement, or if this Agreement is terminated earlier, upon receipt of the notice of termination. <p>b) The Supplier must promptly submit any proposed amendments to the Transition-Out Plan (either submitted, or reviewed and updated, under paragraphs a) or b) respectively) to the Customer for its review, comment, and approval, and incorporate the reasonable comments or suggestions of the Customer into the draft Transition-Out Plan and resubmit for the Customer approval within the time frame specified by the Customer.</p>

No	Item	Ref	Description or selection
	Transition-Out Period	31.3 Schedule 1	<p>The Transition-Out Period is the period commencing on the expiration or termination of this Agreement, and ending on the date specified in a notice in writing issued by the Customer, provided that such date must be no later than twelve months following the expiry or termination of this Agreement. For clarity, this Agreement continues to apply during the Transition-Out Period.</p> <p>The Customer may terminate the Transition-out Services, in whole or in part, at any time by giving the Supplier at least 5 Business Days written notice of such termination. Without limiting the maximum end date for the Transition-Out Period, if required by the Customer, the Supplier must commence the provision of Transition-Out Services prior to the expiration or termination of this Agreement (on a date nominated by the Customer).</p>
34.	User Documentation	8.4(a)	<p>The Supplier must (at the Supplier's sole cost) provide the following User Documentation:</p> <p>a) [insert]; and</p> <p>b) [insert],</p> <p>and such other User Documentation as reasonably required in order for the Customer or Customer Users to use, maintain, secure, operate otherwise obtain the benefit of any Deliverable or Service.</p>
	Format for the User Documentation	8.4(c)	<p>Yes, the Supplier must provide the User Documentation in hard copy format (in addition to electronic format).</p>
35.	Acceptance Testing	14 Schedule 1	<p>All Deliverables (other than Document Deliverables) are subject to Acceptance Testing. Acceptance Testing will be performed in accordance with clause 14. The approval process in clause 8 applies to Document Deliverables.</p> <p>The Supplier must perform the following tests under clause 14.2:</p> <p>a) [Insert details of Supplier testing]; and</p> <p>b) [Insert details of Supplier testing].</p> <p>Prior to handing over any Document Deliverable to the Customer, the Supplier must ensure that such Document Deliverable is peer reviewed by at least one suitable qualified and experienced Personnel of the Supplier who was not involved in the preparation of such Document Deliverable.</p>

No	Item	Ref	Description or selection
			The Customer may perform any such tests as the Customer considers necessary or appropriate to determine that the Services and Deliverables comply with the Acceptance Criteria and the requirements of this Agreement, including the tests set out in the Statement of Work. Additional Acceptance Testing requirements may be specified in the Statement of Work.
		14.1	The Acceptance Testing procedures specified in clause 14 apply.
		14.2 Schedule 1	The Acceptance Criteria are as set out in the Statement of Work, or if not set out, are as reasonably determined by the Customer from time to time.
36.	Warranty Period	9 Schedule 1	[insert warranty period here]
INTELLECTUAL PROPERTY			
37.	Ownership of Existing Materials	17.1	Clause 17.1 applies in all circumstances.
	Licence to use Existing Materials	17.2 17.5	Clause 17.2 applies to the licence granted to the Customer in relation to the Supplier's Existing Materials, and to the licence granted to the Supplier in relation to the Customer's Existing Materials. The licence granted to the Customer in respect of the Supplier's Existing Materials is perpetual and irrevocable and the purposes for which the Customer is permitted to use such Existing Materials include those purposes set out in clause 17.4(b). The licence granted to the Supplier in respect of the Customer's Existing Materials is for the Term only.
	Ownership of New Materials	17.3	All New Materials will be owned by the Customer, and ownership of all Intellectual Property Rights in those New Materials vests in the Customer immediately on creation or is transferred or assigned by the Supplier to the Customer immediately on creation, free of any encumbrances, security interests and third party rights.
	Licence to use New Materials	17.4 17.5	A licence is granted to the Supplier by the Customer in relation to New Materials, but only in accordance with and subject to clause 17.6. Such licence is not perpetual.
	Third party Intellectual Property Rights	17.7	Clause 17.7 applies in relation to third party Intellectual Property Rights.
38.	Escrow	18	Yes, Escrow Materials must be held in escrow. The escrow arrangements must be established on, or promptly after, the Commencement Date and must endure for the entire Term (including any Transition-Out Period).

No	Item	Ref	Description or selection
			<p>The escrow arrangements must be established by the Supplier in accordance with the Statement of Work.</p> <p>The Escrow Materials must be held by the escrow agent in Australia.</p>
	Escrow Materials	18 Schedule 1	The Escrow Materials must include all materials included within the definition of 'Escrow Materials' set out in Schedule 7.
DATA AND SECURITY			
39.	Location of Personal Information	20.1(a)(iv) Schedule 1	The Supplier must not, and must ensure that its Personnel do not, transfer, or access, Personal Information from outside NSW or allow Personal Information to be transferred or accessed from outside of New South Wales.
	Data Location Conditions	19.3(b) Schedule 1	<p>Clause 19.3(b) does not apply, because the Supplier must not transfer, store, process, access, disclose or view Customer Data outside of New South Wales under any circumstances.</p> <p>Where the Supplier is required to provide Services at NSWPF's facilities only and using NSWPF devices only:</p> <p>a) Additionally, but subject to paragraph b), the Supplier must not, and must ensure that its Personnel do not:</p> <ul style="list-style-type: none"> i. access or view Customer Data or Personal Information from outside of; or ii. disclose, transfer, store or process Customer Data or Personal Information outside of, <p>the Customer's premises and facilities (i.e. the Sites).</p> <p>b) The Supplier must ensure that its Personnel only use devices issued by the Customer to access or otherwise deal with Customer Data.</p> <p>Subject to the Customer providing its express written consent, the Supplier's Personnel may be permitted to access Customer Data remotely from a location within New South Wales using the devices issued by the Customer and using remote access facilities and systems provided by the Customer.</p>

40.	Security obligations, standards and Information Security Requirements	19.2 21.2	<p>a) The Supplier must, without limitation, ensure that the Supplier and its Personnel, if and when on the Customer's premises or when accessing Customer Data, CSI or any of the Customer's facilities, computer systems and information, comply with:</p> <ul style="list-style-type: none"> i. the Customer's policies as made available (including on the Customer's intranet, to the extent the intranet is available to the Supplier or its Personnel) or advised by the Customer from time to time and amended or supplemented by the Customer from time to time; and ii. all other reasonable requirements and directions of the Customer (including agreeing to obtain any security checks required by the Customer and complying with any obligation or requirement imposed by law). <p>b) The Supplier must comply with (and must ensure that its Personnel comply with) and to the extent applicable, ensure that Deliverables and Services comply with:</p> <ul style="list-style-type: none"> i. the NSW Police Force ICT Supplier Security Requirements document in accordance with Item 17; ii. the Australian Government Protective Security Policy Framework (PSPF), including PSPF Policy 2 Management structures and responsibilities https://www.protectivesecurity.gov.au/governance/management-structures-and-responsibilities/Pages/default.aspx; iii. the Australian Government Information Security Manual (ISM); iv. NSW Cyber Security Policy (February 2020), https://www.digital.nsw.gov.au/sites/default/files/NSW%20Cyber%20Security%20Policy%202020%20v3.0.pdf; v. AS/NZS 17799.2:2000 (previously known as 4444.2) Information Security Management - Specification for Information Security Management Systems, as updated from time to time; vi. Applicable information security management system in accordance with AS/NZS ISO/IEC 17799:2006 Information Technology - Security Techniques – Code of Practice for Information Security Management; vii. AS 13335 Parts 1 to 5 Information Technology – Guidelines for the Management of IT Security (as updated from time to time) or equivalent;
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No	Item	Ref	Description or selection
			<ul style="list-style-type: none"> viii. ISO/IEC 27001 (or any successor standards); ix. ISO/IEC 27002:2013 (or any successor standards); and x. [insert any further specific requirements/standards etc]. <p>c) The Supplier must ensure that its Personnel undertake all training and other similar things required by the Customer in relation to the onboarding of such Personnel.</p>
	Security certifications	21.2(e)	[Drafting Note: List any security certifications that the Supplier must have and maintain; the frequency with which they must be updated (if other than annually); and any other specific requirements relating to those security certifications.]
	Security audits	21.3 Schedule 1	Clause 21.3 and [insert requirements] applies in full
41.	Backup of Customer Data	19.4	<p>[Drafting Note: The parties will need to determine to what extent the Supplier is responsible for the storage and backup of Customer Data and this Item will need to specify whether the Supplier is required to make and store backup copies of Customer Data as part of the Supplier's Activities.</p> <p>This Item will need to specify any alternative requirements in relation to the backup of Customer Data, including the timeframe within which the Supplier must check the integrity of all backups. Note: The default period for integrity checks is annually.]</p>
	Retention of Customer Data	19.7	[Drafting Note: As above, this Item will need to specify whether the Supplier is required to establish, keep and maintain complete, accurate and up-to-date copies of Customer Data and provide them to the Customer on request.]
42.	Security Incident	22.2(a) Schedule 1	<p>The definition of Security Incident is deemed to include (in addition to the items specified in the definition of Security Incident) any:</p> <ul style="list-style-type: none"> a) breach of the Information Security Requirements (including the requirements set out in Item 40 above); b) flaw or vulnerability of any kind in the security controls or other measures used to protect Customer Data; and c) misuse or loss of, interference with or unauthorised access to, modification of or disclosure of Customer Data. <p>The Supplier must comply with:</p>

No	Item	Ref	Description or selection
			[insert list of any relevant NSWPF additional plans, actions and requirements relating to Security Incidents]
FEES AND PAYMENT			
43.	Payment Particulars	24.1(a)	[As set out in the Payment Schedule, Statement of Work, or inserted here]
	Price model (exception)	24.1(b)	Clause 24.1(b) applies.
44.	Benchmarking	24.2	Yes, benchmarking applies.
45.	Invoicing timeframes	24.4(a)	The default timeframes apply, unless otherwise expressly specified in the Payment Schedule
46.	Payment requirements and invoicing	24.5(a)	<p>a) The Supplier must satisfy the preconditions for payment, as set out in the Statement of Work or the Payment Schedule, prior to being entitled to payment by the Customer.</p> <p>b) Invoices must be sent to:</p> <p>Finance Manager, DTI Level 3, 1 Charles Street Parramatta NSW 2150 NSWPF-ACCTPAY@police.nsw.gov.au</p> <p>c) Without limitation, any electronic invoices must satisfy the criteria below to ensure that they are paid in a timely manner:</p> <p>i. all invoices must be sent as PDF attachments;</p> <p>ii. only one 'PDF' file, containing only one invoice, should be attached;</p> <p>iii. any supporting documents must be contained within the same attached 'PDF' file as the invoice, with the invoice being the first page and all supporting documents to follow; and</p> <p>iv. a valid agreement number and purchase order number must be quoted on all invoices.</p>
	Time for payment	24.5(a) Schedule 1	The default timeframes apply, unless otherwise expressly specified in the Statement of Work.
	Purchase order number and Agreement reference number for Correctly Rendered Invoices	Generally	The purchase order number (and, to the extent applicable, the Agreement reference number) must be specified on each Correctly Rendered Invoice. The purchase order number (and, to the extent applicable, the Agreement reference number) to be specified on Correctly Rendered Invoices will be notified by the Customer to the Supplier after the Commencement Date.

No	Item	Ref	Description or selection
	Supplier's nominated bank account	24.5(a)(i)	The Supplier's bank account details to which payments should be transferred will be as stated in the Correctly Rendered Invoice.
RISK ALLOCATION AND MANAGEMENT			
47.	Business Contingency Plan	25.2(a) 25.2(b)(iii) 25.2(d)	<p>a) A Business Contingency Plan is required and must be provided to the Customer for the Customer's approval by no later than thirty days after the Commencement Date.</p> <p>b) For the purposes of clause 25.2(b)(iii), the Business Contingency Plan must also:</p> <ul style="list-style-type: none"> i. provide for the integration and co-ordination with the Supplier's business continuity arrangements with the Customer and relevant Other Suppliers; ii. be consistent with Best Industry Practice with respect to business continuity; and iii. address any other requirements specified in the Statement of Work or reasonably required by the Customer. <p>The Supplier must review and test the Business Contingency Plan at least annually and in any event upon the reasonable request of the Customer.</p>
48.	Step-In Rights	26	<p>The Customer may exercise Step-In Rights under this Agreement in accordance with clause 26. Without limiting any other right or remedy of the Customer under or in connection with this Agreement (including under clause 29 and including with respect to the events that occurred prior to the exercise of the Customer's Step-In Rights), if the Customer exercises its Step-In Rights for 14 days or more, then the Customer may, at its sole discretion, elect to terminate this Agreement and/or reduce its scope Agreement pursuant to clause 29.1(d).</p> <p>a) The default timeframe of five Business Days applies under clause 26.2(a) for the purposes of the Customer ceasing to exercise its Step-In Rights.</p>
49.	Insurance	27(a)	The default insurance requirements set out in clause 27(a) apply.
	Cyber security and other insurances	27(a) 27(b)	The Supplier is required to hold cyber security insurance and insurance that covers Losses that may be suffered as a result of a data security breach or the wrongful disclosure or use of Personal Information in accordance with clauses 27(a) and 27(b).

No	Item	Ref	Description or selection
50.	Performance Guarantee	28.1	The Supplier must provide a Performance Guarantee, which is executed by [insert entity details for the relevant parent company]. The Performance Guarantee must be provided within 10 Business Days of the Commencement Date.
51.	Financial Security	28.2	The Supplier must provide a Financial Security in the amount of \$[insert], within 15 Business Days of the Commencement Date. The Supplier is responsible for the costs that it incurs in complying with its obligations under clause 28.
52.	Termination for convenience	29.2(b)(ii)B	<p>a) No other costs are payable by the Customer for the purposes of clause 29.2(b)(ii)B.</p> <p>b) If the Customer terminates this Agreement or reduces its scope under clause 29.2(a) and amounts have been pre-paid by the Customer in respect of the period after the termination or reduction (as applicable), the amounts payable by the Customer under clause 29.2(b) will be reduced by such pre-paid amounts. For clarity, if amounts that have been pre-paid by the Customer in respect of the period after the termination or reduction (as applicable) exceed the amounts payable by the Customer under clause 29.2(b), the Supplier must refund the excess amount to the Customer promptly (and in any event within 10 Business Days of the effective date of termination or reduction (as applicable)).</p> <p>c) The Supplier must, within 10 Business Days of a request of the Customer issued from time to time, provide the Customer written notice of the applicable termination for convenience fees which are payable at any particular period during the Term, in which case the Supplier is not entitled to recover any additional amounts if the Customer exercises its termination for convenience rights (including with respect to reduction) in respect of such period.</p>
53.	Limitation Amount	34.5(b)	<p>The Limitation Amount is the greater of:</p> <p>a) two times the total fees paid or payable* by the Customer under this Agreement; and</p> <p>b) \$2 million.</p> <p>* "Paid or payable" includes amounts that at the relevant time have not been paid but which would have become payable if the parties performed all of their obligations under this Agreement. It is not limited to amounts that at the relevant time have become due and payable.</p>

No	Item	Ref	Description or selection
	Alternate approach to uncapped liability	34.5(c)	Not applicable.
	Non-excluded Losses	34.6(b)(ii)	Where the Customer is the recovering party, the following additional types of Loss will also be treated as Loss of the kind referred to in clause 34.6(b)(i): <ul style="list-style-type: none"> a) costs arising from the loss of or corruption to data (in whatever format), including the cost and expense of rectifying and reloading the relevant data; and b) expenditure incurred in respect of crisis management and/or public relations.
54.	Alternative dispute resolution	35	Clause 35.3 does not apply.
55.	Prolonged Force Majeure Event	36.4	The Customer may terminate this Agreement under clause 36.4 if a Force Majeure Event prevents or inhibits the Supplier's performance of any obligation required to be performed under this Agreement for 7 or more days.

PART B: Cloud Module

Where Item 13 above specifies that the Cloud Module applies, complete this Part B. If not applicable, this Part B may be deleted and the words "Not applicable" inserted below.

Clause references below are references to clauses in the Cloud Module.

No	Item	Mod ref	Description or selection
SCOPE			
56.	Cloud Services	1.1	The Cloud Services and associated Deliverables that the Supplier must provide are as set out in the Statement of Work.
57.	Services Period	1.3	The Supplier must provide the Cloud Services for the Term.

No	Item	Mod ref	Description or selection
58.	Unilateral Variation	1.4	<p>Clause 1.4 of the Cloud Module does not apply. Accordingly, all variations to the Services must be made by following the Change Control Procedure, except to the extent otherwise expressly permitted under this Agreement (including clause 4.4 of the Cloud Module). Notwithstanding any consent provided by the Customer for the Supplier to vary the Cloud Services, the Supplier must ensure that any such variation:</p> <ul style="list-style-type: none"> a) does not reduce or diminish the security, functionality, performance or availability of: <ul style="list-style-type: none"> i. the Cloud Services (including customisations and configurations to the Cloud Services); ii. any other system, solution or environment of the Customer; or iii. any integrations between the Cloud Services and any other system, solution or environment of the Customer; and b) does not breach the service standards and any applicable Service Levels that apply under this Agreement, <p>unless and to the extent that the Customer has expressly provided its written consent to such variation having such effect.</p>
	Form of, and medium for, notice of a Unilateral Variation	1.4(c)	If Option 1 immediately above is selected, insert 'Not applicable.'
59.	Dates for Delivery	2.1(a)	<p>The Supplier must provide access to:</p> <ul style="list-style-type: none"> a) the Cloud Services; b) User Documentation; and c) Third Party Components and other Deliverables, <p>in accordance with the Statement of Work.</p>
	Third Party Components	2.1(a)(iii) Annexure A	[Drafting Note: Specify those Third Party Components (to the extent known at the Commencement Date) or other Deliverables to which access must be provided.]
	Date for provision of access codes	2.1(b)	The default applies.
60.	Scope of licence	2.2(b)	The default licence terms set out in clause 2.2(b) of the Cloud Module apply.
61.	Permitted Purpose	2.2(b)(v) Annexure A	In addition to the purposes stated in clause 2.2(b) of the Cloud Module, the Cloud Services may be used by the Customer for any administrative, business or operational purpose of the Customer.

No	Item	Mod ref	Description or selection
LICENSING MODEL AND TERMS			
62.	Licensing model	2.3(a)	[Drafting Note: Describe the licensing model that applies to the Cloud Services being provided under this Agreement.]
	Licensing terms	2.3(b)	[Drafting Note: Specify any alternate terms to those specified in clause 2.3(b) that apply where the Cloud Services are licensed on a User Licensing Model.]
		2.3(c)	Where the Cloud Services are not licensed on a User Licensing Model, specify whether there are any applicable consumption or ceilings/caps.]
63.	Permitted Users	2.3(b) Annexure A	[Drafting Note: Where a maximum number of Permitted Users applies, confirm this here and specify the maximum number. Specify additional persons (in addition to Customer Users) who may access and use the Cloud Services.]
64.	Data backups by the Customer	2.5(a)	The Customer is not required to make and maintain back-ups of data under clause 2.5(a)(i) of the Cloud Module, but if the Customer elects to do so, the Supplier must provide assistance to the Customer as described in clause 2.5(a)(ii) of the Cloud Module.
	Data backups by the Supplier	2.5(b)	The Supplier must backup data loaded into the Cloud Services in accordance with clause 2.5(b) of the Cloud Module.
65.	Records of usage and audits	2.6	The Supplier is not permitted to undertake audits to verify the Customer's compliance with the licensing terms under this Agreement.
66.	Additional Conditions - Cloud Services terms	2.7	As stated or referenced in Item 11.
67.	Restrictions	3(a)	No additional restrictions apply.
68.	Primary and Secondary Data Centres	4.3(a) 4.4(a)	[Drafting Note: Complete details of: <ul style="list-style-type: none"> primary data centre and location; and (if any) secondary data centres and locations, from which the Cloud Services may be provided.]

No	Item	Mod ref	Description or selection
69.	Remote access to Customer Data	4.3(b)	The Supplier is not permitted to remotely access Customer Data from outside New South Wales in accordance with clause 4.3(b) of the Cloud Module or otherwise.
70.	Notice of change to location of data centres	4.4(a)	The default applies.
71.	Excluded locations	4.4(b)	All locations outside of New South Wales are “excluded locations”.
72.	Media decommissioning	4.5(a)(ii)	[Drafting Note: Describe any additional requirements in relation to the decommissioning of storage media with which the Supplier must comply]
SUPPORT AND TRAINING SERVICES			
73.	Support Services	5.1 5.3	<p>[Drafting Note: State whether the Supplier will provide Support Services. If yes:</p> <ul style="list-style-type: none"> describe those Support Services; and specify any additional requirements in relation to the provision of Support Services other than those specified in clause 5.3.] <p>The Supplier must provide Support Services in accordance with the Statement of Work.</p>
74.	Support Period	5.2 Annexure A	<p>[Drafting Note: If the Supplier is providing Support Services, specify the Support Period]</p> <p>The Supplier must provide Support Services, for the full Services Period as specified in Item 57.</p>
75.	Help desk	5.4	<p>[Drafting Note: State whether the Supplier will provide help desk Services. If yes, specify:</p> <ul style="list-style-type: none"> the times of operation for the help desk; and any requirements in relation to the help desk Services.] <p>The Supplier must provide help desk Services in accordance with the Statement of Work.</p>

No	Item	Mod ref	Description or selection
76.	Training Services	6.1	<p>[Drafting Note: State whether the Supplier will provide training Services or Deliverables, and if so, describe the scope of any training Services and Deliverables.]</p> <p>Specify the timeframes and requirements for the provision of training Services and Deliverables.</p> <p>Specify whether a training Plan is required. If yes, specify:</p> <ul style="list-style-type: none"> the date which the Supplier must prepare and submit to the Customer's Representative for approval a training Plan for carrying out the training Services; and any additional details to be included in the training Plan other than those specified in the Module. <p>Specify the locations at which training will occur.</p> <p>If these requirements are specified in the Statement of Work or another Order Document, refer to that document here.]</p> <p>The Supplier must provide any training Services set out in the Statement of Work.</p>
77.	Training Reports	6.2	<p>[Drafting Note: State whether the Supplier is required to provide Training Reports in relation to the provision of training Services.]</p> <p>Describe any alternative or additional requirements in relation to the content for Training Reports.</p> <p>Specify the frequency for the provision of Training Reports (if different to fortnightly).]</p> <p>The Supplier must provide Training Reports to the Customer in accordance with the Statement of Work.</p>
GENERAL			
78.	Additional/ancillary Deliverables and Services	7.1	<p>[Drafting Note: List any additional or related Deliverables or Services to be supplied (including any Data Services), applicable requirements and associated timeframes for provision of those Services and Deliverables.]</p> <p>If Data Services are required, specify the format in which the Supplier must extract and provide Customer Provided Data, the times for the provision of such Customer Provided Data and any other relevant requirements.]</p> <p>The Supplier must provide any additional or related Deliverables and Services specified in the Statement of Work.</p>
79.	Records	8	<p>[Drafting Note: Describe any alternative or additional requirements for the contents of records to those set out in clause 8(b).]</p>

No	Item	Mod ref	Description or selection
			<p>Specify the times for provision of copies of records.]</p> <p>The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under clause 8 of the Cloud Module to the Customer's Representative within 5 Business Days of the end of each calendar month or as otherwise reasonably required by the Customer.</p>
80.	Operating procedures	9(a)(iv)	No operating procedures apply (and clause 9(a)(iv) of the Cloud Module therefore does not apply).

PART C: Services Module

Where Item 13 above specifies that the Services Module applies, complete this Part C. If not applicable, this Part C may be deleted and the words "Not applicable" inserted below.

Clause references below are references to clauses in the Services Module.

No	Item	Mod ref	Description or selection
SCOPE			
81.	Services	1.1	The Services and associated Deliverables that the Supplier must provide are as set out in the Statement of Work.
82.	Non-ICT Services	Generally	<p>[Drafting Note: Specify if any of the Supplier's Activities include any Non-ICT Services and if so, indicate what they include. If there are any requirements that apply to Non-ICT Services, specify those here.]</p> <p>The ICTA can be used to procure Non-ICT Services where they are procured with ICT related Deliverables or Services.]</p>
83.	Services Period	1.3 Annexure A	The Services must be provided for the duration of the Term, in accordance with the Statement of Work.
SUPPORT SERVICES			
84.	Support Services	2.1 2.3	[Drafting Note: State whether the Supplier will provide Support Services and what those Support Services are (for example, Software Support Services).

No	Item	Mod ref	Description or selection
			<p>The specific requirements in relation to the Support Services will need to be set out in the relevant Item numbers below depending on whether the Support Services comprise Software Support Services or Support Services for Hardware and Other ICT Deliverables. If all Support Services are specified in the Statement of Work, state: "As set out in the Statement of Work".]</p> <p>The Supplier must provide Support Services in accordance with the Statement of Work.</p>
	Support Period	2.2 Annexure A	The Support Period is the full Term.
85.	Help desk	2.4	<p>[Drafting Note: State whether the Supplier will provide help desk Services. If so, specify:</p> <ul style="list-style-type: none"> the times of operation for the help desk; and any requirements in relation to the help desk Services.] <p>The Supplier must provide help desk Services in accordance with the Statement of Work.</p>
86.	Software Support Services	3.1 3.2(b) Annexure A	The Supplier must provide Software Support Services in accordance with the Statement of Work, and such Software Support Services must include the provision of both Updates and New Releases.
	Updates	3.2	The default requirements apply.
	New Releases	3.2	The default requirements apply.
	Security Corrections	3.2(f)	The Customer's obligation accept a Security Correction is also conditional on the Supplier satisfying the Customer that such Security Correction will not have a negative impact on the Customer.

No	Item	Mod ref	Description or selection
87.	Period to maintain the Software after provision of Updates and New Releases	4.2(f)	The Supplier must maintain any versions of the Software in use by the Customer for the full Support Period, regardless of whether the Customer has rejected any Update or New Release.
88.	Support Services for Hardware and Other ICT Deliverables	4.1 4.2 Annexure A	The Supplier must provide Support Services in accordance with the Statement of Work and the relevant Hardware and/or Other ICT Deliverables for which such Support Services must be provided are as set out in the Statement of Work.
89.	Preventative Maintenance	4.3 Annexure A	<p>[Drafting Note: State whether the Supplier is required to provide Preventative Maintenance in accordance with clause 4.3.]</p> <p>If the default period does not apply, specify alternative hours for the conduct of Preventative Maintenance. The default is that Preventative Maintenance is conducted outside Business Hours).</p> <p>Describe any alternative requirements to those specified in clause 4.3(c) with respect to Preventative Maintenance.]</p> <p>The Supplier must provide Preventative Maintenance in accordance with clause 4.3 of the Services Module.</p>
90.	Engineering changes	4.4	The default position applies - the Supplier must make available to the Customer all engineering changes. The Supplier must give the Customer at least ninety days advance written notice of all proposed engineering changes.
91.	Remedial Maintenance	4.5 Annexure A	The Supplier must provide Remedial Maintenance in accordance with clause 4.5 of the Services Module and the following additional requirements apply [insert additional requirements].
DEVELOPMENT SERVICES			
92.	Development Services	5.1 Annexure A	The Supplier must provide Development Services in accordance with the Statement of Work.
93.	Software Solution	5.2 Annexure A	[Drafting Note: Specify the Software to be implemented, developed or created by the Supplier and specify the Specifications and requirements that the Software Solution must meet.]

No	Item	Mod ref	Description or selection
94.	Design Specification	5.3(a) 5.3(b)	<p>[Drafting Note: State whether the Supplier must prepare a Design Specification.]</p> <p>Specify the date the Supplier is required to have prepared a Design Specification for the Customer's approval. If this is specified in another Order Document, specify the relevant Order Document here.]</p>
95.	Service Levels or criteria that apply to the Development Services	5.4(d)	<p>[Drafting Note: Specify or reference any applicable Service Levels and other criteria that apply to the Development Services. If this is set out in the Specifications or another Order Document, state that here.]</p> <p>The Supplier must comply with the Service Levels set out in the Statement of Work in the provision of the Development Services.</p>
96.	Alternative project delivery methodology	5.5	<p>[Drafting Note: Specify whether an alternative project design and development methodology (for example, agile development) applies to the Development Services. If so, describe or attach that methodology.]</p>
SYSTEM INTEGRATION SERVICES			
97.	Systems Integration Services	6.1 Annexure A	The Supplier must provide System Integration Services in accordance with the Statement of Work.
	Scope of Systems Integration Services	6.2	<p>[Drafting Note: Describe the Systems Integration Services required and the timeframe for performance of the System Integration Services. If this is specified in another Order Document, specify the relevant Order Document here.]</p> <p>Specify whether any alternative requirements apply in relation to the provision of Systems Integration Services to those set out in clause 6.2.</p> <p>Describe the System (being the software, hardware and other ICT infrastructure) to be integrated.]</p>
	SI Plan and SI Specifications	6.3	<p>[Drafting Note: Specify the requirements and details for:</p> <ul style="list-style-type: none"> the SI Plan; and SI Specifications (including any changes to the default provisions in clause 6.3(d) relating to the SI Specifications).]
DATA SERVICES			
98.	Data Services	7.1 7.2(a) Annexure A	The Supplier must provide Data Services in accordance with the Statement of Work. The Supplier must extract and provide Customer Provided Data, at the times specified in and otherwise in accordance with the Statement of Work.

No	Item	Mod ref	Description or selection
99.	Backup	7.4	<p>[Drafting Note: State the requirements with respect to backups of Customer Provided Data and whether any alternate arrangements to those in clause 7.4 apply with respect to backups of Customer Provided Data.]</p> <p>Specify how frequently backups of Customer Provided Data must occur.]</p>
100.	Data cleansing	7.5	[Drafting Note: State whether the Supplier will perform data cleansing. If so, identify any standards or requirements that apply with respect to data cleansing.]
101.	Data analysis	7.6	<p>[Drafting Note: State whether the Supplier will perform data analysis and, if so, specify whether the Supplier will provide the Customer with the data analytics report(s).]</p> <p>State the timeframes and requirements that apply to the provision of the data analytic Services.]</p>
102.	Data migration	7.7	<p>[Drafting Note: State whether the Supplier will perform data migration.]</p> <p>Describe the activities required to be undertaken with respect to data migration, including whether any varied or additional requirements to those specified in clause 7.7(a)(i) apply.]</p>
103.	Data Migration Plan	7.7	<p>[Drafting Note: Specify the Date for Delivery of the Data Migration Plan.]</p> <p>Specify any alternative content to the Data Migration Plan as compared to that described in clause 7.7(b).]</p>
OTHER PROFESSIONAL SERVICES			
104.	Professional Services	8.1 Annexure A	The Supplier must provide Professional Services in accordance with the Statement of Work.
	Specifications and standards	8.2	The Supplier must provide the Professional Services in accordance with the Specifications and standards specified in the Statement of Work.
105.	Dates for Delivery and timeframes	8.2 8.3	The Supplier must provide the Professional Services in accordance with the Dates for Delivery specified in the Statement of Work.

No	Item	Mod ref	Description or selection
MANAGED SERVICES			
106.	Managed Services	9.1 9.2 Annexure A	The Supplier must provide Professional Services in accordance with the Statement of Work. The Supplier must provide the Managed Services in accordance with the Specifications, standards and Dates for Delivery specified in the Statement of Work.
	Transition-In Services	9.3	<p>[Drafting Note: State whether the Supplier will provide Transition-In Services with respect to the Managed Services. If necessary, the Transition-In Services referenced in Part A of the Order Form can be referenced here to the extent applicable.]</p> <p>Describe any additional requirements to those set out in clause 9.3.</p> <p>Specify the date for completion of the Transition-In Services.]</p>
107.	Procedures Manual	9.4	<p>[Drafting Note: Specify whether the Supplier will provide a Procedures Manual for the carrying out of the Managed Services and, if so, specify the date for provision of the Procedures Manual.]</p> <p>Specify any other details, other than those in clause 9.4(b), which the Procedures Manual must cover.]</p>
108.	Managed Third Party Contracts	9.5 Annexure A	<p>[Drafting Note: State whether the Supplier will assume responsibility for the management and performance of any Managed Third Party Contracts. Where applicable:</p> <ul style="list-style-type: none"> • specify the Managed Third Party Contracts; • specify any additional requirements with respect to Managed Third Party Contracts; • specify the date the Supplier is required to use its best efforts to obtain the novation of each Managed Third Party Contract; and • if not in any other document that comprises the Payment Particulars, specify any alternative cost arrangements to those set out in clause 9.5(g) (that is, if costs associated with the management and novation of Third Party Contracts are not included in the Price for the Managed Services). <p>If the parties agree upon an alternative approach in relation to the administration of Managed Third Party Contracts, specify that alternative approach here.]</p>
109.	Assets	9.6 Annexure A	[Drafting Note: State whether a transfer of Assets is required to carry out the Managed Services. If so, name and specify the Assets and state the date that title to the Assets will be transferred from the Customer to the Supplier in accordance with clause 9.6(b).]

No	Item	Mod ref	Description or selection
110.	Transition-Out Services	9.7	[Drafting Note: State whether the Supplier will provide Transition-Out Services with respect to the Managed Services. If necessary, the Transition-Out Services referenced in Part A of the Order Form can be referenced here.]
TRAINING SERVICES			
111.	Training Services	10.1	<p>[Drafting Note: State whether the Supplier will provide training Services or Deliverables, and if so, describe the scope of any training Services and Deliverables.]</p> <p>Specify the timeframes and requirements for the provision of training Services and Deliverables.</p> <p>Specify whether a training Plan is required. If yes, specify:</p> <ul style="list-style-type: none"> the date which the Supplier must prepare and submit to the Customer's Representative for approval a training Plan for carrying out the training Services; and any additional details to be included in the training Plan other than those specified in the Module. <p>Specify the locations at which training will occur.</p> <p>If these requirements are specified in the Statement of Work or another Order Document, refer to that document here.]</p> <p>The Supplier must provide any training Services set out in the Statement of Work.</p>
	Training Reports	10.2	<p>[Drafting Note: State whether the Supplier is required to provide Training Reports in relation to the provision of training Services.]</p> <p>Describe any alternative or additional requirements in relation to the content for Training Reports.</p> <p>Specify the frequency for the provision of Training Reports (if different to fortnightly).]</p>
GENERAL			
112.	Additional/ancillary Deliverables and Services	11.1 11.2	<p>[Drafting Note: Specify the additional or related Deliverables or Services to be provided and any other goods and services that are incidental or ancillary to the provision of the Deliverables and Services. Specify the requirements that apply to the provision of those Deliverables and Services. If these are specified in the Statement of Work or another Order Document, reference that document here.]</p> <p>The Supplier must provide any additional or related Deliverables and Services specified in the Statement of Work.</p>

No	Item	Mod ref	Description or selection
113.	Records	12	<p>Clause 12(b) of the Services Module applies.</p> <p>The Supplier must at its sole cost, provide copies of the records required to be maintained and kept under clause 12 of the Services Module to the Customer's Representative at least every 30 days and when reasonably required by the Customer.</p>
114.	Operating procedures	13(a)(v)	<p>No operating procedures apply (and clause 13(a)(v) of the Services Module therefore does not apply).</p>

PART D: Software Module (Non-Cloud)

Where Item 13 above specifies that the Software Module (Non-Cloud) applies, complete this Part D.

If not applicable, this Part D may be deleted and the words "Not applicable" inserted below.

Clause references below are references to clauses in the Software Module (Non-Cloud).

No	Item	Mod ref	Description or selection
SCOPE			
115.	Scope	1.1 2.1(a) 9.1	<p>The Supplier must provide Licensed Software and Support Services, in accordance with the Statement of Work.</p> <p>[Drafting Note: Please ensure that the Statement of Work sufficiently describes the above.]</p>

No	Item	Mod ref	Description or selection
	Licensed Software and Software Support Services	1.1 2.1(a) 9.3(a) Annexure A	<p>The Supplier must provide:</p> <p>a) [insert the type of Licensed Software to be provided];</p> <p>b) [insert details of any Software Support Services to be carried out by the Supplier];</p> <p>c) [insert the details of any Deliverables (including Document Deliverables) to be provided in connection with the Licensed Software and Software Support Services]; and</p> <p>d) [insert other relevant details in relation to the provision of the Licensed Software, Software Support Services and associated Deliverables].</p>
SUPPLY OF LICENSED SOFTWARE			
116.	Dates for Delivery	2.1(b)	The Supplier must provide the Licensed Software, User Documentation and any Third Party Components and other Deliverables in accordance with the Dates for Delivery specified in the Statement of Work.
	Installation	2.1(c) 2.2	<p>[Drafting Note: State if the Supplier or the Customer is responsible for installing the Licensed Software. If the Customer is responsible for installing the Licensed Software, describe any installation instructions. Note: The default position is that installation must be performed by the Customer in accordance with any instructions in the User Documentation. If other instructions apply, specify those here.]</p> <p>If the Supplier is responsible for installing the Licensed Software, describe any installation instructions/requirements (including timeframes for installation).]</p>

No	Item	Mod ref	Description or selection
			<p>Option 1:</p> <p>'The Supplier must install the Licensed Software in accordance with the requirements of the Statement of Work.'</p> <p>Option 2:</p> <p>'The Customer is responsible for installing the Licensed Software. The User Documentation specifies instructions for installation. The Supplier must provide such information and assistance to the Customer as is reasonably requested by the Customer to assist the Customer to install the Licensed Software.'</p> <p>Option 3:</p> <p>'Not applicable.'</p>
	Download of Licensed Software	2.1(d)	<p>[Drafting Note: Where the Supplier makes the Licensed Software and User Documentation available for download from a website, specify the date that the Supplier must provide the access codes to the Customer (if not the Commencement Date).]</p> <p>The Supplier must make the Licensed Software and User Documentation available to the Customer for download on [insert date].</p>
117.	Data backups by the Customer	2.3(a)	Not applicable – the Supplier must back-up data that is loaded into the Licensed Software.
	Data backups by the Supplier	2.3(b)	The Supplier must back-up data that is loaded into the Licensed Software in accordance with clause 2.3(b) of the Software Module and the following other Data Services must be performed in relation to the data back-up: [insert].

No	Item	Mod ref	Description or selection
118.	Licence Period	3.1 Annexure A	<p>[Drafting Note: Specify the Licence Period and any Extended Period. If an Extended Period applies, specify any alternative notice period for extensions (if different from 15 Business Days).]</p> <p>NSWPF options:</p> <p>Option 1:</p> <p>‘The Licence Period is perpetual.’</p> <p>Option 2:</p> <p>‘The Licence Period is for the full Term.’</p> <p>Option 3:</p> <p>‘The Licence Period is [insert] and there are [insert number] of Extension Periods which are [insert] months in length.’</p>
	Licensing model	3.2	[Drafting Note: Describe the licensing model. Where the licensing model is a User Licensing Model, the default position is that there is no cap on the number of Permitted Users. If there is any change to this default position, specify the maximum number of Permitted Users and specify whether any alternative or additional terms to those set out in clause 3.2(b) apply. Where it is not a User Licensing Model, specify any consumption or other ceiling that applies to the use of the Licensed Software.]
	Permitted Users	3.2 Annexure A	[Drafting Note: Nominate any additional persons (in addition to Customer Users) to be Permitted Users.]
	Permitted Purposes	3.3 Annexure A	In addition to the purposes stated in clause 3.3 of the Software Module, the Licensed Software may be used by the Customer for any administrative, business or operational purpose of the Customer.
	Scope of licence	3.3	Not applicable.
119.	Updates and New Releases - General	4.1(a)	The Supplier must provide all Updates and New Releases for the Licensed Software.
	Updates	4.2(a) 4.2(c)	The default requirements in clauses 4.2(a) and 4.2(c) apply in relation to Updates.
	New Releases	4.2(a) 4.2(c)	The default requirements in clauses 4.2(a) and 4.2(c) apply in relation to New Releases.

No	Item	Mod ref	Description or selection
	Security Corrections	4.2(e)	The Customer's obligation accept a Security Correction is also conditional on the Supplier satisfying the Customer that such Security Correction will not have a negative impact on the Customer.
	Period to maintain the Licensed Software after provision of Updates and New Releases	4.2(f)	The Supplier must maintain any versions of the Software in use by the Customer for the full Support Period, regardless of whether the Customer has rejected any Update or New Release.
120.	Transfer rights	5.1	The Customer may sub-licence and transfer excess licences and associated licensing rights and obligations to the following Government Agencies/other Eligible Customers: [insert].
121.	Restrictions	6.1(a)	No additional restrictions apply.
122.	End of Licence Period	6.2(a)	The later period of 60 Business Days applies.
123.	Third Party Components	7.1(b) Annexure A	Any Third Party Components will be licensed to the Customer on the same terms and conditions as the Licensed Software.
	Third party warranties	7.2	The Supplier must ensure that the Customer receives the benefit of the following third-party warranties: [insert].
124.	Record keeping	8.1	Not applicable.
125.	Software Audits	8.2(b) 8.2(c)	Not applicable – the Supplier is not permitted to perform Software Audits.
	Results and consequences of Software Audit	8.3(b)	Not applicable – the Supplier is not permitted to perform Software Audits.
SOFTWARE SUPPORT SERVICES			
126.	Support Period	9.2	The Supplier must provide Software Support Services and the Support Period is the full Term.
	Software Support Services	9.3(b)	[Drafting Note: If the Supplier will provide any Software Support Services, specify any additional requirements in

No	Item	Mod ref	Description or selection
			<p>relation to the Software Support Services to those set out in clause 9.3(b).]</p> <p>The Supplier must provide Software Support Services in accordance with the Statement of Work.</p>
127.	Help desk	10	<p>[Drafting Note: State whether the Supplier will provide help desk Services. If so, specify:</p> <ul style="list-style-type: none"> the times of operation for the help desk; and any requirements in relation to the help desk Services.] <p>The Supplier must provide help desk Services in accordance with the Statement of Work.</p>
TRAINING			
128.	Training Services	11.1	<p>[Drafting Note: State whether the Supplier will provide training Services or Deliverables, and if so, describe the scope of any training Services and Deliverables.</p> <p>Specify the timeframes and requirements for the provision of training Services and Deliverables.</p> <p>Specify whether a training Plan is required. If yes, specify:</p> <ul style="list-style-type: none"> the date which the Supplier must prepare and submit to the Customer's Representative for approval a training Plan for carrying out the training Services; and any additional details to be included in the training Plan other than those specified in the Module. <p>Specify the locations at which training will occur.</p> <p>If these requirements are specified in the Statement of Work or another Order Document, refer to that document here.]</p> <p>The Supplier must provide any training Services set out in the Statement of Work.</p>
	Training Reports	11.2	<p>[Drafting Note: State whether the Supplier is required to provide Training Reports in relation to the provision of training Services.</p> <p>Describe any alternative or additional requirements in relation to the content for Training Reports.</p> <p>Specify the frequency for the provision of Training Reports (if different to fortnightly).]</p>

No	Item	Mod ref	Description or selection
GENERAL			
129.	Additional/ancillary Deliverables and Services	12	<p>[Drafting Note: List any additional or related Deliverables or Services to be supplied (including any Data Services) and the applicable requirements and associated timeframes for provision of those Services and Deliverables.]</p> <p>If Data Services are required, specify the format in which the Supplier must extract and provide Customer Provided Data, the times for the provision of such Customer Provided Data, and any other relevant requirements.]</p> <p>The Supplier must provide any additional or related Deliverables and Services specified in the Statement of Work.</p>
130.	Export Laws	13(a)(ii) Annexure A	Australia only.
131.	Records	14	<p>Clause 14(b) applies.</p> <p>The Supplier must at its sole cost, provide copies of the records required to be maintained and kept under clause 14 to the Customer's Representative at least every 30 days and when reasonably required by the Customer.</p>
132.	Operating procedures	15(a)(iv)	No operating procedures apply (and clause 15(a)(iv) of the Software Module therefore does not apply).

PART E: Hardware and Other ICT Deliverables Module

Where Item 13 above specifies that the Hardware and Other ICT Deliverables Module applies, complete this part E. If not applicable, this part E may be deleted and the words "Not applicable" inserted below.

Clause references below are references to clauses in the Hardware and Other ICT Deliverables Module.

No	Item	Mod ref	Description or selection
SCOPE			
133.	Scope	1.1 7.1	<p>The Supplier must provide:</p> <ul style="list-style-type: none"> a) Hardware and Other ICT Deliverables; b) Support Services; and/or c) Hardware and Other ICT Deliverables and Support Services,

No	Item	Mod ref	Description or selection
			to the extent required by the terms of the Statement of Work. [Drafting Note: Please ensure that the Statement of Work sufficiently describes the above.]
	Hardware, Other ICT Deliverables and Support Services	1.1 2.3(a)(ii) 7.3 Annexure A	[Drafting Note: Specify (as applicable) the Hardware, Other ICT Deliverables, Support Services and associated Deliverables to be provided by the Supplier, including: <ul style="list-style-type: none"> the type of Hardware and Other ICT Deliverables to be provided; any parts and components to be provided; the Machine Code; any Support Services to be carried out by the Supplier in respect of the Hardware and/or Other ICT Deliverables, including a list of the Hardware and/or Other Deliverables which comprise the Supported Deliverables; the details of any Deliverables (including Document Deliverables) to be provided in connection with the provision of the Hardware, Other ICT Deliverables and Support Services; and other relevant details in relation to the provision of the Hardware, Other ICT Deliverables, Support Services and associated Deliverables.]
SUPPLY OF HARDWARE AND OTHER ICT DELIVERABLES			
134.	Status of Deliverables	2.1(a)	Not applicable – no exceptions apply.
135.	Supply and delivery	2.3	[Drafting Note: Specify any requirements for supply and delivery of the Deliverables to Site. Specify any additional documents or information (including any test results) that must accompany the Deliverables on delivery. Specify any additional requirements for the marking or labelling of the packaging.]

No	Item	Mod ref	Description or selection
136.	Availability Period	2.5 Annexure A	The Availability Period is the period commencing on the Commencement Date and ending on the later of: a) the expiration of Term; b) three years after Acceptance; and c) the end of the Warranty Period.
137.	Passing of title	3.1(a)	The default position with respect to the transfer of title in each Deliverable applies.
138.	Risk	3.2(b)	The default position with respect to the transfer of risk in each Deliverable applies.
139.	Installation	4.1	The Supplier must Install the Hardware in accordance with the requirements of the Statement of Work, and the default requirements in clause 4.1(c) apply.
140.	Data backups by the Customer	4.2(a)	Not applicable – the Supplier must backup any data that is loaded into the Hardware in accordance with clause 4.2(b) of the Hardware Module and must carry out any Data Services specified in the Statement of Work.
	Data backups by the Supplier	4.2(b)	The Supplier must backup any data that is loaded into the Hardware in accordance with clause 4.2(b) of the Hardware Module and must carry out any Data Services specified in the Statement of Work.
141.	Machine Code	5.1(b) Annexure A	In addition to the purposes stated in clause 5.1(b) of the Hardware Module, the Machine Code may be used by the Customer for any administrative, business or operational purpose of the Customer.
142.	Licensed Software	5.2	The Licensed Software is licensed to the Customer under the Software Module.

No	Item	Mod ref	Description or selection
TRAINING			
143.	Demonstration	6.1	[Drafting Note: Specify whether the Supplier must demonstrate to the Customer and Customer Users how to use the Deliverables. If yes, specify when this will occur and any requirements that will apply to the demonstration. If these requirements are specified in the Statement of Work or another Order Document, refer to that document here.]
	Training Services	6.2	<p>[Drafting Note: State whether the Supplier will provide training Services or Deliverables, and if so, describe the scope of any training Services and Deliverables.</p> <p>Specify the timeframes and requirements for the provision of training Services and Deliverables.</p> <p>Specify whether a training Plan is required. If yes, specify:</p> <ul style="list-style-type: none"> the date which the Supplier must prepare and submit to the Customer's Representative for approval a training Plan for carrying out the training Services; and any additional details to be included in the training Plan other than those specified in the Module. <p>Specify the locations at which training will occur.</p> <p>If these requirements are specified in the Statement of Work or another Order Document, refer to that document here.]</p> <p>The Supplier must provide any training Services set out in the Statement of Work.</p>
	Training Reports	6.3	<p>[Drafting Note: State whether the Supplier will provide Training Reports in relation to the provision of Training Services.</p> <p>Describe any alternative or additional requirements in relation to the content for Training Reports.</p> <p>Specify the frequency for the provision of Training Reports (if different to fortnightly).]</p>
SUPPORT SERVICES			
144.	Support Period	7.2 Annexure A	The Supplier must provide Support Services and the Support Period is the full Term.
145.	Preventative Maintenance	7.4 Annexure A	The Supplier must provide Preventative Maintenance in accordance with clause 7.4 of the Hardware Module, and the default provisions of clause 7.4 apply.
146.	Engineering changes	7.5	

No	Item	Mod ref	Description or selection
			The default position applies - the Supplier must make available to the Customer all engineering changes. The Supplier must give the Customer at least ninety days advance written notice of all proposed engineering changes.
147.	Remedial Maintenance	7.6 Annexure A	<p>[Drafting Note: State whether the Supplier is required to provide Remedial Maintenance in accordance with clause 7.6.]</p> <p>Describe any additional requirements to those in clause 7.6(b) with respect to Remedial Maintenance.]</p> <p>The Supplier must provide Remedial Maintenance in accordance with clause 7.6 of the Hardware Module and the following additional requirements apply [insert additional requirements].</p>
148.	Help desk	8	<p>[Drafting Note: State whether the Supplier will provide help desk Services. If so, specify:</p> <ul style="list-style-type: none"> the times of operation for the help desk; and <p>any requirements in relation to the help desk Services.]</p> <p>The Supplier must provide help desk Services in accordance with the Statement of Work.</p>
GENERAL			
149.	Records	9	<p>Clause 9(b) applies.</p> <p>The Supplier must at its sole cost, provide copies of the records required to be maintained and kept under clause 9 to the Customer's Representative at least every 30 days and when reasonably required by the Customer.</p>
150.	Optional Features	10.1	<p>[Drafting Note: Specify whether the Deliverables come with any Optional Features and if so, state the time period for activation of those Optional Features.]</p> <p>State the period for which activated Optional Features will be provided.</p> <p>Remember to state (in the Payment Particulars) the Price for Optional Features).</p> <p>State if the Supplier will not provide Support Services for Deliverables with activated Optional Features.]</p>

No	Item	Mod ref	Description or selection
151.	Additional/ancillary Deliverables and Services	10.3	<p>[Drafting Note: Specify the additional or related Deliverables or Services to be provided and any other goods and services that are incidental or ancillary to the provision of the Deliverables and Services. Specify the requirements that apply to the provision of those Deliverables and Services. If these are specified in the Statement of Work or another Order Document, reference that document here.]</p> <p>The Supplier must provide any additional or related Deliverables and Services specified in the Statement of Work.</p>
152.	Site access	11	<p>[Drafting Note: State if the Customer must prepare the Site to enable supply and Installation.]</p> <p>Describe Site preparation requirements and specify any Site access policies and procedures that the Supplier must comply with. If necessary, the Site requirements and policies/procedures referenced in Part A of the Order Form can be referenced here.]</p>
153.	Export Laws	12 Annexure A	Australia only.
154.	Compatibility	13.1	NSWPF option: 'The Supplier must ensure that the Deliverables are fully compatible and interoperable with the Customer Environment. In addition and without limitation, the Supplier must ensure that the Deliverables are fully compatible and interoperable with: [identify operating system and Licensed Software].
155.	Third party warranties	13.2	<p>The Supplier must ensure that the Customer receives the benefit of the following third party warranties:</p> <p>[insert].</p>
156.	Operating procedures	14(a)(v)	No operating procedures apply (and clause 14(a)(v) of the Hardware Module therefore does not apply).

No	Item	Mod ref	Description or selection
157.	Movement of Deliverables by Supplier	15(a)	<p>[Drafting Note: If the Supplier is required to move and relocate Deliverables specify that here.</p> <p>If the Supplier must move or relocate Deliverables, the Supplier must meet (among other requirements) the requirements specified in clause 15(a)(ii) unless otherwise specified here or in the other Order Documents.]</p>
	Movement of Deliverables by Customer	15(b)	Clause 15(b) applies in full and the Customer is not required to make any notification to the Supplier or otherwise inform the Supplier of any movement or relocation of the Deliverables.

Annexure A to Order Form – Supplier's Documents

The Supplier's Documents are:

[insert].

Annexure B to Order Form – Statement of Work

[Drafting Note: Please insert the completed SOW here, using the template provided in Schedule 3.]

Annexure C to Order Form – Additional Conditions

Additional Conditions

Part A – Amendments to the Agreement

1. No deemed Acceptance

- 1.1 Clause 8.1(e) of the Core Terms is amended by deleting the words '*except where clause 8.2(f) applies*'.
- 1.2 Clause 8.2(f) of the Core Terms is amended by deleting the sentence '*If the Customer does not approve or reject the relevant Document Deliverable or otherwise communicate with the Supplier in relation to that reminder notice within 10 Business Days of its receipt, then the relevant Document Deliverable will be deemed to have been approved by the Customer.*' and replacing it with the sentence '*Under no circumstances will a Document Deliverable be deemed to have been Accepted by the Customer.*'
- 1.3 Clause 14.3(f) of the Core Terms is amended by deleting the sentence '*If the Customer does not take one of the actions referred to in clause 14.3(c) or otherwise communicate with the Supplier in relation to that reminder notice within 15 Business Days of its receipt, then the relevant Deliverable will be deemed to have been Accepted by the Customer.*' and replacing it with the sentence '*Under no circumstances will a Deliverable be deemed to have been Accepted by the Customer.*'

2. Personnel

- 2.1 Clause 11.3(e) of the Core Terms is deleted and replaced with the following:
 - (e) *The Customer may from time to time in its sole discretion, give notice in writing requiring the Supplier to remove any of its Personnel (including Nominated Personnel) from work in respect of this Agreement, without the need to provide reasons. Upon receipt of such notice, the Supplier must:*
 - (i) *immediately ensure that:*
 - A. *the relevant Personnel does not carry out any further work under or in connection with this Agreement;*
 - B. *the relevant Personnel does not have access to any information of the Customer (including Customer Data) or any of the Customer Supplied Items (including facilities, materials, equipment or systems); and*
 - C. *all materials relating to this Agreement and any other documentation, information, resources and other materials of the Customer (if any) given to the relevant Personnel are immediately returned to the Supplier; and*
 - (ii) *promptly arrange for the removal of such Personnel and their replacement with Supplier Personnel approved in writing by the Customer. The Customer must act reasonably in granting or withholding approval, or granting approval subject to conditions. If requested by the Customer, the Supplier must provide the Customer with such information as the Customer requires concerning any proposed replacement of any Personnel (including a resume and an opportunity to interview them).*

3. Policies, Codes and Standards

- 3.1 Clause 12.2(a) of the Core Terms is amended by inserting the following words at the end of the clause *'(to the same extent as if those Policies, Codes and Standards applied to the Supplier and as if references to the Customer (or similar) were references to the Supplier), and must do all things necessary in the performance of the Supplier's Activities to ensure that the Customer complies with all Policies, Codes and Standards'*.

4. Intellectual Property Rights

- 4.1 A new clause 17.14 of the Core Terms is inserted as follows:

17.14 Scope of licence rights

- (a) *The Supplier represents, warrants and undertakes that the Customer's use of the Services and Deliverables will not under any circumstance, or at any time, be subject to any terms and conditions other than those terms and conditions expressly set out in this Agreement, even where a third party owns the Intellectual Property Rights in the Services and/or Deliverables (as applicable).*

5. Termination for cause by the Customer

- 5.1 Clause 29.1 of the Core Terms is amended by inserting the following additional subclauses:

- (e) *if the Supplier breaches its obligations under:*
- (i) *clauses 19.1 (Obligations in relation to Customer Data), 19.2 (Security of Customer Data), 20 (Privacy), 21 (Security), 22 (Security Incident notification) or 23 (Confidentiality); or*
 - (ii) *the Information Security Requirements; or*
- (f) *if the Supplier commits a breach of this Agreement which, in the Customer's reasonable opinion:*
- (i) *has caused, or may cause, damage or harm to the Customer's or the State of New South Wales' reputation; or*
 - (ii) *negatively impact on the ability of the Customer to conduct its operations or perform its functions.*

6. Liability - the Professional Standards Legislation

- 6.1 Clause 34.5(d) of the Core Terms is deleted and marked 'Not used'.

Part B – Additional Terms and Conditions

7. Use of Police Insignia

- 7.1 The Supplier must not use police insignia, as defined in section 203(8) of the *Police Act 1990* (NSW) (**Police Act**), unless the Supplier:

- (a) is authorised by a licence granted to the Supplier by the Commissioner of the NSW Police Force; or
- (b) is otherwise authorised by the Commissioner of the NSW Police Force.

8. Transition Out

8.1 The parties acknowledge and agree that:

- (a) this Additional Condition 8 supplements and applies in addition to the requirements of this Agreement (including clause 31 of the Core Terms);
- (c) the main objectives of the Transition-Out Services are to ensure the smooth and orderly transition of the Supplier's Activities from the Supplier to the Customer or its nominee/s;
- (d) the successful performance of the Transition-Out Services by the Supplier is critically important to the Customer, including to minimise the risk and impact on the Customer and the Customer's operations, Personnel, end users and/or other stakeholders; and
- (e) the Customer may require the Supplier to perform Transition-Out Services in relation to all or part of the Supplier's Activities.

8.2 The Supplier must:

- (a) except to the extent otherwise requested by the Customer in writing, continue to provide the Supplier's Activities (including any associated reporting and other related services required under this Agreement) during the Transition-Out Period in accordance with the terms of this Agreement (for clarity, to the extent that the Customer requires the Supplier to continue to provide the Supplier's Activities, the Customer must continue to pay for such Supplier's Activities, in accordance with, and to the extent set out in, the Payment Particulars);
- (b) ensure that there is no disruption to, or degradation in the quality of such Supplier's Activities during the Transition-Out Period;
- (c) perform the Services (including the Transition-Out Services), deliver the Deliverables, and meet the requirements specified in this Additional Condition 8 and do everything else required of it under the Transition-Out Plan; and
- (d) where required by the Customer, provide for the orderly hand over of such Supplier's Activities to the Customer or the relevant Other Supplier/s nominated by Customer.

8.3 The Transition-Out Services that the Customer may require the Supplier to perform include:

- (a) assisting the Customer in discussions with any Other Suppliers;
- (b) providing such information on hardware, software, processes and procedures as reasonably required by the Customer to enable discussions with any Other Supplier to take place;
- (c) providing such cooperation as is reasonably necessary to enable any Other Supplier to perform a technical joint verification or due diligence exercise in relation to the Supplier's Activities;
- (d) without limiting the Supplier's obligations under this Agreement, converting any data into a common and generally accepted non-proprietary format (as nominated by the Customer);
- (e) undertaking or assisting with the un-encryption of any encrypted data to allow data migration or translation to other system;

- (f) providing all relevant encryption 'keys' and tools sufficient to allow the Other Supplier to access any encrypted data;
- (g) providing any Other Supplier with all necessary documentation, configuration details, specifications and assistance to ascertain the status of any outstanding Supplier's and the input required to provide and complete the Services and to operate, support and maintain the Deliverables;
- (h) ensuring the attendance of relevant Personnel at such meetings as may reasonably be required by the Customer;
- (i) doing all things necessary to ensure the smooth and orderly transition to the Other Supplier/s;
- (j) transferring and/or returning all records, data, information, equipment and/or assets of the Customer to the Customer or the Other Supplier/s; and
- (k) continuing to provide relevant Supplier's Activities to the Customer.

8.4 The fees for the Transition-Out Services must not exceed the rates specified in this Agreement, or if no such rates are specified, will be chargeable in accordance with commercially competitive rates which will be agreed between the parties in writing and in advance.

8.5 The Parties acknowledges and agree that:

- (a) fees for Transition Out Services are only payable for any resources (based on total full-time-equivalent count) required in addition to the resources used to deliver the Supplier's Activities prior to commencement of the Transition-Out Period;
- (b) no fees are payable if additional resources are not utilised; and
- (c) the Supplier must use reasonable endeavours to use existing resources where possible.

8.6 At the end of the Transition-Out Period (and earlier, if determined necessary by the Customer in its sole direction):

- (a) the Supplier must and must ensure that its Personnel:
 - (i) cease access the Customer's premises, facilities, data, information, systems or other materials; and
 - (ii) return all data, information, equipment and other materials of the Customer to the Customer; and
- (b) the Supplier's security and access rights to Customer's premises, facilities, data, information, systems and other materials will be terminated.

8.7 Upon request of the Customer, the Supplier must provide a statutory declaration to the Customer confirming that the Supplier has complied with its obligations under Additional Condition 8.6.

8.8 All Transition-Out Services must be provided by the Supplier in accordance with the terms and conditions of this Agreement. The Supplier must perform the Transition-Out Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it provided and was required to provide the same or similar services prior to the start of the Transition-Out Period.

- 8.9 The Customer may terminate the Transition-Out Services (or reduce their scope), in whole or in part, at any time by giving the Supplier five (5) Business Days written notice of such termination, in which case the Supplier must promptly provide a refund to the Customer of any fees, charges or other similar amounts that have been paid by the Customer in advance in respect of the period following termination of the Transition-Out Services, or for Services and Deliverables that have not been provided by the Supplier.
- 8.10 The Supplier must act reasonably and in good faith in the performance of the Transition-Out Services and must provide all information and materials to the Customer as reasonably requested by the Customer.
- 8.11 The Supplier must provide Transition-Out Services to the Customer regardless of the reason for the expiration or termination of this Agreement.

9. Tender Response

- 9.1 If directed by the Customer, the Supplier must comply with the Tender Response to the extent that any matter or thing addressed in the Tender Response is not provided for in this Agreement.
- 9.2 Where the Tender or the Tender Response is capable of assisting in ascertaining the meaning of a particular provision of this Agreement, the Customer may rely on the Tender and/or the Tender Response to:
 - (a) confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in this Agreement and the purpose or object underlying this Agreement; or
 - (b) determine the meaning of a provision of this Agreement when the provision is ambiguous or obscure.
- 9.3 To the extent that there is any conflict between this Agreement and the Tender or the Tender Response, the conflict will be resolved by giving priority to this Agreement.
- 9.4 To the extent that there is any conflict between the Tender and Tender Response, the conflict will be resolved by giving priority to the Tender, except to the extent that the Tender Response expressly provides otherwise in relation to particular section of the Tender (for clarity, any wording in the Tender Response which provides that the entire Tender Response or a substantial part of the Tender Response prevails over the Tender will not apply to this Agreement).
- 9.5 For the purposes of Additional Conditions 9.1 to 9.4:
 - (a) **Tender** means the [insert details of the RFT/RFP/RFQ or similar released by NSWPF] issued by the Customer on or about [insert date], including any all conditions, annexures, schedules, attachments, addenda, clarifications and other similar things; and
 - (b) **Tender Response** means:
 - (i) the Supplier's response to the Tender dated [insert date];
 - (ii) any written response by or on behalf of the Supplier to a request from the Customer for clarification or further information given before the Commencement Date; and
 - (iii) any written statement made by or on behalf of the Supplier to the Customer before the Commencement Date in relation to its proposed provision of the Supplier's Activities.

Annexure D to Order Form – ICT Supplier Security Requirements document

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NSWPF, ICT Supplier Security Requirements

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Introduction

The NSW Police Force (NSWPF) is committed to ensure that:

- existing and potential ICT Suppliers have adequate security controls in place to manage and protect NSWPF Data, Security Classified Information, and Security Classified Material; and
- the due diligence processes applying to existing and potential ICT Suppliers are fit for purpose to ensure the ongoing security of NSWPF assets.

Intended Audience

The primary audience for this

document is: Suppliers (both existing and potential) and their Personnel;

2. NSWPF employees, contractors and temporary staff involved in working with existing or potential ICT Suppliers;

Scope

This document sets out the Security obligations and requirements that ICT Suppliers must comply with in their dealings with NSWPF.

This NSWPF ICT Supplier Security Requirements document applies to any ICT Suppliers:

1. providing ICT goods or services to NSWPF; or
2. providing non-ICT goods or services to NSWPF, where NSWPF determines that the Security requirements set out in this document should apply in relation to the provision of those goods or services; or
3. that are transacting with NSWPF and may have access to NSWPF Data and/or NSWPF Systems), where NSWPF determines that this document should apply in relation to those transactions.

This document covers responsibilities of the ICT Supplier at organisational level, and responsibilities of the ICT Supplier and its Personnel when accessing NSWPF Systems or NSWPF Data.

NSWPF reserves the right to take any steps required to verify compliance with this document in relation to any existing and potential ICT Suppliers.

1 Security Governance

1.1 Information Security Policies

NSWPF requires that ICT Suppliers must:

- (a) maintain security in the delivery of the services in accordance with industry standards (or any successor standards), or the Australian Government Information Security Manual (ISM) as specified under any relevant Agreement;
- (b) maintain an Information Security Policy that is reviewed at regular intervals (no less than annually) to respond to changing threats and risks and to cater for technology advances and provide evidence of such to NSWPF; and
- (c) Implement appropriate security tools and practices, including but not limited to:
 - (i) robust cryptographic algorithms, encrypted protocols, multi-factor authentication mechanisms, network traffic inspection and filtering, security governance and security practises pertaining to its systems, premises, and Personnel when providing the services.

1.2 Security Management

NSWPF requires that ICT Suppliers:

- (a) provide a nominated Security Representative in relation to the provision of services to NSWPF. The Security Representative should:

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- (i) attend security meetings with NSWPF as organised by NSWPF from time to time; and
- (ii) be the nominated single point of contact for security services managed and delivered by the ICT Supplier;
- (b) appoint a Chief Information Security Officer (CISO) or equivalent role provides cyber security leadership within the ICT Supplier's organisation in order to maintain pace with the cyber threats and ensuring compliance with cyber security policy, standards, regulations and legislation.
- (c) clearly nominate business owner(s) for risk, business impact and business investment strategy and technology system owner(s) for service, support and technology/system investment strategy
- (d) clearly nominate and supervise information security roles and responsibilities within its own organisation and follow an organisation structure where segregation of duties relating to information security is enforced and controlled;
- (e) address security requirements as part of the design of all aspects of delivery of services including their processes; and
- (f) adopt a "secure by design" approach and consider security requirements at all stages during the design and delivery of an ICT solution or service.

1.3 Ownership Changes Impacting Security

NSWPF requires that ICT Suppliers (to the extent permitted by law):

- (a) immediately notify NSWPF when they become aware of:
 - (i) an actual or anticipated change in control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of the ICT Supplier; or
 - (ii) an investor domiciled outside of Australia (including foreign government investors) acquiring a substantial interest (equal to or greater than 20 per cent) of the ICT Supplier business;
- (b) immediately notify NSWPF if and when it becomes aware of any legal rights which may be held by another party over the ICT Supplier that could allow access to any NSWPF Data; and
- (c) agree that, as between NSWPF and the ICT Supplier, NSWPF retains ownership of all rights, title and interest (including intellectual property rights) in any NSWPF Data and ownership of any NSWPF Data created, developed or collected by the ICT Supplier will vest in NSWPF.

1.4 Conflicts of Interest

- (a) For the purposes of this section, a conflict of interest means any interest of the ICT Supplier or duty of the ICT Supplier to one or more other party that may reasonably be anticipated to conflict with or restrict the ICT Supplier in performing its obligations under a contract with NSWPF fairly and independently, including in relation to any security requirements in this document or in any contract between NSWPF and the ICT Supplier.
- (b) NSWPF requires that ICT Suppliers use best efforts to avoid conflicts of interest.
- (c) If any actual, potential or perceived conflict of interest would or could impact the Security of systems, data, Personnel or premises of NSWPF or the ICT Supplier, NSWPF expects that ICT Suppliers will notify and fully disclose this to NSWPF as soon as reasonably possible and cooperate with NSWPF to rectify the relevant conflict of interest.

1.5 Classification, Disposal, and Handling of Data

This section applies the ICT Supplier's management of data ("ICT Supplier Data").

NSWPF requires that ICT Suppliers must:

- (a) develop or already have in place a data classification scheme (sometimes called an "information classification scheme") with different levels of classification. The ICT Supplier should classify data in terms of legal requirements, value, criticality and sensitivity to unauthorised disclosure or modification, and apply data classification labels where relevant;
- (b) identify information technology assets relevant in the lifecycle of data, document their importance and assign owners to assets;
- (c) develop or already have in place an appropriate set of procedures for information labelling and implement labelling in accordance with the data classification;
- (d) document and follow a policy and procedures related to the disposal of media in line with good industry practice. Media containing confidential information should be disposed of securely (e.g. by incineration or

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shredding, or erasure of data for use by specific applications). Guidance on how to dispose of media can be found in the ISM (*Guidelines for Media Management*). Disposal of sensitive items should be logged;

- (e) protect media containing data against unauthorised access, misuse or corruption at all times, including during transportation; and
- (f) review users' access rights at regular intervals

1.6 Classification, Disposal, and Handling of NSWPF Data by the ICT Supplier

This section applies to a ICT Supplier's management of NSWPF Data.

NSWPF requires that ICT Suppliers:

- (a) handle NSWPF Data according to its classification as determined by NSWPF. NSWPF will follow the NSW Government Classification, Labelling and Handling Guidelines when classifying and handling NSWPF Data;
- (b) encrypt NSWPF Data in transit and at rest
- (c) implement a decommissioning process for media to ensure that prior to final disposal, any storage media used to store NSWPF Data will be degaussed, erased, purged, physically destroyed, or otherwise sanitised in accordance with the ISM and NSWPF Policies (such as the *Secure Disposal and Data Destruction Procedure*) to ensure that NSWPF Data cannot be retrieved from the applicable type of storage media, in whole or in part, by any data or information retrieval tools or similar means; and
- (d) ensure that NSWPF Data is not:
 - (i) used or reproduced by the ICT Supplier;
 - (ii) disclosed, sold, assigned, leased, sub-licensed or otherwise provided to other third- parties by the ICT Supplier;
 - (iii) commercially exploited by or on behalf of the ICT Supplier, its Representatives or Personnel or;
 - (iv) combined with other data;
 other than as expressly authorised under its contract with NSWPF.

1.7 Subcontracting and supply chains related to NSWPF Contracts

- (a) NSWPF requires that the ICT Supplier will not subcontract to any other entity ("**Subcontractor**") in relation to goods or services provided to NSWPF without prior written approval by NSWPF.
- (b) Where approval is given, the ICT Supplier will be required to ensure that the Subcontractor complies with all requirements in this document and in any contracts(s) between NSWPF and the ICT Supplier, and that the ICT Supplier will be responsible for acts and omissions of that Subcontractor.
- (c) NSWPF requires that ICT Suppliers actively oversee and manage the delivery of any services by an approved Subcontractor.
- (d) NSWPF expects ICT Suppliers to conduct regular reviews of its suppliers and supply chain (including Subcontractors). This should include their country of origin and should identify, and subsequently rectify, any security risks that would affect the ICT Supplier and/or NSWPF.

1.8 Offshoring and Transfer of Data Overseas

- (a) NSWPF requires that the ICT Supplier does not:
 - (i) subcontract or delegate any services, tasks, activities, functions or other responsibilities relating to any services, to any person who is located in a jurisdiction outside of Australia or otherwise perform those services, tasks, activities, functions or responsibilities from a jurisdiction outside of Australia;
 - (ii) perform any services, tasks, activities, functions or other responsibilities relating to the services from a jurisdiction outside of Australia; or
 - (iii) disclose or transfer any NSWPF Data to any person who is outside of Australia or store or process NSWPF Data in any country outside Australia.
 other than as expressly authorised in any contracts(s) between NSWPF and the ICT Supplier.
- (b) If the ICT Supplier becomes aware of, or suspects, a failure of the ICT Supplier to comply with 1.8(a) above, NSWPF requires that the ICT Supplier promptly provide details to NSWPF and promptly follow

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reasonable directions from NSWPF in relation to the matter.

1.9 Conclusion of the contract between NSWPF and the ICT Supplier

NSWPF requires that ICT Suppliers, at the expiry or termination of a contract between NSWPF and the ICT Supplier, must:

- (a) in addition to any requirements set out in the contract with NSWPF, all NSWPF Data (both electronic and hard copy) and NSWPF assets specific to the services provided be returned to NSWPF;
- (b) where deletion is not constrained by legal requirements related to data retention, all NSWPF Data specific to that engagement is deleted from the ICT Supplier's ICT systems (for information classified at PROTECTED or above, the ICT Supplier should sanitise their ICT system in accordance with the ISM). For further guidance see the Protective Security Policy Framework (PSPF) policy: Sensitive and classified information, the ISM Guidelines for Media Management, and NSWPF policies for guidance on destruction of NSWPF Data; and
- (c) where deletion is constrained by legal requirements related to data retention, the ICT Supplier continues to comply with any applicable requirements set out in this document or the ICT Supplier's contract with NSWPF.

1.10 No Adverse Impact

NSWPF expects that ICT Suppliers will not engage with any act or omission which has or could reasonably be expected to have, an adverse impact on the security or integrity of NSWPF, its operations, its partners (including other agencies or government entities), the services, NSWPF Systems or any NSWPF Data.

1.11 Right to Audit

NSWPF reserves the right to audit the ICT Supplier's compliance with this document.

1.12 Security Self-Assessment

Where requested by NSWPF, the ICT Supplier must complete an ISM controls based self-assessment and provide results to NSWPF.

1.13 External Certifications

- (a) If NSWPF requires the ICT Supplier to provide a certification, the following certifications are acceptable:
 - (i) SOC2 Type 2;
 - (ii) SOC for Cybersecurity;
 - (iii) IRAP; or
 - (iv) other certifications as approved by NSWPF on a case by case basis.
- (b) The security certifications provided should be relevant to the service provided.
- (c) NSWPF requires that the ICT Supplier provide the full certification report and the Statement of Applicability for each certification requested by the NSWPF.

2 Obligations when using NSWPF Systems or NSWPF Data

2.1 Access to NSWPF Systems or NSWPF Data

NSWPF requires that the ICT Supplier must:

- (a) only access NSWPF Systems or NSWPF Data for the purposes of the ICT Supplier carrying out, and only to the extent required to carry out, its obligations under its Contract(s) with NSWPF;
- (b) restrict access to NSWPF Systems or NSWPF Data to Personnel who have been approved and authorised by NSWPF to have such access, ensuring that:
 - (i) segregation of duties is defined;
 - (ii) the 'need to know' and the 'Least Privilege' principles are implemented; and
 - (iii) Role Based Access Control (RBAC) is implemented.

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- (c) Before any of the ICT Suppliers Personnel carries out any work in connection with any NSWPF systems, the ICT Supplier must:
 - (i) obtain from the ICT Suppliers Personnel any consent that is necessary to enable the NSWPF to conduct a Criminal Record Check (P799 or equivalent) and a probity clearance; and
 - (ii) receive written confirmation from the NSWPF that those specific named Personnel are authorised to carry out work under or in connection with the ICT Services;
 - (iii) are suitably qualified, experienced and competent to perform the services and/or be granted such access;
 - (iv) has been identified to NSWPF in writing, authorised under an existing Agreement or NSWPF has given written consent;
 - (v) has been provided with appropriate training by the ICT Supplier to minimise the risk of accidental Security Incidents with respect to:
 - (1) the correct handling and processing of NSWPF Data;
 - (2) the correct handling of Security Classified Material; and
 - (3) the access and use of NSWPF Systems, where so authorised;
 - (vi) maintains an active Australian Security Clearance, verified by NSWPF, commensurate with the security classification of information and material they are accessing; and
 - (vii) has successfully passes the pre-employment checking requirements in accordance with cl 6.1 (below); and
 - (viii) where required by NSWPF, has signed a non-disclosure agreement directly with NSWPF;
 - (ix) the ICT Supplier acknowledges that there is lead time of approximately 10 Business Days for all clearances to be conducted and must ensure that it submits clearances within such a time to ensure that clearances are obtained prior the relevant Personnel being required to perform work under or in connection with any NSWPF systems;
 - (x) If the ICT Supplier is unable to obtain the consent of the ICT Suppliers Personnel as required by section 2.1(c) above, then, without limiting the ICT Suppliers obligations under this document, the ICT Supplier must ensure that the relevant ICT Supplier Personnel does not carry out any work in connection with any NSWPF systems and provides a suitable replacement Personnel as soon as reasonably possible. The ICT Supplier must promptly notify the NSWPF in writing if the ICT Supplier becomes aware of any change in the criminal record history, qualifications, job history or character of any of the ICT Suppliers Personnel or any other matter that may adversely affect the suitability of any of the ICT Suppliers Personnel to carry out work in connection with any NSWPF systems.
 - (xi) The NSWPF may from time to time require the ICT Supplier to withdraw any one or more of the ICT Suppliers Personnel from being engaged in connection with any of the ICT Services provided, by written notice to the ICT Supplier and without the need to provide reasons. If such written notice is issued, the ICT Supplier must immediately, to the full extent permitted by law:
 - (i) comply with the notice;
 - (ii) provide a replacement Personnel acceptable to the NSWPF and who meets the requirements of the ICT Services sought;
 - (iii) ensure that the relevant Personnel does not carry out any work in connection to any agreement attached to the ICT Services at any time from the date of the notice, unless otherwise agreed in writing by an authorised NSWPF representative in writing;
 - (iv) ensure that the relevant Personnel does not have access to any information, including, without limitation any NSWPF Data; and
 - (v) ensure that any other materials of the NSWPF (if any) given to the relevant Personnel are immediately returned to the NSWPF.
- (ci) not access NSWPF Systems or NSWPF Data from outside of Australia without prior express written consent from an authorised NSWPF representative;

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- (h) ensure that each of its Personnel with access to NSWPF Systems is made aware of and complies with all the ICT Supplier's obligations under this document and any contracts between NSWPF and the ICT Supplier in connection with NSWPF Systems and NSWPF Data; and
- (i) complies with NSWPF Code of Conduct and NSWPF Security Policies and Guidelines (e.g. *Email and Internet Guidelines*, *Secure Disposal and Data Destruction Procedure* etc.) when accessing NSWPF Systems. These documents are published on NSWPF intranet <http://intranet.police.nsw.gov.au> and can be provided to the ICT Supplier upon request.

2.2 Remote access

- (a) NSWPF will only grant remote access to specific NSWPF Systems by exception, in its sole discretion, upon review of the ICT Supplier's business needs in relation to delivering the services or performing the contract with NSWPF.
- (b) NSWPF requires that ICT Suppliers use a NSWPF supplied remote access solution when accessing NSWPF Systems remotely. In the interests of clarity, NSWPF Remote Access in this context is any access to NSWPF where a user is not on the NSWPF wired network or NSWPF Enterprise wireless network. In such circumstances, NSWPF may provide (at its absolute discretion) a secure remote access solution which may include but not be limited to a collection of technologies (VPN, authentication, authorisation etc) for the purposes of enabling the ICT Supplier to deliver the contracted ICT Services.

3 General Information Security Requirements for ICT Supplier Systems**3.1 Data Loss Prevention**

NSWPF requires that ICT Suppliers have in place appropriate software, systems and processes that are designed to detect and prevent the loss of any NSWPF Data that it holds and protect it from data leakage risks.

3.2 Protection from Malware

- (a) For the purposes of this section, *Harmful Code* means any computer viruses or other code that is intended or known to be harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised disclosure or destruction or corruption of data, including viruses, worms, spyware, adware, keyloggers, trojans, ransomware and any new types of programmed threats that may be classified as harmful code.
- (b) NSWPF requires that ICT Suppliers use all reasonable endeavours consistent with industry good practices including:
 - (i) use of the most appropriate and up-to-date virus detection software and intrusion detection systems for preventing and detecting Harmful Code;
 - (ii) implementing practices and procedures that are consistent with industry standards;
 - (iii) pro-actively monitoring known threats of Harmful Code; and
 - (iv) informing NSWPF of any Harmful Code and the steps necessary to avoid its introduction, to detect and prevent Harmful Code from being installed, released or otherwise introduced into (or sent from):
 - (1) the ICT Supplier systems used to provide the services;
 - (2) any deliverables to be provided to NSWPF; and
 - (3) any other part of NSWPF Systems.

3.3 Logging and Monitoring

- (a) NSWPF requires that ICT Suppliers document and implement their own Logging and Monitoring Policy describing the type of events to be generated, collected and retained.
- (b) NSWPF requires that the logs collected by the ICT Supplier have anti-tamper measures in place to maintain the integrity of the logs and prevent unauthorised access to those logs in order to maintain their confidentiality.
- (c) NSWPF requires that when collecting logs on behalf of NSWPF, the ICT Supplier sends all relevant logs to NSWPF logging solution and synchronises with a single reference time source provided by NSWPF.

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- (d) NSWPF requires that when the ICT Supplier (or a Subcontractor) is hosting systems on behalf of NSWPF, logs should be retained for an agreed retention period of at least 7 years and made available to NSWPF to assist in future investigations and access control reviews.

3.4 Network security

NSWPF requires that ICT Suppliers must:

- (a) document and implement network security mechanisms (such as firewalls, network segregation, network traffic filtering, traffic inspection, network access control); and
- (b) implement encryption in transit, at the application and/or network level layer for all solutions and systems, in accordance with good industry practice.

3.5 Security Vulnerability Management

- (a) NSWPF requires that ICT Suppliers document and implement a vulnerability management policy and a vulnerability management program describing how vulnerabilities will be categorised and prioritised, defining remediation timeframes, and detailing any exception mechanism.
- (b) NSWPF requires that ICT Suppliers ensure that all ICT Supplier systems undergo vulnerability scans:
 - (i) on a regular basis; and
 - (ii) immediately following any material system change,
- (c) Critical and Internet facing systems/services must be penetration tested prior to go-live or after significant changes/upgrades and on a regular basis as part of Systems lifecycle.
- (d) If a vulnerability scan or security test reveals any vulnerabilities that affect services provided to NSWPF or NSWPF Data, then NSWPF requires that the ICT Supplier report to NSWPF and remediate all material vulnerabilities, prioritised according to their severity.

3.6 Backup and Disaster Recovery

NSWPF requires that ICT Suppliers must:

- (a) document and implement a backup and disaster recovery process which takes regular copies of information, software and system images used in the provision of the services;
- (b) test their backup and disaster recovery process at least every twelve months (or as agreed in writing with NSWPF) against the ICT Supplier's backup policy with any suspected or identified defects to be remediated as soon as is reasonably possible;
- (c) store the backups in an encrypted format in a remote location and ensure that the encryption key(s) is/are stored securely in a separate location;
- (d) document and implement a disaster recovery plan;
- (e) test the disaster recovery plan regularly, with any suspected or identified defects to be remediated as soon as is reasonably possible; and
- (f) where applicable, ensure that services provided to NSWPF are backed-up according to NSWPF policy or other agreements.

3.7 Business Continuity

NSWPF requires that ICT Suppliers must:

- (a) document and implement a business continuity plan for use in the event of adverse situations that:
 - (i) identifies key business areas, critical functions, dependencies between various business areas and functions, defines acceptable downtime for each critical function and articulates a plan to maintain operations of the ICT Supplier;
 - (ii) is tested annually for effectiveness by the ICT Supplier; and
 - (iii) includes provisions to ensure the continuity of continue services delivered to NSWPF by the ICT Supplier; and
- (b) ensure that services and systems provided to NSWPF are available commensurate to the business or operational criticality of the services and systems to NSWPF.

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3.8 Robust Solutions and Systems

NSWPF requires that ICT Suppliers must:

- (a) ensure that all systems and solutions used to provide services to NSWPF are:
 - (i) protected from Distributed Denial of Service and Denial of Service attacks with appropriate technologies; and
 - (ii) monitored (performance and security), tuned, and capable of scaling to meet projections made of future capacity requirements to ensure the required system performance;
- (b) document operating procedures in relation to those systems and solutions, and make these procedures available to all NSWPF users who need them; and
- (c) establish security rules and good practices for the development of software and systems and apply them when delivering solutions and services.

3.9 System Acquisition and Development

When acquiring or developing solutions and systems critical to its business operations, NSWPF requires that ICT Suppliers must:

- (a) separate development, testing, and operational environments to reduce the risks of unauthorised access or changes to the operational environment;
- (b) include information security related requirements in the requirements for new/existing information systems, and follow a security framework to develop or customise systems, driven by industry good practices (e.g. OWASP, CIS standards etc.);
- (c) implement procedures to control the installation of software on operational systems; and
- (d) perform security testing on sensitive/business essential solutions.

3.10 Mobile Devices, Portable Media Handling and Teleworking

ICT Suppliers must implement the following measures when accessing any NSWPF System or NSWPF Data:

- (a) have a documented policy and adopt supporting security measures to manage the risks introduced by using mobile and portable devices (e.g. laptops, mobile phones);
- (b) seek NSWPF assessment and written approval prior to accessing NSWPF Systems or NSWPF Data from non-NSWPF provided devices;
- (c) have a policy and supporting security measures that are implemented to protect and avoid any information being accessed, processed or stored at Teleworking Sites;
- (d) not store NSWPF Data on removable media (e.g. USB stick and external hard drives); and
- (e) where the use of removable media is approved by NSWPF the ICT Supplier must:
 - (i) have in place encryption technologies using an Australian Signals Directorate (ASD) Approved Cryptographic Algorithm as per the ISM ASD Approved Cryptographic Algorithms; and
 - (ii) ensure that NSWPF Data is removed from the removable media immediately after use or at NSWPF's request in accordance with *1.6 Classification, Disposal, and Handling of NSWPF Data* by the ICT Supplier.

3.11 Controlled Access

NSWPF requires that for any ICT Suppliers System(s) that connects to NSWPF System(s) or accesses, stores, processes NSWPF Data, and any system that is used in conjunction with delivery ICT Services to NSWPF, the ICT Supplier must:

- (a) establish, document and review an access control policy based on business and information security requirements reflecting the premise that users should only be provided with access to the network and applications/services that they have been specifically authorised to use;
- (b) restrict access to data (including NSWPF Data) and application system functions in accordance with the access control policy;
- (c) implement an identity and access management lifecycle, including a formal user registration and de-registration process enabling assignment of access rights;
- (d) review and verify user access every 6 months;
- (e) implement a formal user access provisioning process to assign or revoke access rights for all user types to all systems and services;

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- (f) restrict and control privileged access rights;
- (g) allocate secret authentication information (e.g. passwords) through a formal management process. Authentication should be aligned with the access control policy and follow complex rules for setting passwords, and when relevant, require strong authentication (i.e. Multi-Factor Authentication (MFA));
- (h) implement MFA for remote access mechanisms when accessing their internet facing systems including Virtual Private Networks (VPN)s;
- (i) implement MFA for administrative access, and ensure that management access is segregated;
- (j) implement a password policy satisfying requirements for passwords as outlined in the ISM (*Guidelines for System Hardening*);
- (k) establish and maintain complete, accurate, and up-to-date records of NSWPF Data accessed, collected or changed by the ICT Supplier, which should include:
 - (i) details of the ICT Supplier's Personnel who accessed, collected or changed NSWPF Data;
 - (ii) the date it was accessed, collected or changed; and
 - (iii) the purpose for which it was accessed, collected or changed; and
- (l) ensure that only de-identified and de-personalised, sanitised data is used in non-production environments, and that NSWPF Data is not used in any non-production environment.

3.12 Email Security

NSWPF requires that ICT Suppliers must:

- (a) use email solutions that are securely configured according to good industry practices (e.g. support encryption); and
- (b) ensure that emails sent to and received from NSWPF:
 - (i) have Transport Layer Security (TLS) enforced; and
 - (ii) support NSWPF's enforcement of TLS for transmission of email to the ICT Supplier.

3.13 Cryptography

NSWPF requires that ICT Suppliers must:

- (a) establish, document, review and implement a cryptography policy based on:
 - (i) business and information security requirements;
 - (ii) the required level of protection based on the type, strength and quality of the encryption algorithm required; and
 - (iii) up to date cryptographic algorithms;
- (b) if in possession of NSWPF Data, encrypt all NSWPF Data at rest and in transit in accordance with industry good practices and where appropriate using an ASD Approved Cryptographic Algorithm as per the ISM;
- (c) ensure that any digital device (phone, laptop or tablet) used to access or process NSWPF Data (where so authorised under its contract(s) with NSWPF) has endpoint encryption capabilities installed using an ASD Approved Cryptographic Algorithm as per the ISM; and
- (d) always maintain the confidentiality of all encryption techniques such as keys secrets.

3.14 Security patching

NSWPF requires that the ICT Supplier must:

- (a) establish, document, review and implement a patching policy, including the need to apply security patches;
- (b) patch and maintain the latest vendor supported version with no unresolved vulnerabilities for its own software, operating systems and firmware. Obsolete and no longer commercially supported software, devices and equipment should be decommissioned and replaced with supported ones; and
- (c) patch any device, server, system, software, or network element that stores or processes NSWPF Data or connects to NSWPF Systems (where so authorised under its contract(s) with NSWPF) as soon as

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reasonably practicable after a security patch becomes available. New security patches should be tested in a non-production system before being released under this clause unless the patch is critical.

3.15 Use of Open Source Software

NSWPF requires that:

- (a) software developed on behalf of and for NSWPF should not include open source software unless agreed to in the contract between NSWPF and the ICT Supplier; and
- (b) before any open source software is approved, NSWPF reserves the right to conduct a security and legal review on the open source software being provided.

4 Physical Security**4.1 Secure Facilities**

NSWPF requires that ICT Suppliers ensure that services are delivered from facilities that are physically secure and environmentally maintained, with controls sufficient to prevent unauthorised physical access, damage and interference to NSWPF Data, and data storing or processing systems and facilities.

4.2 Physical Security Requirements for Security Classified Information

Where ICT Suppliers access, handle or store NSWPF Security Classified Material, NSWPF requires that ICT Suppliers must:

- (a) ensure that the ICT Supplier's premises and facilities used to access, handle or store Security Classified Material meet the NSWPF's physical security standards to protect information and assets up to, and including, the nominated security classification level; and
- (b) provide NSWPF representatives access to the ICT Supplier's premises, records and equipment on request to monitor the ICT Supplier's compliance with protective security conditions.

5 Security Incident Management**5.1 Investigations**

NSWPF requires that ICT Suppliers, when requested by NSWPF, co-operate with any investigation relating to Cyber Security Incidents carried out by or on behalf of NSWPF or by any investigating body. This includes supplying any information or material in the ICT Supplier's possession or control to the extent permitted by law.

5.2 Security Incident Management

- (a) ICT Suppliers must:
 - (i) implement technical and organisational measures to protect NSWPF Data from Security Incidents;
 - (ii) establish management responsibilities and procedures to ensure a quick, effective and orderly response to Security Incidents; and
 - (iii) retain appropriate records of the nature and circumstances of Security Incidents, any investigations, and remediation activities undertaken into the cause or possible effects of the Security Incident for at least 7 years.
- (b) At a minimum, NSWPF requires ICT Suppliers to:
 - (i) notify NSWPF immediately if NSWPF Systems or information are accessed or administered in an unauthorised manner or if there are reasonable grounds to suspect that unauthorised access may have taken place;
 - (ii) inform NSWPF of any Security Incidents including unplanned outages as soon as possible and no later than within 1 hour of becoming aware of such Security Incidents;
 - (iii) perform a reasonable and expeditious assessment of any Security Incidents as soon as possible and commence remediation immediately;
 - (iv) provide NSWPF with all details in respect of such Security Incidents;
 - (v) provide all reasonable assistance and support required by NSWPF so that NSWPF can assess the risk of harm arising from such Security Incidents;

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- (vi) investigate, mitigate and remediate such Security Incidents within the timeframes specified by NSWPF at the relevant time (depending on the critical nature of such Security Incidents);
- (vii) maintain the integrity of evidence gathered during an investigation by ensuring investigators record all their actions and ensuring raw audit trails are copied onto media for archiving; and
- (viii) ensure that appropriate security controls applied to protect the availability and integrity of evidence.

6 Additional Personnel Security

6.1 Eligibility and Suitability of Personnel

- (c) In addition to the Personal Security Requirements specified under cl 2.1(c) above, ICT Suppliers must:
 - (a) have appropriate pre-employment checks in place as part of its onboarding process for staff and contractors. The ICT Supplier should ensure that these checks include at a minimum:
 - (i) confirmation of identity checks;
 - (ii) qualification checks;
 - (iii) previous employment checks; and
 - (iv) police checks (national criminal history);
 - (b) request all its Personnel to read and agree to follow the ICT Supplier's information security policy;
 - (c) ensure the eligibility and suitability of its Personnel who have access to NSWPF Data and NSWPF Systems (where so authorised under the ICT Supplier's contract(s) with NSWPF); and
 - (d) maintain a register of Personnel with access to NSWPF Data and Systems and supply this register to NSWPF upon written request.

6.2 Ongoing Training and Assessment of Personnel

ICT Suppliers must:

- (a) provide appropriate security awareness education and training yearly to all Personnel, and regular updates in organisational policies and procedures, as relevant for their job function;
- (b) prevent any access to Security Classified Material by Personnel whose Australian Security Clearances are revoked, lapsed, who do not hold the appropriate security clearance, no longer have a legitimate business requirement for access or use of NSWPF Systems or access to NSWPF Data (i.e. Personnel has changed roles, duties etc) or where ICT Supplier Personnel depart the organisation;
- (c) report to NSWPF in writing when any of its Personnel have had any incidental or accidental contact with Security Classified material;
- (d) inform NSWPF in writing if any of its Personnel who are involved in providing the services to NSWPF:
 - (i) have been expelled from an accrediting body;
 - (ii) have been arrested, convicted, become a subject of criminal investigation or is undergoing disciplinary proceedings;
 - (iii) have or would fail any pre-employment check;
 - (iv) no longer require access to NSWPF Systems or NSWPF Data;
 - (v) have had their Australian Security Clearance revoked or have allowed it to lapse; or
 - (vi) have been dismissed, has resigned or are on long-term leave; and
- (e) Prior to accessing NSWPF Systems or NSWPF Data ICT Supplier must ensure its authorised Personnel undertake mandatory security awareness training. ICT Supplier must further conduct regular awareness training (including the requirements pertaining to this document) at least annually:
 - (i) protect NSWPF's assets and information;
 - (ii) report changes in personal circumstances;
 - (iii) report suspicious, ongoing, unusual or persistent contact; and
 - (iv) use ICT equipment securely and appropriately.

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6.3 Change of Employment & Separating Personnel

ICT Suppliers must:

- (a) require that Personnel return all the ICT Supplier organisational assets in their possession upon termination of their employment, contract or agreement;
- (b) revoke the separating Personnel's physical and ICT access upon the ICT Supplier Personnel's exit from the ICT Supplier;
- (c) immediately inform NSWPF and allow them to revoke any access provided to the separating Personnel;
- (d) advise NSWPF when the Personnel with NSWPF sponsored Australian Security Clearances have ceased to work on NSWPF's contract(s);
- (e) remind Personnel who have accessed NSWPF Data, Official Information, or Security Classified Information that the confidentiality requirements are ongoing. Security responsibilities and duties that remain valid after termination or change of employment should be defined, communicated to the Personnel and enforced; and
- (f) remove the access rights of all Personnel and external party users to data and information processing facilities upon termination of their employment, contract or agreement - or adjust access rights upon change of employment.

6.4 Disciplinary Process

NSWPF requires that ICT Suppliers have a formal and communicated disciplinary process in place to take action against Personnel who have committed or contributed to a Security breach.

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Glossary of terms

Term	Definition
Australian Security Clearance	A security clearance issued by the AGSVA (Australian Government Security Vetting Agency) or an authorised vetting agency, or sponsoring entity (including NSWPF).
Australian Signals Directorate Approved Cryptographic Algorithm	A cryptographic algorithm approved by the Australian Signals Directorate and listed in the ISM (https://www.cyber.gov.au/acsc/view-all-content/guidance/asd-approved-cryptographic-algorithms).
Cyber Security Incident	A Cyber Security Incident is an unwanted or unexpected cyber security event, or a series of such events, that have a significant probability of compromising business operations.
Distributed Denial of Service (DDoS) and Denial of Service (DoS)	<p>A denial-of-service attack (DoS attack) is a type of cyber-attack in which a threat actor aims to render a computer or other device unavailable to its intended users by interrupting the device's normal functioning.</p> <p>A DDoS attack is a type of DoS attack that comes from many distributed sources (e.g. botnet).</p>
Government Agency	<p>Means any of the following:</p> <ol style="list-style-type: none"> 1. a government sector agency (within the meaning of the Government Sector Employment Act 2013 (NSW)); 2. a NSW Government agency or any other State, Territory or Federal government agency; 3. any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation); or 4. any State owned corporation prescribed by regulations under the Public Works and Procurement Act 1912 (NSW).
ICT Supplier Data	<p>ICT Supplier Data for the purposes of this document includes data from any source and in any form, which is collected, received, stored or developed by the ICT Supplier, its employees or contractors. The data may exist in a range of forms, including:</p> <ol style="list-style-type: none"> 1. documents, papers and other printed or written material; 2. electronic data; 3. voice communications; 4. video and audio recordings; 5. any physical item from which information belonging to the ICT Supplier could be derived; 6. intellectual knowledge.
NSWPF Data	<p>NSWPF Data is any data, metadata and credentials or information in any form which is:</p> <ol style="list-style-type: none"> 1. provided or made available by NSWPF or its Personnel to the ICT Supplier (including information provided for the purpose of authenticating users); 2. stored, created, generated, captured, collected, controlled, managed, processed, transferred or transmitted by NSWPF or its Personnel, or by the ICT Supplier or its Personnel on NSWPF's behalf, in the course of performing the contract or using the Services; or 3. is generated in the course of operating the ICT Supplier's business and systems in relation to the services provided to NSWPF.
NSWPF Systems	NSWPF ICT (Information and Communications Technology) Systems managed

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Term	Definition
	and/or operated by or on behalf of NSWPF.
Official Information	Information that is classified as OFFICIAL or OFFICIAL: SENSITIVE under the PSPF.
Personnel	The ICT Supplier's sub-contractors, contractors, directors, officers, employees and agents, affiliates and any other person under the ICT Supplier's direction or control.
Security Classified Information	Information that is classified as PROTECTED, SECRET or TOP SECRET under the PSPF.
Security	Relating to physical security, personnel security, information security, computer security, or data security.
Security Classified Material	Media, ICT devices, systems, documents, or containers that: <ol style="list-style-type: none"> 1. contain Security Classified Information; or 2. are classified as PROTECTED, SECRET or TOP SECRET under the Protective Security Policy Framework (PSPF).
Security Incidents	<p>A security incident can be any actual, apparent, suspected or anticipated:</p> <ol style="list-style-type: none"> a. action, whether deliberate, reckless, negligent or accidental that fails to meet protective security requirements or NSWPF-specific protective security practices and procedures that results, or may result in, the loss, damage, corruption or disclosure of NSWPF Data or resources; b. a breach of a system's security policy in order to affect its confidentiality, integrity or availability and/or the unauthorised access or attempted access to a system or systems; c. approach from anybody seeking unauthorised access to NSWPF Data; d. observable occurrence or event (including natural disaster events, terrorist attacks etc) that can harm NSWPF people, NSWPF Data or NSWPF assets; or e. events which are similar to those identified in items (a) to (h) which trigger legal reporting obligations to a Federal or State governmental authority in relation to NSWPF Data. <p>Examples include:</p> <ol style="list-style-type: none"> a. Criminal actions such as actual or attempted theft, break and enter, vandalism or assault. b. Loss of personal information that is likely to result in serious harm. c. Security classified material not properly secured or stored. d. Security classified material left in inappropriate waste bins or government assets to be sold or disposed of. e. Deliberate disregard of implementing a PSPF requirement. f. An unplanned outage. g. Access passes or identification documents lost or left unsecured. h. Incorrect handling of security or classified marked information, such as failure to provide the required protection during transfer or transmission resulting in a data spill on an electronic information network or system. i. Compromise of keys to security locks, or of combination settings. j. Sharing computer passwords. <p>For more examples, please refer to <i>PSPF GOVSEC02, Requirement 3</i></p>
Sensitive Information	Information that is classified as OFFICIAL: SENSITIVE under the PSPF.

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Term	Definition
Subcontractor	Has the meaning given in section 1.7(a).
Teleworking Sites	<p>A site not controlled by NSWPF or the ICT Supplier that is used for remote work by Personnel of the ICT Supplier, including but not limited to:</p> <ol style="list-style-type: none"> 1. the private residence of ICT Supplier Personnel; 2. hotels, serviced apartments, and/or other accommodation used by ICT Supplier Personnel; and 3. public places such as cafes and airports used by ICT Supplier Personnel.
ICT Supplier	<p>For the purposes of this document, and ICT Supplier is any Party (including Personnel) who is either directly or indirectly:</p> <ol style="list-style-type: none"> 1. providing ICT goods or services to NSWPF; or 2. providing non-ICT goods or services to NSWPF, where NSWPF determines that the Security requirements set out in this document should apply in relation to the provision of those goods or services; or 3. a Government Agency transacting with NSWPF (which may involve access to NSWPF Data and/or NSWPF Systems), where NSWPF determines that the Security requirements set out in this document should apply in relation to those transactions.

Schedule 3 - Statement of Work Template

1. Statement of Work Details

- (a) Statement of Work Name: *[Insert]*.
- (b) Statement of Work Number: *[Insert]*.
- (c) Purchase Order Number and Agreement reference (where available): *[Insert]*.

2. Revision History

Version	Status	Date	Prepared By	Comments
<i>[Insert version number; e.g. version 1.0]</i>	<i>[Insert; e.g. Draft / Final]</i>	<i>[Insert date]</i>	<i>[Insert Name and Title]</i>	<i>[Briefly summarise the nature of the revision]</i>

3. Introduction and overview of the Supplier's Activities

- (a) The Supplier's Activities are to *[Insert]*.
- (b) The core objectives of the Supplier's Activities are as follows:
- (i) *[Insert]*; and
 - (ii) *[Insert]*.

4. Services and Deliverables

- (a) The Services to be provided are:
- (i) *[Insert]*; and
 - (ii) *[Insert]*.

[Specify with sufficient detail the type of Services to be provided - e.g. Support Services (and the type of Support Services); Managed Services; Systems Integration Services; Development Services; Professional Services; Data Services and/or training Services etc.]

- (b) The Deliverables to be provided are:
- (i) *[Insert]*; and

(ii) [Insert].

[Specify comprehensively and with sufficient detail the Deliverables (including any Document Deliverables) to be provided. Both parties should be able to determine what elements comprise a Deliverable.]

(c) Out-of-Scope Services and Deliverables are:

(i) [Insert]; and

(ii) [Insert].

[Note: It is very important to be consistent in the naming that is used for the Supplier's Activities, including the Deliverables and Services, throughout the Statement of Work and the other Schedules, as it is essential to be able to easily identify the same activity, Service, Deliverable in the other places within the Agreement where there is a reference to it, including where a Deliverable is:

(i) **subject to Acceptance Testing;**

(ii) **part of a milestone (including a payment milestone);**

(iii) **part of a Stage; and/or**

(iv) **subject to Liquidated Damages (that is, a Key Milestone).]**

5. Specifications

The Specifications for [Insert Deliverable/Service] include:

(a) [Insert]; and

(b) [Insert].

[List all the Specifications that the Supplier must comply with in providing the Services and Deliverables. If the Specifications are referenced in a separate document clearly reference and attach that document here.]

[Note: This section must be completed using specific details and avoiding generalities. Where the Specifications have evolved over time and are included in more than one document, it is best practise to reduce the Specifications to a single document. However, where the Specifications are described in more than one document, specify any order of priority that will apply in the event of a conflict or inconsistency within the relevant documents that comprise the Specifications.]

6. Customer Supplied Items (CSI)

(a) The Customer will provide the CSI as set out in the table below:

Item No.	CSI
1.	[Specify the particulars of the CSI and, if applicable, specify whether any CSI is "Critical CSI" by including the words "Critical CSI" in brackets after each item of Critical CSI.]
2.	
3.	

(b) List any associated requirements that apply to CSI.

[Note: A CSI may be: office access, desks etc. (specify location, standards, times of access); Hardware or software (specify equipment, capacity, versions of software and dates of availability); VPN access or other remote access (specify capacity and hours available).]

7. Timeframes and Dates for Delivery

The Supplier must deliver the Services and Deliverables in accordance with the Dates for Delivery set out in the below table.

Deliverable/Service	Timeframe and Date for Delivery
[Insert]	[Insert Date for Delivery]

[Insert the dates (or relevant timeframes) by which each Service and Deliverable listed in the Order Form, including this Statement of Work, must be provided to the Customer (including, where applicable, any Services Period).]

Note: The descriptors in the Project Plan must be consistent with the descriptors above to the extent applicable.]

8. Key Milestones

The following dates constitute Key Milestones:

Key Milestone ID	Key Milestone	Date
[Insert]	[Insert]	[Insert]

[Specify the Key Milestones in the table above. If Liquidated Damages apply, remember to complete Item 29 in Part A of the Order Form.]

9. Transition-In Services

[Insert and clearly describe any Transition-In Services that the Supplier must perform and specify the timeframe for performance of these obligations. Please also describe in this section, with sufficient detail, any processes and/or mechanisms that the Customer requires the Supplier to follow in providing the Transition-In Services.]

10. Transition-Out Services

[Insert any Transition-Out Services that the Supplier must perform and specify the timeframe for performance of these obligations. Please also describe in this section, with sufficient detail, any processes and/or mechanisms that the Customer requires the Supplier to follow in providing the Transition-Out Services.]

11. Roles and responsibilities

[Describe the roles and responsibilities of the parties in carrying out the Supplier's Activities.]

12. Business Contingency Plan

[State whether a Business Contingency Plan is required and if so, the timeframe within which a plan must be developed and presented to the Customer for approval. Note that the plan must meet the requirements of clause 25.2.]

13. Project Plan and management

[Set out or attach any Project Plan that applies, whether the Supplier is required to prepare and submit a Project Plan to the Customer and, where applicable, the details that it must cover.]

14. Stages and methodology

[Describe the Stages and/or methodology (for example, waterfall, agile) that the Customer requires the Supplier to follow in carrying out the Supplier's Activities.]

15. Acceptance Testing

[Describe details in relation to the form and conduct of Acceptance Tests which should apply in addition to the processes set out in clause 14, or any variations to the Acceptance Testing processes and procedures provided for in that clause.]

16. Governance arrangements

[Describe any governance arrangements that apply to the performance of the parties' respective obligations.]

17. Assumptions and dependencies

[Exhaustively describe any assumptions or dependencies which apply to the provision of the Services or the supply of the Deliverables. All assumptions and dependencies are subject to the Customer's approval and must be clearly described.]

18. Service Level agreement

[Insert the Service Levels or Service Level agreement that will apply to the arrangement. If necessary, this could be inserted as an attachment to this Statement of Work. The Service Level agreement should cover the following matters (to the extent applicable):

- **details of the relevant Service Levels or key performance indicators (including, for example, resolution and response times);**
- **escalation points; and**
- **whether any service credits or service rebates apply, as well as any other consequences for failing to meet Service Levels.**

All Service Levels should be described with sufficient clarity to avoid confusion.]

19. Pricing

[If the Payment Schedule is not being utilised, insert the rate card and price details here or in the relevant sections of Part A of the Order Form. If you are also completing the Payment Schedule or the other parts of the Order Form, you must ensure that the details identified here and in the Payment Schedule and in the other parts of the Order Form are consistent. Use the following suggested format where milestone payments apply.]

- (a) The Supplier will be entitled to submit a Correctly Rendered Invoice to the Customer upon the completion of each of the following milestones:

Milestone Payment Number	Description	Price (ex. GST)	GST Amount	Price (inc. GST)
Milestone 1	Describe Milestone 1	[Insert]	[Insert]	[Insert]
Milestone 2	Describe Milestone 2			
Milestone 3	Describe Milestone 3			
	Total			

OR

- (b) The Customer agrees to pay the Supplier [#monthly/quarterly/other] for the Services/Deliverables provided.

20. Interpretation

- (a) In this Statement of Work, unless the contrary intention appears:

[Insert any applicable definitions that apply to the Statement of Work. Terms that are defined in the ICTA do not need to be defined again.]

- (b) Terms in this Statement of Work which are not otherwise defined in this document have the meaning given to them in the ICTA.

Schedule 4 - Payment Schedule

[Note: Insert the Price, the mechanism for calculating the Price and the payment regime (including any milestone payments).

Also insert (where applicable) the schedule of rates or prices or any pricing methodology, including for the calculation of Change Requests and any reduction or changes in scope.

Where applicable, consider specifying any capped rates; for example, for professional Services.

Any schedule of prices containing a daily rate must specify how many hours are assumed in a day for that rate (for example, a "day" equals 8 hours).

For all pricing include the GST inclusive and exclusive amounts.

Specify the currency type; for example, if pricing is in American dollars, clearly specify this.]

For example:

Milestone Payments

- (a) The Supplier will be entitled to submit a Correctly Rendered Invoice to the Customer upon the completion of each of the following milestones:

Milestone Payment Number	Description	Price (ex. GST)	GST Amount	Price (inc. GST)
Milestone 1	Describe Milestone 1	[Insert]	[Insert]	[Insert]
Milestone 2	Describe Milestone 2			
Milestone 3	Describe Milestone 3			
	Total			


OR

- (b) The Customer agrees to pay the Supplier [#monthly/quarterly/other] for the Services/Deliverables provided.

Schedule 5 - Change Request Form

Change Request number	<i>[Number the Change Request to assist with tracking Change Requests and administering the Agreement.]</i>
Purchase Order Number and Agreement reference	<i>[Where available, insert a reference to the applicable Purchase Order number and the Agreement reference number to which the Change Request relates.]</i>
Effective date for Change Request	<i>[Insert the date on which the parties agree the Change Request will become effective.]</i>
Details of Change Request	<i>[Insert a sufficiently detailed description of the Change Request, including which sections of the Statement of Work will be changed by the Change Request. Please attach a more detailed scope document to this Change Request, if required.]</i>
Specifications	<i>[Insert any changes to the Specifications, including any additional Specifications.]</i>
Plans	<i>[If applicable, outline the effect the Change Request will have on any Plans, such as the Project Plan. To the extent that it is appropriate to replace any Plans with new Plans, please attach those to this Change Request.]</i>
Date for Delivery and Key Milestones	<i>[List any new or amended Dates for Delivery and identify whether any of these dates constitute Key Milestones.]</i>
Effect on Price	<i>[If applicable, specify how the Change Request will affect the Price.]</i>
Nominated Personnel	<i>[Specify any changes to the Nominated Personnel.]</i>
Implementation	<i>[Outline in sufficient detail how the Change Request will be implemented.]</i>
Effect on Customer Users	<i>[Outline the effect, if any, of the change to the Customer Users.]</i>
Other matters	<i>[List any other matters that are relevant to the Change Request or that the Customer has requested are covered by this Change Request.]</i>
List documents that form part of this Change Request	<i>[Insert list.]</i>

Customer Name (Print): Signature: Date:	Supplier Name (Print): Signature: Date:
---	---

	Guidance note: Only persons with the necessary authorisation or delegation may execute Change Request Forms.
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Schedule 6 - Deed of Confidentiality and Privacy

Given by: **[Insert full name of Recipient (insert ABN, if applicable)] of [Insert address of Recipient] (Recipient)**

In favour of: **[Insert full name of Customer (insert ABN)] (Customer)**

Made: on the date the Recipient executes this Deed (**Date of this Deed**).

Background

- A The [Insert name of the Supplier] and the Customer have entered into an ICT Agreement dated on or about the date of this Deed (**Agreement**) pursuant to which the Supplier must carry out certain activities (**Supplier's Activities**).
- B The Recipient has been engaged, contracted or may provide works or services in connection with the Agreement.
- C The Customer has agreed that the Recipient may access or receive certain Confidential Information and/or Personal Information on the terms and conditions of this Deed and for the Permitted Use.

1. Definitions and Interpretation

1.1 Definitions

In this Deed:

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is communicated by the Customer as being confidential;
- (c) the Recipient knows or ought to know is confidential; or
- (d) relates to or comprises the:
 - (i) financial, corporate and commercial information of the Customer;
 - (ii) affairs of a third party; or
 - (iii) strategies, practices and procedures of the State of New South Wales and any information in the Recipient's possession relating to a Government Agency,

but excludes information:

- (e) in the public domain, unless it came into the public domain due to a breach of confidentiality;
- (f) independently developed by the Recipient; or
- (g) in the possession of the Recipient without breach of confidentiality by the Recipient or other person.

Customer Data means all data (including metadata) and information relating to the Customer or any Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any Government Agency, including Personal Information,

in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed or produced as part of carrying out the Supplier's Activities, but excluding any Performance Data.

Deed means this deed poll.

Government Agency means any of the following:

- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013* (NSW));
- (b) a New South Wales Government agency;
- (c) any other public authority that is constituted by or under an Act or that exercises public functions for or on behalf of the State of New South Wales (other than a State owned corporation); or
- (d) any State owned corporation prescribed by regulations under the *Public Works and Procurement Act 1912* (NSW).

Performance Data means automatically generated metadata, not including any Personal Information or Confidential Information of the Customer or a Government Agency that:

- (a) is incidentally generated by a computer system in the course of its normal operation;
- (b) relates to the performance or operation of that computer system; and
- (c) arises in the course of the performance of the Supplier's Activities.

Permitted Use has the meaning given to that term in clause 3(a) of this Deed.

Personal Information means information or an opinion about an identified individual (that is, a natural person) or an individual who is reasonably identifiable whether the information or opinion is:

- (a) true or not; and
- (b) recorded in a material form or not.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the Customer, the Recipient or the Supplier) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that the Customer or any Personal Information or the Supplier or the Recipient is subject to the laws of that jurisdiction),

affecting privacy or Personal Information, provided that the Recipient ensures that it complies at all times with the Privacy Laws applicable in New South Wales to the extent relevant to the Recipient's activities; and

- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) a reference to a "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a clause is a reference to a clause of this Deed;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) "including", "in particular" and words of equivalent expression are not words of limitation.

2. Access and non-disclosure

- (a) The Recipient acknowledges and agrees that:
 - (i) in the course of performing duties under the Agreement, it may receive or have access to Confidential Information and/or Personal Information;
 - (ii) compliance with this Deed and the protection of Confidential Information and Personal Information are of paramount importance to the Customer; and
 - (iii) the obligations in this Deed are for the benefit of the Customer and the Customer may enforce the obligations under this Deed.
- (b) The Recipient must not disclose any Confidential Information or Personal Information that it receives or obtains in connection with the Agreement or the

Supplier's Activities except with the consent of the Customer or as otherwise authorised under the Agreement or this Deed.

- (c) If the Customer grants its consent for the Recipient to disclose Confidential Information or Personal Information, it may impose conditions on that consent. In particular, the Customer may require that the Recipient obtain the execution of a deed in these terms by the person to whom the Recipient proposes to disclose the Personal Information or Confidential Information.
- (d) The Recipient's obligations under this Deed will not be taken to have been breached to the extent it is required by law to disclose the Confidential Information or Personal Information. However, if the Recipient is required by law to disclose any Confidential Information or Personal Information, the Recipient must, before doing so, immediately notify the Customer and comply with any reasonable directions or requirements given by the Customer.

3. Recipient's obligations

- (a) The Recipient must only use Confidential Information and Personal Information that it receives or obtains in connection with the Agreement or the Supplier's Activities for the sole purpose of carrying out duties under the Agreement (**Permitted Use**).
- (b) The Recipient must:
 - (i) safeguard and protect all Confidential Information and Personal Information;
 - (ii) not copy or reproduce Confidential Information or Personal Information for purposes other than the Permitted Use;
 - (iii) not sell, let for hire, assign rights in or otherwise commercially dispose of any Confidential Information or Personal Information;
 - (iv) not commercialise or otherwise exploit any Confidential Information or Personal Information; and
 - (v) take all necessary precautions to prevent the loss; unauthorised use, disclosure or other misuse of Confidential Information and Personal Information in its possession or control.

3.2 Comply with Privacy Laws

Where the Recipient receives or obtains access to any Personal Information in connection with the Agreement or the Supplier's Activities, the Recipient must comply with all applicable Privacy Laws, including the *Personal Information Protection Act 1998* (NSW) in respect of that Personal Information, regardless of whether the Recipient is legally bound to comply with those Privacy Laws.

3.3 Security measures

Without limiting any other obligation under this Deed or at law, the Recipient must ensure that any Confidential Information or Personal Information in its possession or control is kept secure at all times, including by:

- (a) where the Recipient has access to Confidential Information or Personal Information by password or other secure means, not disclosing that password or means of access to any other person unless it has been authorised in writing to do so by the Customer; and

- (b) complying with the security requirements under the Agreement or as notified by the Customer to the Recipient.

3.4 Breach of obligations

If the Recipient becomes aware of any actual, threatened or suspected breach of this Deed, including by any of the Recipient's personnel, the Recipient must:

- (a) immediately notify the Customer in writing and take all steps necessary to remedy, prevent or stop the actual, threatened or suspected breach of this Deed and comply with any reasonable directions issued by the Customer regarding any unauthorised use or disclosure of the Confidential Information or Personal Information; and
- (b) provide such other assistance as may be reasonably required by the Customer, including in relation to any claim or proceedings that the Customer may bring against any third party for unauthorised use or disclosure of the Confidential Information or Personal Information.

3.5 Return of Confidential Information and Personal Information

If requested by the Customer, the Recipient must:

- (a) promptly and securely return to the Customer all documents and other physical records of Confidential Information or Personal Information in its or its personnel's possession, custody or control;
- (b) securely delete the Confidential Information and Personal Information from any computer system or other device operated or controlled by, or which may be accessed by, the Recipient;
- (c) where applicable, comply with any Customer policies and procedures in respect of the destruction or return of any Confidential Information and Personal Information; and
- (d) comply with any reasonable directions issued by the Customer in respect of the Confidential Information and Personal Information.

4. Remedies

The Recipient acknowledges that:

- (a) damages may not be an adequate remedy for the Customer for any breach of this Deed by the Recipient; and
- (b) the Customer is entitled to seek injunctive relief as a remedy for any breach or threatened breach of this Deed by the Recipient, in addition to any other remedies available at law or in equity under, or independently of, this Deed.

5. General

5.1 No exclusion of law or equity

This Deed must not be construed to exclude the operation of any principle of law or equity, including in relation to the protection and preservation of the confidentiality of Confidential Information.

5.2 Waiver

The Recipient acknowledges and agrees that:

- (a) no waiver by the Customer of one breach of any obligation or provision under this Deed will operate as a waiver of another breach of the same or of any other obligation or provision; and
- (b) none of the provisions under this Deed will be taken either at law or in equity to have been varied, waived, discharged or released by the Customer unless by its express consent in writing.

5.3 Governing Law

This Deed will be governed by, and construed in accordance with, the laws in force in the State of New South Wales, Australia. The Recipient submits to the exclusive jurisdiction of the courts of New South Wales, Australia and the courts competent to determine appeals from those courts.

5.4 Continuing obligations

The obligations of the Recipient under this Deed continue after the completion or termination of any employment, engagement or assignment in respect of the Permitted Use.

5.5 Revocation or amendment

This Deed may not be revoked or otherwise modified or amended without the prior written consent of the Customer.

Executed as a deed poll:

[Note: Delete the execution block that is not applicable.]

[If the Recipient is an individual]

Signed, sealed and delivered by **[insert full legal name of Recipient]** in the presence of:

Signature of witness

Signature of Recipient

Full name and position of witness

Full name and position of Recipient

Date

[If the Recipient is a company]

Executed by **[Insert] ABN [Insert ABN]** in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/company secretary

Full name of director

Full name of director/company secretary

Date

Date

Schedule 7 - Escrow Deed

Between: [Insert full name of escrow holder (insert ABN)] of [Insert registered address of Recipient] (Escrow Holder)

And: [Insert full name of Customer (insert ABN)] of [insert registered address of Recipient] (the Customer)

And: [Insert full name of Supplier (insert ABN)] of [Insert registered address of Recipient] (the Supplier)

Made: on the date the Recipient executes this deed (**Date of this Deed**).

RECITALS

- A. The Supplier has agreed to deposit with the Escrow Holder a copy of the Escrow Material and to allow the Customer to access and use the Escrow Material under certain circumstances.
- B. The Escrow Holder agrees to deal with the Escrow Material on the terms and conditions of this deed.

1. Interpretation

1.1 Definitions

Unless otherwise specified below, words and phrases used in this deed have the same meaning as that which is given to them under the ICT Agreement.

In this deed:

Annual Fee means the annual fees set out in section 1 of the Information Schedule.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Escrow Deposit Specification Form means the form set out in Attachment 2 to this deed.

Escrow Materials means:

- (a) the Source Code and object code of:
 - (i) the Licensed Software
 - (ii) all infrastructure as code created or implemented in connection with the Licensed Software; and
 - (iii) all other software programs made available to the Customer under the ICT Agreement;
- (b) documentation, information, drawings and plans relevant to the use, operation, support and maintenance of the Licensed Software, including:
 - (i) all build guides for the Licensed Software;
 - (ii) all API guides for the Licensed Software;
 - (iii) all configuration information for the Licensed Software; and

- (iv) the 'Operations Manual' for the operation, configuration and maintenance of the Licensed Software; and
- (c) a list of any third party software programs that would enable a competent programmer skilled in the use of the Deliverables and any necessary development tools to keep the Deliverables in good order and repair that are stated in section 2 of the Information Schedule.

Establishment Fee means the establishment fee set out in section 1 of the Information Schedule.

ICT Agreement means the agreement between the Customer and the Supplier dated [Insert].

Information Schedule means Attachment 1 to this deed.

Insolvency Event means in relation to a party to the ICT Agreement, any of the following:

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the ICT Agreement for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;
- (c) the party:
 - (i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act or under any bankruptcy, insolvency or analogous law;
 - (ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act;
 - (iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within seven days after being required in writing to do so by the party issuing the statutory demand;
 - (iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
 - (v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous law;
 - (vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
 - (vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
 - (viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or
- (d) any act is done or event occurs which, under applicable law, has a similar effect to anything mentioned in paragraphs (b) or (c).

Intellectual Property Rights means all intellectual property rights including:

- (a) copyright, patent, trade mark, design, semi-conductor or circuit layout rights, registered design, trade marks or trade names and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right to use or grant the use of, or apply for the registration of, any of the rights referred to in paragraph (a).

Licensed Software means the software to be licensed by the Supplier to the Customer and other permitted users under the ICT Agreement.

Software means the software licensed or made available to the Customer under the ICTA Agreement.

Source Code means, in respect of any software, firmware, computer code or configuration files (**Computer Programs**), the human readable code of such Computer Programs, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all compilers, tools, language, documentation necessary to operate, maintain and modify the executable code copy of that Computer Program including all technical documentation and specifications in respect of that Computer Program, including any other information necessary for a reasonably skilled computer programmer to understand the program logic of the software, firmware, computer code or configuration files and to perform any of those acts in relation to it.

Tax Invoice has the same meaning as in the GST Law.

Taxable Supply has the same meaning as in the GST Law.

Update means any material update, new release, modification or new version of the computer programs or computer interfaces provided by the Supplier.

1.2 References to certain general terms

In the deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of the deed, and a reference to the deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the deed, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) the word "includes" and similar expressions are not used as, nor intended to be, interpreted as words of limitation;
- (l) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (m) a reference to "\$" or "dollar" is to Australian currency or such other currency specified in the Order Documents; and
- (n) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that authority, institute, association or body.

2. Supplier's deposit obligations

2.1 Supplier to make deposits

The Supplier must deposit the current version of the Escrow Material, accompanied by a completed Escrow Deposit Specification Form, with the Escrow Holder:

- (a) within 14 days of the date of this deed; and
- (b) within 14 days of any update or material change being made to the implemented version of the Licensed Software under the ICTA Agreement.

2.2 The Customer may test deposits

The Customer may, after providing the Supplier with at least seven days' notice, conduct tests on the Escrow Material to determine whether the Supplier has met its obligations under clause 2.1.

2.3 Escrow Holder to provide access

The Escrow Holder will provide the Customer with access to the Escrow Material to enable testing under clause 2.2 to be carried out and will, in the presence and with the oversight of the Supplier, allow the Customer to:

- (a) remove the Escrow Material from the custody of the Escrow Holder;
- (b) install, download or copy the Escrow Material onto such computer system or hardware as the Customer may reasonably specify; and
- (c) analyse and conduct reasonable tests in relation to the Escrow Material as provided for under clause 2.2.

Following the testing, the Customer will (in the presence of, and with the oversight of, the Supplier) ensure that all copies of the Escrow Material are deleted from the computer system or hardware referred to in clause 2.3(b), and the material referred to in clause 2.3(a) is promptly returned to the Escrow Holder.

2.4 Support to provide assistance with testing

The Supplier must, at the Customer's request and at no charge, give the Customer all reasonable assistance to enable the Customer to carry out the tests referred to in clause 2.2.

2.5 Failure to deposit correct version in escrow

If testing by the Customer reveals that the Escrow Material does not contain the correct version of the computer programs or computer interfaces, the Supplier must, at no charge, deliver a copy of the correct version of the Escrow Material to the Escrow Holder within two Business Days of the completion of testing.

3. Escrow Holder's obligations

3.1 Obligations

The Escrow Holder must:

- (a) accept each deposit of the Escrow Material and, subject to the terms and conditions of this deed, hold it on behalf of the Supplier and the Customer;
- (b) take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Escrow Material whilst it is in the possession, custody or control of the Escrow Holder;
- (c) only use, access, copy and release the Escrow Material to the extent necessary to enable the Escrow Holder to comply with its obligations under this deed;
- (d) establish and maintain a register of deposits of the Escrow Material (**Register**) showing deposit and release dates and to whom each deposit was released;
- (e) allow the Supplier or the Customer to examine the Register at any time during regular business hours; and
- (f) provide the Supplier or the Customer with a copy of the Register within seven days of receiving a request to do so.

3.2 Limit on obligations

The Escrow Holder has no obligation to and is not responsible for:

- (a) verifying the nature, completeness or accuracy of Escrow Material; or
- (b) any transaction between the parties, other than the performance of the Escrow Holder's obligations under this deed.

4. Confidentiality

The Escrow Holder must not disclose to any person:

- (a) any part of the Escrow Material;
 - (b) any information about the Escrow Material; or
 - (c) any information about this deed,
- other than as permitted by this deed or as required by law.

5. Release to the Customer

5.1 The Customer may request release

If one of the following circumstances occurs:

- (a) an Insolvency Event occurs to the Supplier that would entitle the Customer to terminate the ICT Agreement;
- (b) the Supplier ceases to carry on business;
- (c) the Supplier has ceased for any reason to maintain or support the Software Application;
- (d) the Supplier breaches the terms of this deed;
- (e) the ICT Agreement is terminated for the Supplier's breach or otherwise for cause by the Customer; or
- (f) the Supplier assigns copyright in the Software to a third party,

then the Customer may notify the Escrow Holder and the Supplier of this event and request that the Escrow Holder release the Escrow Material to the Customer (**Customer Notice**).

5.2 Supplier may dispute release

If the Supplier disputes the Customer Notice, then it may notify the Escrow Holder and the Customer that it objects to release of the Escrow Material on the basis that the event relied on by the Customer does not exist and the Supplier has provided substantial evidence to support its objection (**Supplier Objection**).

5.3 Release of Escrow Material to the Customer

Unless otherwise ordered by a court, the Escrow Holder must release the Escrow Material to the Customer:

- (a) if no Supplier Objection is received, within two Business Days after the Escrow Holder receives a Customer Notice; or
- (b) if a Supplier Objection is received, within seven days after the Supplier Objection is received.

5.4 Grant of licence

If the Escrow Material is released to the Customer under this clause 5, then the Supplier grants the Customer a licence to use the Escrow Material on terms consistent with the ICT Agreement.

6. Release to Supplier

6.1 Release of Escrow Material to Supplier

If the Customer has given the Escrow Holder written notice of its consent to the release of the Escrow Material to the Supplier, then the Supplier may request that the Escrow Holder release the Escrow Material to the Supplier, and the Escrow Holder must immediately release the Escrow Material to the Supplier.

6.2 No other release to Supplier is permitted

Other than as provided for in clause 6.1 and clause 7, the Escrow Holder must not release any Escrow Material to the Supplier.

7. Release by agreement or by court order

7.1 Release by agreement

Within five days after receipt of a joint notice from the Supplier and the Customer requesting release of the Escrow Material, the Escrow Holder must release the Escrow Material in accordance with that notice.

7.2 Release by court order

Each party acknowledges that the Escrow Holder must release the Escrow Material in accordance with any court order requiring the Escrow Holder to do so.

7.3 Notice to the Customer

The Escrow Holder must immediately notify the Customer if it receives a court order (or any document that refers to a court order being sought) in relation to the Escrow Material.

8. Fees and charges

8.1 Payment of fees

The Customer must pay the Establishment Fee and Annual Fee to the Escrow Holder within 30 days of the Customer's receipt of the invoices referred to in clause 8.3.

8.2 Annual Fee subject to change

The Escrow Holder may increase the Annual Fee for any year by giving 30 days' notice to the Customer. An increase must not exceed the increase in the CPI for the previous year.

8.3 Invoices

The Escrow Holder may issue invoices as follows:

- (a) for the Establishment Fee, on or after the date of this deed, to the Customer;

- (b) for the Annual Fee, on or after each anniversary of the date of this deed, to the Customer; and
- (c) for reasonable delivery costs incurred by the Escrow Holder in releasing the Escrow Material, to the party that requested the release.

All invoices issued by the Escrow Holder must state the basis on which fees are charged and, in respect of amounts invoiced pursuant to sub-clause (c), must attach evidence justifying the amounts claimed.

8.4 GST inclusive prices

Unless otherwise stated, the fees include GST.

9. GST

9.1 GST gross up

Subject to clauses 9.2, 9.3 and 9.4, if GST is imposed on any Taxable Supply made by a party under this deed (**Supplying Party**), then the party receiving the Taxable Supply (**Receiving Party**) must pay, in addition to any consideration payable or to be provided under this deed for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant Taxable Supply payable, or to be provided, by the Receiving Party under any other clause in this deed.

9.2 Tax invoice

Payment for Taxable Supplies is conditional upon the issue of a Tax Invoice. Each Tax Invoice must provide full details of the Taxable Supply, the subject of the Tax Invoice, including any details the payer of the fee may specifically require and such other details required to ensure that it is a Tax Invoice.

9.3 Adjustment

If the amount of GST recovered by the Supplying Party from the Receiving Party differs from the amount of GST payable at law by the Supplying Party (or an entity grouped with the Supplying Party for GST purposes) in respect of the supply, the amount payable by the Receiving Party to the Supplying Party will be adjusted accordingly.

9.4 Reimbursements

Where one party (**Payer**) is liable to reimburse another party (**Payee**) for any expenditure incurred by the Payer (**Expenditure**), the amount reimbursed by the Payer shall be the GST exclusive Expenditure plus any GST payable to the Payee by the Payer pursuant to clause 9.1.

10. Ownership and risk

10.1 Acknowledgements

Each party acknowledges that:

- (a) nothing in this deed assigns any Intellectual Property Rights in the Escrow Material;
- (b) title in the physical media on which the Escrow Material is stored passes from the Supplier to the Customer on release of the Escrow Material to the Customer under clause 5 or clause 7; and

- (c) risk of loss of, or damage to, the Escrow Material and associated media remains with the Supplier.

10.2 Loss or damage to Escrow Material

Without limiting any rights or remedies that any of the parties may have, if any of the Escrow Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control:

- (a) the Escrow Holder must promptly notify each other party; and
- (b) the Supplier must provide the Escrow Holder with replacement Escrow Material within two Business Days of receiving such notice from the Escrow Holder.

10.3 Warranty

The Supplier warrants and represents that it has the necessary authority to comply with its obligations under this deed (including the right to grant the licence in clause 5.4).

10.4 Act or omission of Escrow Holder

Notwithstanding any other provision of this deed, if any of the Escrow Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control, and that loss, damage or destruction is caused by:

- (a) the Escrow Holder's breach of this deed; or
- (b) the negligent, wilful or unlawful act or omission of the Escrow Holder,

then the Escrow Holder must, at its own expense, reimburse the Supplier for the reasonable cost of replacing the relevant part or parts of the Escrow Material.

11. Termination

11.1 Upon insolvency

This deed terminates immediately if an Insolvency Event occurs to the Escrow Holder to the extent there is no prohibition at Law in respect of such termination.

11.2 Upon release of Escrow Material

This deed terminates immediately if the Escrow Material is released to the Customer or the Supplier under this deed, except such termination will not affect those parts of this deed referenced in clause 14.14 (**Survival**).

11.3 Upon provision of notice

This deed may be terminated by:

- (a) the Escrow Holder giving 90 days' written notice to the Supplier and the Customer, subject to a pro-rata refund by the Escrow Holder to the Customer of any advance payment of the Annual Fee; or
- (b) the Customer giving 90 days' written notice to the Supplier and the Escrow Holder.

11.4 By the Customer or the Supplier

Either the Supplier or the Customer may, by giving notice to the Escrow Holder (with a copy to the Customer or the Supplier, as applicable), terminate this deed with immediate effect if:

- (a) the Escrow Holder commits a breach of this deed; and
- (b) the breach is not remedied within 14 days of the Escrow Holder receiving a notice detailing the breach and requiring that it be rectified.

11.5 Consequences of an Escrow Holder termination event

Within 14 days after the termination of this deed under clauses 11.1 to 11.4, the Supplier must, at the direction of the Customer (and the Customer must, if the Supplier so requests), enter into another agreement between the Supplier, the Customer and a new escrow Supplier in a form substantially similar to this deed.

11.6 Return of Escrow Material on termination

- (a) If this deed terminates for any reason other than under clauses 11.2 and 11.3(b), then, unless a new escrow deed is entered into within 14 days in accordance with clause 11.5, the Escrow Holder must, within a further 20 days, deliver the Escrow Material to the Customer.
- (b) If this deed terminates under clause 11.3(b), then the Escrow Holder must within seven days deliver the Escrow Material to the Supplier.

12. Notices

- (a) Any notices contemplated by this deed must be in writing and delivered to the relevant email or postal address as set out below (or to any new address that a party notifies to the others):
 - (i) to the Customer: *[Insert]*
 - (ii) to the Escrow Holder: *[Insert]*
 - (iii) to the Supplier: *[Insert]*.
- (b) Unless there is evidence to the contrary:
 - (i) a letter sent by post will be taken to be received on the fifth Business Day after posting (or seventh, if posted to or from a place outside of Australia); and
 - (ii) in the case of email:
 - A. production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;
 - B. where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and
 - C. where a delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender must use an alternative method of giving that notice in accordance with this clause.

13. No assignment

The Supplier and the Escrow Holder must not assign or otherwise deal with all or any of its rights or obligations under this deed without the written consent of the other parties.

14. General**14.1 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

14.2 Partial exercise of rights

If a party does not exercise a right or remedy at a given time, the party may still exercise it later.

14.3 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

14.4 Remedies cumulative

The rights and remedies provided in this deed are in addition to other rights and remedies given by law independently of this deed.

14.5 Operation of law

Rights given to the parties under this deed and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

14.6 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) Nothing in this clause 14.6 prevents any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

14.7 No partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as constituting the relationship between the Customer, the Supplier and the Escrow Holder as that of partners, joint venturers or any other fiduciary relationship.

14.8 Entire agreement

This deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this deed; or

- (b) any correspondence or other documents relating to the subject matter of this deed that may have passed between the parties prior to the date of this deed and that are not expressly included in this deed.

14.9 Joint and several liability

- (a) The obligations of the Escrow Holder, if more than one person, under this deed, are joint and several. Each person constituting the Escrow Holder acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the others as if those acts or omissions were its own and the Customer may proceed against any or all of them.
- (b) The obligations of the Supplier, if more than one person, under this deed, are joint and several. Each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the others as if those acts or omissions were its own and the Customer may proceed against any or all of them.

14.10 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

14.11 Provisions limiting or excluding liability

Any provision of this deed which seeks to limit or exclude a liability of the Customer, the Supplier or the Escrow Holder is to be construed as doing so only to the extent permitted by law.

14.12 Variations

This deed may only be varied by a document signed by or on behalf of the Customer, the Supplier and the Escrow Holder.

14.13 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by the Customer will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by the Customer under this deed will only be effective and binding on the Customer if it is given or confirmed in writing by the Customer.
- (c) No waiver by the Customer of:
 - (i) a breach of any term of this deed; or
 - (ii) any other failure by the Escrow Holder to comply with a requirement of this deed,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this deed or failure to comply with any other requirement of this deed.

14.14 Survival

Clauses 3.1(e) and 3.1(f) ("Obligations"), 4 ("Confidentiality"), 5.4 ("Grant of licence"), 8.4 ("GST inclusive prices"), 9 ("GST"), 10.3 ("Warranty"), 11.5 ("Consequences of an Escrow Holder termination event"), 11.6 ("Return of Escrow Material on termination"), 14 ("General"), 14.15 ("Governing Law and jurisdiction") and 1 ("Interpretation") survive the termination (for any reason) of this deed.

14.15 Governing Law and jurisdiction

This deed is governed by the laws applicable in the State of New South Wales, Australia. Each party irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the courts of New South Wales, Australia and the courts entitled to hear appeals from those courts.

Attachment 1 to Escrow Deed - Information Schedule

1. Fees and charges

Establishment Fee: (first year) \$[] plus GST

Annual Fee: (first year and subsequent years) \$[] plus GST
(subject to increases under clause 8.2)

2. Escrow Material

- (a) the Source Code which incorporates computer programs or computer interfaces;
- (b) all documentation relating to the material referred to in paragraph (a) which a reasonably qualified programmer would require for understanding, maintaining and modifying such material; and
- (c) media on which that Source Code is stored or deposited:

[Insert description of media, e.g. CD ROM]

Attachment 2 to Escrow Deed - Escrow Deposit Specification Form**1. Depositor information**

Company Name:

Technical Contact:

Email:

Telephone:

2. Software Application information

Product Name(s)/Version(s)

Software modules:

Product Name(s)/Version(s)	
Software modules:	

3. Media information

Medium

Quantity

Label

4. Escrow deposit details**4.1 Compilation**

(a) What hardware is required to compile the Software Application?

(b) What operating system and version is used in the compilation process?

-
-
- (c) What development environment (compilers/linkers/other tools) is necessary to compile the Software Application?

- (d) List all third party libraries/components that are required to compile the software (brand name, version and Supplier) and indicate which (if any) are not included in the deposit?

- (e) List all non-third party libraries/components that are required to compile the software.

- (f) Detail the steps to follow to compile the Source Code and produce a version of the Software Application that runs.

- (g) List all of the files that are created by the compilation process and are needed to successfully run the Software Application.

4.2 Running the application

- (a) What hardware is required to successfully run the Software Application? If identical to item 4.1(a) please leave blank.

- (b) What software (in addition to the operating system) is required to successfully run the Software Application?

4.3 Documentation

- (a) Please provide an overview of the technical documentation.

- (b) Please provide an overview of the user documentation.

- (c) Please include a short description on the layout of the deposit.

- (d) Please include a full directory listing of the contents of the deposit media.

4.4 General information

- (a) What are the main functions performed by the Software Application?

- (b) List the additional material (reports, databases, etc.) included with the deposit.

- (c) Is a copy of the development environment (compilers and third party software) included with the deposit?

- (d) Does your company use a formal coding convention? Please provide a brief description of the convention used.

5.

Remarks

6.

Signature

Date: _____ Signature: _____

Name (please print):_____

For and on behalf of the Supplier

The Supplier warrants that the details set out above are correct and complete.

Executed as a deed:

Executed for and on behalf of **The Crown in right of the State of New South Wales represented by NSW Police Force (ABN 43 408 613 180)** by its authorised delegate in the presence of:

Signature of witness

Full name of witness

Executed by **[Insert name of Supplier]** ABN **[Insert ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Date

Executed by **[Insert name of Escrow Agent]** ABN **[Insert ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Date

Signature of authorised delegate

Full name of authorised delegate

Date

Signature of company secretary/director

Full name of company secretary/director

Date

Signature of company secretary/director

Full name of company secretary/director

Date

Schedule 8 - Performance Guarantee

Deed of Guarantee and Indemnity made on the date on which the last party to execute this deed has executed this deed

[Insert full name of Customer] (ABN **[Insert ABN]**), of **[Insert address]** Customer)

[Insert full name of Guarantor] (ABN **[Insert ABN]**), of **[Insert address]** (Guarantor)

RECITALS

- A. The Customer has agreed to enter into the ICT Agreement with the Supplier on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Customer all of the Obligations and to indemnify the Customer against any loss arising from any failure by the Supplier to perform the Obligations.

THIS DEED PROVIDES

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Event of Default means any event which constitutes a breach of the ICT Agreement.

Guaranteed Money means all money the payment or repayment of which, from time to time, forms part of the Obligations.

ICT Agreement means the agreement between the Customer and the Supplier dated **[Insert]**.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Legal Opinion means a legal opinion:

- (a) from lawyers to the Guarantor, authorised to practice in the place of incorporation of that Guarantor, stating that this deed is binding and enforceable against that Guarantor;
- (b) which states that it may be relied upon by the Customer; and
- (c) in a form reasonably satisfactory to the Customer.

Obligation(s) means all the liabilities and obligations of the Supplier to the Customer under or arising out of or in any way in connection with the ICT Agreement or the work to be carried out or performed by the Supplier under the ICT Agreement, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present;
- (c) are in existence before or come into existence on or after the date of this Deed;

- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Supplier is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Customer comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Supplier and the Customer comes to owe or be owed such liability or obligation.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Customer by the ICT Agreement, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at or about 10:15am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by three banks selected by the Customer at or about 10:15am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

Supplier means [] ABN [].

1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the ICT Agreement.

1.3 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the word "includes" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;

- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Deed; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency or such other currency specified in the Order Documents;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 Limitation

- (a) Notwithstanding any other clause in this Deed but subject to clauses 1.4(b) and (c):
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Supplier under the ICT Agreement;
 - (ii) the liability of the Guarantor under this Deed in connection with a breach of the ICT Agreement by the Supplier shall not be greater than the liability of the Supplier under the ICT Agreement in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Supplier and the Guarantor liable for the same loss twice for the one breach of the ICT Agreement by the Supplier;
 - (iv) the Guarantor is entitled to rely on all defences, limitations and exclusions (including set-off and counterclaim) available to the Supplier under the ICT Agreement;
 - (v) where the Guarantor is performing any Obligation, the Guarantor will not be required to perform any such Obligation in a manner any different than that required by the ICT Agreement; and
 - (vi) payment by one of the Supplier or the Guarantor to, or in favour of, the Customer shall be deemed to be good discharge against the Customer in respect of that payment.
- (b) The limitation of liability under this clause 1.4 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause 1.4 shall limit the Guarantor's liability for Obligations which arise from, or would have arisen from, any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such liability not exceeding the liability that the Supplier would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Customer the due and punctual performance by the Supplier of all the Obligations.

2.2 Payment by Guarantor

If the Supplier does not pay the Guaranteed Money when due, the Guarantor must, on demand, pay to the Customer the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

If the Supplier defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Customer, immediately perform any of the Obligations then required to be performed by the Supplier in the same manner as the Supplier is required to perform the Obligations.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Customer and to keep the Customer indemnified at all times against any loss or damage suffered by the Customer arising out of or in connection with any:

- (a) failure by the Supplier to perform the Obligations; or
- (b) obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Supplier for any reason, and whether or not the Customer knew or ought to have known of that reason.

4. Liability as Guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Supplier or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;
 - (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
 - (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Supplier or the Guarantor;
- (b) the receipt by the Customer of any payment, dividend or distribution under any Insolvency Provision in relation to the Supplier or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the ICT Agreement or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;

- (e) the Customer accepting or declining any Security from any person at any time;
- (f) the Customer granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Supplier or the Guarantor;
- (g) the Customer not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the ICT Agreement or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Customer;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Customer, the Supplier or the Guarantor of the ICT Agreement or any Obligation;
- (j) any variation to the ICT Agreement or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Supplier or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Customer, or by operation of law, of the Supplier or the Guarantor from the ICT Agreement or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Supplier or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Customer, the Supplier or the Guarantor of all or any of its rights or obligations under the ICT Agreement or under any other Obligation;
- (n) any failure by the Customer to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Customer relating to or affecting the Supplier or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Customer was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Supplier;
- (o) the Customer agreeing with the Supplier or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Supplier or the Guarantor; or
- (p) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the ICT Agreement or any other Power of the Customer.
- (b) The Customer will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to be made aware of any event referred to in clause 5.2, any transaction between the Customer and the Supplier, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The Customer is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Customer holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Customer determines in its absolute discretion.
- (b) The Customer may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Customer may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the Customer has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,
 in either case in reliance on a payment, receipt or other transaction to, or in favour of, the Customer; or
- (b) any payment or other transaction to, or in favour of, the Customer has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,

and:

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Customer,

then:

- (e) the Customer will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Customer may reasonably require to restore all of those rights to the Customer; and
- (g) the Guarantor must indemnify the Customer against costs, losses and expenses suffered or incurred by the Customer in, or in connection with, any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

Subject to clause 1.4(a)(iv), the liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Supplier against the Customer.

5.8 Claim on the Guarantor

- (a) Subject to clause 5.8(b), the Customer is not required to make any claim or demand on the Supplier, or to enforce the ICT Agreement, or any other right, power or remedy against the Supplier, before making any demand or claim on the Guarantor.
- (b) The Customer agrees not to make a claim or demand for payment of Guaranteed Money against the Guarantor under this Deed unless:
 - (i) the Customer has made a written claim or demand against the Supplier for such Guaranteed Money, a copy of which the Customer gives to the Guarantor at the same time as the Customer makes the claim or demand against the Supplier, and such Guaranteed Money remains unpaid, in whole or in part, for 10 Business Days after the claim or demand is made; or
 - (ii) an Insolvency Event has occurred in relation to the Supplier or the Guarantor.

5.9 No representation by Customer etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by, or on behalf of, the Customer, the Supplier or any other person.

6. Representations and warranties

6.1 General representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, represents and warrants to the Customer that:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law binding on it, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;
- (d) all information relating to the Guarantor provided to the Customer in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Customer that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent that they are material to the performance of the obligations of the Guarantor under this Deed.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Customer in immediately available funds to the account and in the manner notified by the Customer to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Customer on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Customer or any Security, until the Customer has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must, on demand by the Customer, pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Customer is incorporated into the calculation of the amount payable under the ICT Agreement.

7.4 Merger

If the liability of the Guarantor to pay to the Customer any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Customer under this Deed must be:

- (a) subject to clause 1.4(a)(iv), free of any set-off or counterclaim; and
- (b) without deduction or withholding for, or on account of any present or future taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future taxes (not being taxes on the overall net income of the Customer), then the Guarantor must:

- (c) pay to the Customer any additional amounts necessary to enable the Customer to receive (after all deductions and withholdings for those taxes) a net amount equal to the full amount which would otherwise be payable to the Customer if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those taxes which it is compelled by law to deduct or withhold, and indemnify the Customer for any taxes and interest or penalties to which the Customer may become liable consequent upon the failure of the Guarantor to pay those taxes; and
- (e) deliver to the Customer, promptly on request from the Customer, a copy of any receipt issued by the relevant taxing authority on payment of those taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is expressly stated to be made in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under, or in connection with, this Deed is received by the Customer in a currency (**Payment Currency**) other than the currency in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise) (**Agreed Currency**), and the amount obtained (net of charges) by the Customer on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Customer for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must, on demand, reimburse the Customer for, and keep the Customer indemnified against, all expenses (including legal fees, costs and disbursements on a solicitor/own client basis or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Customer in connection with any:

- (a) consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar taxes, including fines and penalties, financial institutions duty and debits tax, which may be payable to, or required to be paid by, any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed.
- (b) The Guarantor must indemnify the Customer against any loss or liability incurred or suffered by the Customer as a result of the delay or failure by the Guarantor to pay taxes.

8.3 Goods and Services Tax

If the Customer is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (**GST Liability**) then:

- (a) to the extent that an amount is payable by the Guarantor to the Customer under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise the Guarantor will indemnify and keep the Customer indemnified for the full amount of the GST Liability.

9. Assignment

The Customer may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Customer relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed, and where applicable the arbitration reference contained in clause 10.3, is governed by, and will be construed according to the laws of New South Wales, Australia.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the courts of New South Wales, Australia and the courts entitled to hear appeals from those courts.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 10.2(b).

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and

finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).

- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

10.6 Joinder

The arbitral tribunal has the power, on the application of any party to the arbitration, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.7 Award final and binding

Any award will be final and binding upon the parties.

10.8 Guarantor incorporated outside Australia

If the Guarantor is incorporated outside of Australia, a Legal Opinion must be provided by the Guarantor to the Customer, on the date of execution of this Deed.

11. Miscellaneous

11.1 Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant email or postal address as set out below (or to any new address that a party notifies to the other):
 - (i) to the Customer: []
 - (ii) to the Guarantor: []
- (b) Unless there is evidence to the contrary:
 - (i) a letter sent by post will be taken to be received on the fifth Business Day after posting (or seventh, if posted to or from a place outside of Australia); and
 - (ii) in the case of email:

- A. production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;
- B. where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and
- C. where a delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender must use an alternative method of giving that notice in accordance with this clause.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Customer will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Customer, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Customer reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Customer created, or intended to be created, by this Deed.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Customer determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

11.5 Entire agreement

This Deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

11.6 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Customer may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

11.7 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

11.8 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Customer.

11.9 Waiver

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Customer will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver or consent given by the Customer under this Deed will only be effective and binding on the Customer if it is given or confirmed in writing by the Customer.
- (c) No waiver by the Customer of:
 - (i) a breach of any term of this Deed; or
 - (ii) any other failure by the Guarantor to comply with a requirement of this Deed,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

11.10 Consents

Any consent of the Customer referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Customer (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.11 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

11.12 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.13 Variations

This Deed may only be varied by a document signed by or on behalf of both the Customer and the Guarantor.

11.14 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Customer or the Guarantor is to be construed as doing so only to the extent permitted by law.

11.15 Counterparts

- (a) This Deed need not be executed by the Customer.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

11.16 Confidentiality

- (a) Subject to clause 11.16(b), each party must keep the terms of this Deed confidential.
- (b) A party may make any disclosure in relation to this Deed:
 - (i) to a professional adviser, financial adviser, insurer, rating agency, financier or auditor if that person is obliged to keep the information disclosed confidential;
 - (ii) to the extent required to comply with any law, a requirement of a regulatory body (including any relevant stock exchange) or pursuant to an administrative request or Parliamentary requirement;
 - (iii) to any of its employees or officers to whom it is necessary to disclose the information;
 - (iv) in connection with any legal or arbitral proceeding under or in relation to this Deed;
 - (v) to obtain the consent of a third party to a term of, or to an act under, this Deed;
 - (vi) to a "related body corporate", as defined in section 9 of the *Corporations Act 2001* (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this Deed;
 - (vii) (in the case of the Customer) to a potential assignee provided they agree to keep the terms of this Deed confidential;
 - (viii) (in the case of the Customer) to a related agency (where applicable) or to its responsible Minister;
 - (ix) with the prior consent of the other party to this Deed; or
 - (x) if the information disclosed has come into the public domain through no fault of the party (or its Personnel or related bodies corporate) making the disclosure.

Executed as a deed

Signed for and on behalf of **The Crown in right of the State of New South Wales represented by NSW Police Force (ABN 43 408 613 180)** by its authorised delegate in the presence of:

Signature of witness

Full name of witness

Signature of authorised delegate

Full name of authorised delegate

Date

Executed by **[Insert name of Guarantor]** ABN **[Insert ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Date

Signature of company secretary/director

Full name of company secretary/director

Date

Schedule 9 - Financial Security

This deed poll (**Deed**) is made on the date of execution of this Deed

In favour of: **[Insert full name of Customer]** ABN **[Insert ABN]** of **[Insert registered address]**
(Customer)

Given by: **[Insert full name of Institution]** of **[Insert registered address]** (Institution)

Recitals

- A. By an agreement dated **[Insert] (Agreement)** between **[]** ABN **[]** (**Supplier**) and the Customer, the Supplier agreed to carry out the Supplier's Activities (as defined in the Agreement).
- B. Under the provisions of the Agreement, the Supplier is required to provide this Deed to the Customer.

Operative

1. The Institution unconditionally undertakes and covenants to pay to the Customer on demand without reference to the Supplier and notwithstanding any notice given by the Supplier to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Customer to a maximum aggregate sum of **(\$Insert)**.
2. The Institution's liability under this Deed will be a continuing liability and will continue until payment is made under this Deed of the maximum aggregate sum or until the Customer notifies the Institution that this Deed is no longer required.
3. The liability of the Institution under this Deed must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Agreement or the Supplier's Activities or acts or things to be executed, performed and done under the Agreement or by reason of any breach or breaches of the Agreement by the Supplier or the Customer.
4. The Institution may, at any time, without being required to do so pay to the Customer the maximum aggregate sum less any amount or amounts it may previously have paid under this Deed and, as a consequence, the liability of the Institution under this Deed will immediately cease.
5. This Deed will be governed by, and construed in accordance with, the laws of the State of New South Wales, Australia.

Executed as a deed poll:

Signed, sealed and delivered for and on)
behalf of **[Insert]** ABN **[Insert ABN]** by its)
attorney)
)
)
)
)
Name of attorney (print))
Under power of attorney)
Registration Number / Book Number)
(Powers of attorney created in Victoria do not have a number. Insert)
the date of the power of attorney instead.))
)

.....

in the presence of:

.....
Signature of witness

.....
Name of witness

.....
Signature of attorney
By executing this document the attorney states
that the attorney has received no notice of
revocation of the power of attorney

.....
Date