



Medium Form ICT Agreement

between

**The Council of the City of Sydney
(ABN 22 636 550 790)
("Customer")**

and

**Infor Global Solutions (ANZ) Pty Limited
(ABN 25 003 538 314)
("Supplier")**

Pathway Project

Agreement Reference No: RFP-2024-1338

(MF ICTA)

Contents

PART A: PRELIMINARIES	1
1. Definitions and Agreement documents	1
1.2 Defined terms and interpretation	1
1.3 Agreement documents.....	1
1.4 Order of precedence.....	1
1.5 Supplier's Documents	1
2. Supplier's acknowledgments	2
3. Purchasing Services and/or Deliverables by Order	3
3.1 Order Documents	3
3.2 Electronic execution.....	3
3.3 Additional Orders	3
3.4 No exclusivity or minimum commitment	4
3.5 Additional Conditions.....	4
3.6 Reseller arrangements	4
4. Relationship	4
4.1 General	4
4.2 Nature of relationship.....	4
5. Term	4
5.1 Initial Term	4
5.2 Renewal Period	5
PART B: SUPPLIER'S ACTIVITIES	5
6. Performance of the Supplier's Activities	5
General	5
6.1 Customer Supplied Items	5
6.2 ICT Accessibility	6
6.3 Co-operation with the Customer and Other Suppliers.....	6
6.4 Project management.....	7
6.5 Staged implementation	7
6.6 Delays	8
6.7 Extension of time	8
6.8 Delay costs	9
6.9 Site.....	10
7. Transition-In	11
7.1 Application	11
7.2 Transition-In Plan.....	11
7.3 Transition-In Services	11
8. Document Deliverables	12
8.1 General	12
8.2 Review	12
8.3 No obligation.....	13
8.4 User Documentation	13
9. Defects	14
10. Change Control Procedure	15
10.1 Change Requests	15
10.2 Process for submitting and agreeing to Change Requests	16
10.3 Electronic transactions.....	16
10.4 Acknowledgements.....	16

11.	Personnel	17
11.1	Nominated Personnel	17
11.2	Replacement of Nominated Personnel.....	18
11.3	Supplier's Personnel.....	18
11.4	Deed of Confidentiality and Privacy.....	19
11.5	Subcontracting.....	19
11.6	Compliance with employment Laws	22
11.7	Non-solicitation	22
12.	Compliance	22
12.1	Compliance with Laws and directions	22
12.2	Policies, Codes and Standards	22
12.3	Policy Changes.....	23
12.4	Work health and safety	24
12.5	Work health and safety where Supplier's Activities include construction work	24
12.6	The environment.....	25
12.7	Conflicts of Interest.....	25
13.	Modern Slavery	25
13.1	Compliance.....	25
13.2	Information.....	25
13.3	Modern Slavery due diligence	26
13.4	Subcontractors.....	26
13.5	Response to Modern Slavery Incident.....	26
13.6	Termination.....	27
14.	Acceptance Testing	27
14.1	General	27
14.2	Testing by Supplier.....	27
14.3	Testing by the Customer	27
14.4	Effect of failure to meet Acceptance Criteria	28
14.5	Effect of Acceptance Certificate	29
15.	Performance	29
15.1	Service performance obligations ("Performance obligations")	29
15.2	Service standards and Service Levels	30
15.3	Consequences for failing to meet a Service Level	31
15.4	Performance reports.....	32
15.5	Performance reviews.....	32
15.6	Notice.....	32
15.7	Meetings	32
16.	Liquidated Damages	33
17.	Intellectual Property	33
17.1	Ownership of Existing Materials	33
17.2	Licence to use Existing Materials	33
17.3	Ownership of New Materials.....	34
17.4	Customer licence to use Supplier owned New Materials	34
17.5	Licence term	35
17.6	Software (including Cloud Services) licence	35
17.7	Licensing model – Licence to New Software and Access to Cloud Services	37
17.8	Supplier Licence to use Customer owned New Materials.....	38
17.9	Third party Intellectual Property Rights	38
17.10	Open Source Software	38
17.11	Consents and Moral Rights	39
17.12	Prohibited activities.....	39
17.13	Additional obligations.....	39
17.14	Warranties and acknowledgements	39

17.15	Replacement of Deliverables.....	40
18.	Title and risk	40
18.1	Application of this clause	40
18.2	Title	40
18.3	Risk	40
PART C: DATA AND SECURITY		41
19.	Customer Data.....	41
19.1	Obligations in relation to Customer Data.....	41
19.2	Security of Customer Data	42
19.3	Location of Customer Data	42
19.4	Backup of Customer Data	43
19.5	Restoration of lost Customer Data	43
19.6	Rights to access, use, extract and retrieve Customer Data	43
19.7	Record, retention, return and destruction of the Customer Data	44
19.8	General	44
20.	Privacy	45
20.1	Protection and use of Personal Information	45
20.2	Data Management and Protection Plan.....	47
20.3	No limitation of obligations.....	48
21.	Security	48
21.1	Scope of the Supplier's security obligations	48
21.2	Supplier's security obligations	48
21.3	Audits and compliance	49
22.	Security Incidents	50
22.1	Notification of Security Incidents	50
22.2	Actions required in relation to a Security Incident	50
23.	Confidentiality	51
PART D: FEES AND PAYMENT		52
24.	Payment and invoicing	52
24.1	Price.....	52
24.2	Invoicing.....	52
24.3	Payment.....	52
24.4	Payment disputes	53
24.5	Set off	53
24.6	Taxes	53
PART E: RISK ALLOCATION AND MANAGEMENT		54
25.	Insurance	54
26.	Termination.....	54
26.1	Termination for cause by the Customer	54
26.2	Termination for convenience by the Customer.....	55
26.3	Consequences of reduction of scope	56
26.4	Termination for cause by the Supplier.....	56
26.5	Dispute resolution	57
26.6	Survival of rights on termination or reduction in scope.....	57
27.	Transition-Out Services.....	57
27.1	Application of this clause	57
27.2	Transition-Out Plan.....	57
27.3	General	58

28.	Consequences of expiry or termination	58
28.1	Extracting or retrieving Customer Data	58
28.2	Confidential Information and intellectual property	58
29.	Warranties.....	58
29.1	Mutual warranties	58
29.2	General Supplier warranties	59
29.3	Warranties in relation to Supplier's Activities.....	59
29.4	Implied warranties.....	59
30.	Indemnities and liability	59
30.1	Indemnities	59
30.2	Third Party IP Claims.....	60
30.3	Indemnities not affected by insurance	61
30.4	Status of indemnities	61
30.5	Liability cap	61
30.6	Exclusions of liability.....	62
30.7	Application and contribution	63
30.8	Mitigation	63
31.	Dispute resolution.....	63
31.1	General	63
31.2	Escalation	63
31.3	Acknowledgment	64
31.4	Costs.....	64
31.5	Continue to perform.....	64
32.	Force Majeure.....	64
32.1	Force Majeure Event	64
32.2	Notification and diligence.....	64
32.3	Liability not relieved	65
32.4	Prolonged Force Majeure Event.....	65
33.	Reports and audits.....	65
33.1	Records and reports	65
33.2	Audits and inspections.....	65
33.3	Conduct of audits and inspections.....	68
33.4	Survival	68
34.	Proportionate liability	68
PART F: GENERAL PROVISIONS		68
35.	General.....	68
35.1	Exports.....	68
35.2	Government information	69
35.3	Personal Property Securities Act.....	70
35.4	No use of the Customer's name or logo	70
35.5	Prior work.....	70
35.6	Entire agreement	70
35.7	Variation.....	70
35.8	Survival and merger.....	71
35.9	Severability	71
35.10	Waiver.....	71
35.11	Cumulative rights	71
35.12	Further assurances.....	71
35.13	Assignment, novation and other dealings	71
35.14	Notices	72
35.15	Construction.....	73
35.16	Expenses	73
35.17	English language	73

35.18	Governing Law.....	73
Schedule 1 - Definitions and interpretation		75
Schedule 2 - Order Form.....		91
Annexure A to Order Form – Supplier's Documents		101
Annexure B to Order Form – Statement of Work		102
Annexure C to Order Form – Additional Conditions.....		108
Annexure D to Order Form – List of Permitted Subcontractors		114
Annexure E to Order Form – Solution Description		116
Solution Description Document.....		116
1.	Background	116
2.	Transition to the Cloud	117
3.	Product Description.....	118
3.4	Table of Product SKU and Authorised Functions	118
3.5	Configurations (also referred to as Extensions) means any components deployed in the hosted environment other than the generally available New Software or components that Customer may deploy via the standard user interface or tools included in the generally available New Software. Support for such Configurations / Extensions is included under this Agreement.	122
3.6	Software Customizations means any Infor developed software for ePathway and Pathway that are developed by the Supplier under a Statement of Work to be deployed either on-premise or in a single-tenant hosted environment. Support for such Software Customizations is included under this Agreement.	122
4.	Licensing Metrics for the New Software and Cloud Services being purchased by the Customer	122
4.1	Additional Notes.....	124
5.	Support.....	125
6.	Pricing	125
7.	Service Level Agreement	126
8.	Miscellaneous.....	130
Schedule 3 - Change Request Form		131
Schedule 4 - Deed of Confidentiality and Privacy		132
1.	General	137
1.1	Scope.....	137
1.2	Acknowledgements.....	137
1.3	Services Period.....	137
1.4	Variations to Cloud Services	137
2.	Provision and use of Cloud Services.....	138
2.1	Customer use and access to the Cloud Services.....	138
2.2	Rights grant	138

2.3	Licensing model.....	139
2.4	Performance	140
2.5	Backups	140
2.6	Records of usage and audits.....	140
2.7	Additional Cloud Services terms.....	140
3.	Restrictions	141
4.	Data.....	141
4.1	Customer Data.....	141
4.2	Supplier’s security controls for viewing and accessing Customer Data	141
4.3	Storage and transfer of Customer Data.....	142
4.4	Change to location of Customer Data	142
4.5	Media decommissioning process	143
4.6	Data control and other requirements	144
5.	Provision of Support Services.....	144
5.1	Application	144
5.2	Support Period.....	144
5.3	General	144
5.4	Help desk.....	144
6.	Training	145
6.1	Training Services	145
6.2	Training Reports	145
7.	Additional and ancillary Deliverables and Services.....	146
7.1	Provision of additional and ancillary Deliverables and Services	146
7.2	Requirements	146
8.	Records.....	146
9.	Exceptions	147
Annexure A: Definitions and interpretation		149
1.	General	151
1.1	Scope.....	151
1.2	Acknowledgements.....	151
1.3	Services Period.....	151
2.	Provision of Support Services.....	151
2.1	Application	151
2.2	Support Period.....	151
2.3	General	152
2.4	Help desk.....	152
3.	Software Support Services	152
3.1	Application	152
3.2	Updates and New Releases	152
3.3	No restriction.....	153
4.	Support Services for Hardware and Other ICT Deliverables	154
4.1	Application	154
4.2	Provision of Support Services	154
4.3	Preventative Maintenance	154
4.4	Engineering changes	154
4.5	Remedial Maintenance	155
5.	Development Services.....	156

5.1	Application	156
5.2	Performance requirements	156
5.3	Design process	156
5.4	Development process	156
5.5	Alternative project delivery methodology	157
5.6	Warranties in relation to Development Services	157
6.	Systems Integration Services	157
6.1	Application	157
6.2	Provision of Systems Integration Services	157
6.3	SI Plan and SI Specifications	158
6.4	Warranties in relation to Systems Integration Services	159
7.	Data Services	159
7.1	Application	159
7.2	Customer Provided Data	159
7.3	Further restrictions	160
7.4	Backups	160
7.5	Data cleansing	160
7.6	Data analysis	161
7.7	Data migration	161
7.8	Tools and Methodologies	162
8.	Other Professional Services	162
8.1	Application	162
8.2	General	162
8.3	Timeframe for provision	162
9.	Managed Services	162
9.1	Application	162
9.2	General	163
9.3	Transition-In Services	163
9.4	Procedures Manual.....	163
9.5	Managed Third Party Contracts.....	164
9.6	Assets	165
9.7	Transition-Out Services	165
10.	Training	166
10.1	Training Services	166
10.2	Training Reports	166
11.	Additional and ancillary Deliverables and Services	167
11.1	Provision of additional and ancillary Deliverables and Services	167
11.2	Requirements	167
12.	Records	167
13.	Exceptions	168
Annexure A: Definitions and interpretation		170
1.	General	173
1.1	Scope	173
1.2	Acknowledgements.....	173
2.	New Software.....	173
2.1	Provision of New Software	173
2.2	Installation by the Supplier	174
2.3	Backups	174
3.	Licensing	175

3.1	Licence Period	175
3.2	Licensing model.....	175
3.3	Scope of licence	175
4.	Updates and New Releases	177
4.1	Application	177
4.2	Updates and New Releases	177
4.3	No restriction.....	178
5.	Transfer of licences	178
5.1	Transfer rights.....	178
5.2	Effect of transfer	178
6.	Additional licensing conditions.....	179
6.1	Restrictions	179
6.2	End of Licence Period.....	179
7.	Third parties	179
7.1	Third Party Components.....	179
7.2	Third party warranties	179
8.	Audits	180
8.1	Records of usage.....	180
8.2	Audit and verification	180
8.3	Results and consequences of Software Audit.....	180
9.	Provision of Software Support Services	181
9.1	Application	181
9.2	Support Period.....	181
9.3	General	181
10.	Help desk	181
11.	Training	182
11.1	Training Services	182
11.2	Training Reports	182
12.	Additional and ancillary Deliverables and Services	183
12.1	Provision of additional and ancillary Deliverables and Services	183
12.2	Requirements	183
13.	Exports	183
14.	Records	183
15.	Exceptions	184
	Annexure A: Definitions and interpretation	186

Medium Form ICT Agreement (MF ICTA)

Parties The party identified as such on the first page of this Agreement (**Customer**)
 The party identified at Item 2 of the Order Form (**Supplier**)

Background

- A. The Supplier has represented to the Customer that it has the relevant skills and experience to provide the Supplier's Activities.
- B. 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**

1.2 **Defined terms and interpretation**

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

1.3 **Agreement documents**

This Agreement comprises the following documents:

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

1.4 **Order of precedence**

In the event of any conflict or inconsistency between the documents set out in clause 1.3, 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.

1.5 **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 1.3(a) to 1.3(e).

- (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 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 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 or any Additional Conditions;
 - (iv) impose additional obligations or requirements on the Customer, beyond those set out in the Core 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 or any Additional Conditions.
- (e) Where any of the Supplier's Documents purport to override or otherwise vary the Core Terms or any Additional Conditions those terms will have no legal effect.
- (f) 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 35.7.

2. Supplier's acknowledgments

- (a) The Supplier 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), 17.14, 29.2 and 29.3.

3. Purchasing Services and/or Deliverables by Order

3.1 Order Documents

The Supplier must comply with the terms of the Agreement in connection with the provision of Services to Customer, provide all Services and/or Deliverables specified in the Order Documents and carry out all other Supplier's Activities on the terms of this Agreement. The Supplier must provide all Services and/or Deliverables specified in the Order Documents 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 8 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 qualifications specified in Item 8 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 or the Order Form, 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 10 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

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.

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 7 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 7 of the Order Form).
- (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 35.7.

PART B: SUPPLIER'S ACTIVITIES

6. Performance of the Supplier's Activities

General

This clause 6 applies exclusively to the Services to be provided. Software Deliverables (including Cloud Services) and Support are herewith explicitly excluded from the application of this clause 6.

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

6.1 Customer Supplied Items

- (a) Other than any CSI, the Supplier must provide all necessary Materials and resources to carry out the Supplier's Activities in accordance with this Agreement.
- (b) The parties acknowledge and agree that:
- (c) unless the Customer agrees otherwise in writing, the Supplier will only receive access to the CSI specified in the Statement of Work;
 - (i) the Supplier will obtain no title or interest to any CSI;
 - (ii) 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
 - (iii) 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 Statement of Work expressly contemplates CSI being put to a particular use or function in relation to this Agreement).
- (d) 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 6.7 applies:
 - (i) the Customer failing to supply the CSI at the times and in accordance with the requirements specified in the Statement of Work or this Agreement;
 - (ii) the Customer failing to maintain the CSI to any minimum standards specified in the Statement of Work; or
 - (iii) any Other Supplier failing to supply items in accordance with any requirements specified in Statement of Work.

- (e) 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 Documents;
 - (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; and
 - (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.
- (f) 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.
- (g) 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 6.1.

6.2 ICT Accessibility

Without limiting any other obligation under this Agreement, the Supplier must ensure that, to the extent reasonably practicable, all Services and Deliverables:

- (a) are available to Customer Users on a non-discriminatory accessible basis and do not infringe anti-discrimination Laws; and
- (b) meet Accessibility Standard AS EN 301 549 and any other accessibility requirements to the extent specified in the Order Documents (unless otherwise required by the Order Documents).

6.3 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.

6.4 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 6.4 (**Project Plan**).
- (b) Where specified in the Order Documents, 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 Documents 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.

6.5 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 6.5(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 6.5(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 6.5(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.
- (e) Nothing in this clause 6.5 will prevent the parties adopting a different project delivery methodology to that described in clause 6.5 (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 Documents, the Supplier must carry out the Supplier's Activities in accordance with the requirements for that alternative methodology as specified in the Order Documents.

6.6 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.

6.7 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 6.7.
- (b) To request an extension of time under clause 6.7(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 6.7(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 6.7(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 6.7(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 31.1, where:
- (i) any dispute or difference arises between the parties in relation to this clause 6.7 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 31.1(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.

6.8 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 6.8(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 6.8(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 6.8(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 6.8(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.

6.9 Site

- (a) Where specified in the Order Documents, the Supplier must carry out the Supplier's Activities at the locations or sites specified in the Order Documents or otherwise notified by the Customer to the Supplier (**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 Documents or otherwise notified by the Customer to the Supplier; and
 - (ii) on the Date for Delivery and between the hours stated in the Order Documents or otherwise notified by the Customer to the Supplier,
- 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 6.9(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) 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 notified to the Supplier by the Customer time to time;
 - (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 only if expressly specified in the Order Documents 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 Documents specify 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 mistakes or technical errors;
 - (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.

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.

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.
- (b) The User Documentation may be supplied in an electronic format and by the time specified in the Order Documents (if any).
- (c) Where requested by the Customer, the Supplier must provide the Customer's Representative with at least one hardcopy 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 during the Warranty Period, the Customer discovers or is informed that there is a Defect of a Deliverable or any other Service that does not constitute the Cloud Services, and such Defect is discovered during the period starting from the date of Acceptance and continuing until the date that is 12 months after the Go-Live Date, then the Customer, subject to the Customer providing the Supplier with reasonable written details to assist the Supplier to be able to recreate and identify the nonconformance, may require the Supplier to do 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 considering the limitations set out in this Agreement subject to compliance with the dispute resolution procedure in clause 31.
- (b) If the Supplier identifies a Defect or an instruction is given under clause 9(a)(ii), 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.
- (c) The Supplier represents, warrants and undertakes that:
 - (i) the Cloud Services will operate consistently with the User Documentation, which describes the features, functions, and operation of the Cloud Services; and
 - (ii) Updates will not result in a material loss in key functionality (Updates that require a different look and feel, or manner, to achieve similar functionality, or changes to programming language consistent with industry standards, will not be considered a material loss in functionality).

- (d) Upon becoming aware of a breach of the warranty set out in clause 9(c), the Customer will notify the Supplier in writing and will provide reasonable detail of such breach in the notification.
- (e) If the Supplier remains in breach of either such warranty set out in clause 9(c) following the Customer's written notification to the Supplier within 60 days of the alleged breach, the Customer may elect to terminate the Agreement pursuant to clause 26.1, in which case the Supplier must promptly refund to the Customer the unused Fees that have been paid by the Customer in advance in respect of the period following the date of the breach for the affected Cloud Services giving rise to the warranty claim.
- (f) If the Supplier identifies a Defect, critical for the use of the Services provided to the Customer the Supplier must notify the Customer in writing within one Business Day of identifying the Defect.
- (g) 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.
- (h) If multiple Defects are identified, the Customer may request the Supplier to prioritise the rectification of such Defects, and the Supplier must, to a reasonable extent, comply with any such request. However, for clarity, any prioritisation must remain consistent with any applicable Service Levels.
- (i) 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.
- (j) For clarity, the obligations in this clause 9 will not be deemed to exclude or restrict any guarantee that is provided at Law with respect to any Deliverable or Services.

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 Documents,

(Change Request).

- (b) No Change Request is binding on either party or to be carried out by the Supplier subject to the completion of a mutually agreed Change Control Procedure as specified in this clause 10.

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 3 (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 or any Additional Conditions, which must be effected in accordance with the variation procedure specified in clause 35.7;
- (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 6.5(c); or
 - B. reduce the scope of this Agreement pursuant to clause 26;
- (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

General

This clause 11.1 applies solely to Professional Services.

- (a) The Supplier must ensure that:
 - (i) each of its Nominated Personnel is made available to perform their role/responsibilities as set out in the Order Documents; 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 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) Solely if specified in Item 14 of the Order Form, the Supplier's Personnel involved in the provision of the Supplier's Activities while performing Services on-premises at Customer's facilities (or who may receive or have access to the Customer's Confidential Information or Personal Information in connection with this Agreement while performing Services on-premises at the Customer's facilities), must, if requested by the Customer from time to time, sign a deed in substantially the same form as the document in Schedule 4 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 4, 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 while performing Services on-premises at the Customer's facilities.

11.5 Subcontracting

- (a) The Supplier must not subcontract any of its obligations under this Agreement unless specified in Item 15 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) **Subprocessors**
 - (i) The Customer may access a list of relevant Subprocessors (as set out in Annexure D to the Order Form) that are engaged by the Supplier through the Customer's account in the Supplier's Support portals or alternative equivalent methods (and the Customer may subscribe to receive updates).
 - (ii) When engaging any Subprocessor, the Supplier must:
 - A. evaluate the security, privacy and confidentiality practices of the Subprocessor prior to selection to establish that it is capable of providing the level of protection of Customer Data required by this Agreement;
 - B. ensure via a written agreement that:
 - 1) the Subprocessor may access Customer Data in accordance with the terms of this Agreement, but only to deliver the services the Supplier has retained them to provide and is prohibited from using Customer Data for any other purpose; and
 - 2) the Subprocessor is bound by no less protective data protection and security obligations as those binding the Supplier under this Agreement; and
 - 3) oversee the Subprocessors to ensure that such contractual obligations are met.
 - (iii) Where a Subprocessor fails to fulfill its data protection obligations, the Supplier is fully liable and responsible to the Customer for the performance of that Subprocessor's obligations in accordance with the terms of this Agreement and any act or omission of such Subprocessor that causes the Supplier to breach this Agreement, or that would constitute a breach of this Agreement were it an act or omission of the Supplier.

- (g) From time to time, the Supplier may engage new Subprocessors, provided that:
- (i) the Supplier must give the Customer reasonable advance written notice (via automated email addressed to the Customer's email address provided to the Supplier, or such other email address(es) as the Customer may notify in writing to the Supplier from time to time) at least 14 days prior to the engagement of such Subprocessor) of any new Subprocessor to provide the Customer with an opportunity to object to the use of such new Subprocessor;
 - (ii) if the Customer objects on reasonable grounds under Privacy Laws, applicable Laws or other New South Wales Government directives to a new Subprocessor in writing:
 - A. the Supplier must not engage such new Subprocessor to provide services to the Customer until such objection has been resolved to the satisfaction of the Customer;
 - B. the Supplier must use all reasonable efforts to resolve such objection, and such resolution attempts may include, without limitation:
 - 1) requiring the objected-to Subprocessor to modify its services to resolve the objection;
 - 2) modifying the Service to exclude the objected-to Subprocessor; or
 - 3) using best efforts to procure an acceptable replacement for the objected-to Subprocessor,and the Supplier must keep Customer reasonably informed on the progress of its resolution process by promptly providing the Customer information in writing upon the Customer's request; and
 - C. if the Supplier is unable to resolve that objection in a reasonable amount of time (in any event no more than 6 months from date of objection or such other time as agreed in writing between the parties), then the Customer may terminate those aspects of the Services which cannot be provided by the Supplier without the use of the new Subprocessor, by providing written notice of termination, and the Customer must also include an explanation of the grounds for non-approval together with the termination notice, in order to permit the Supplier to re-evaluate any such new Subprocessor based on those concerns. For clarity, where the Customer terminates this Agreement or reduces its scope under this clause 11.5(g)(ii)C, the Customer is not required to pay the Supplier any early termination fees or charges (or similar amounts) (whether under clause 26.2(b) or Item 23, or otherwise).
- (h) Any termination under clause 11.5(g) shall be subject to the terms of the Agreement, and in the event of such termination, the Supplier must refund the Customer any unused, prepaid Fees for the applicable Services.
- (i) 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.

- (j) Any subcontracting by the Supplier does not relieve the Supplier of any of its obligations under this Agreement.
- (k) 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.
- (l) 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.

11.6 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 11.6(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.

11.7 Non-solicitation

- (a) To the extent allowable under applicable law, 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 11.7(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 11.7.
- (d) The parties agree that the restrictions in this clause 11.7 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 on-site.

12.2 Policies, Codes and Standards

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.

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 will evaluate and 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 Documents 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" 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, materially affects the interests of the Customer, and the Supplier is unable to resolve the Conflict of Interest within a reasonable time of receipt of a notice from the Customer, then the Customer will be entitled to terminate this Agreement under clause 26.1(c).

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) This clause 14 will only apply in relation to the supply of Professional Services.
- (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 Statement of Work.

14.2 Testing by Supplier

- (a) Before delivery by the Supplier to the Customer of any Services (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 Service meets the acceptance criteria, mutually agreed by the parties in the respective SOW ("Acceptance Criteria") for the Services;
 - (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 Service (or component thereof) does not meet any Acceptance Criteria, promptly remedy that non-compliance; and
 - (iv) when appropriate, notify the Customer that the relevant Service (or applicable component thereof) is ready for Acceptance Testing by the Customer.

14.3 Testing by the Customer

- (a) The Customer may carry out Acceptance Tests in respect of the Services pursuant to the terms of the respective SOW, 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 10 Business Days (or such other longer period identified in the relevant Statement of Work) after the date of the Supplier's notification.
- (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 notify the Supplier in writing (and in particular, 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 Service 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. Any dispute with respect to the Professional Services as set out in the respective Statement of Work will be resolved pursuant to the escalation path as set out in clause 31.
- (g) In event the Customer does not respond to the Supplier within 5 Business Days after the date of such reminder, the Professional Services subject to the Customer's Acceptance will be deemed as properly delivered and accepted.
- (h) Notwithstanding the foregoing, the Customer shall always have the right to claim, and Supplier shall be liable for Defects in the Deliverables which the Customer did not discover during the Acceptance Testing process. The warranty period starts when the Deliverable has been Accepted.

14.4 Effect of failure to meet Acceptance Criteria

- (a) If the Acceptance Criteria in respect of a Service 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 Service has failed to meet the Customer's Acceptance Testing;
 - (i) Accept the Services subject to a reasonable reduction in the Price as reasonably agreed between the parties; or
 - (ii) if the Service contains a Material Defect that is incapable of remedy or the Supplier has failed to remedy that Material Defect within 20 Business Days after notification by the Customer on the existence of such Material

Defect (or such other time as specified in the Order Form or agreed between the parties in writing), immediately terminate the Statement of Work on the Service which is subject of the Material Defect or reduce its scope pursuant to clause 26.1(c).

- (b) If the Supplier receives a notice under clauses 14.4(a)(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)(i); or
 - (iii) immediately terminate or reduce the scope of the Statement of Work and all related or impacted Statements of Work in accordance with clause 26.1(c).

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 Service performance obligations (“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 the Services to operate in accordance with the 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, if applicable, and Dates for Delivery;
 - (ix) in accordance with any relevant Statement of Work;
 - (x) in accordance with the User Documentation and Specifications; and
 - (xi) otherwise in accordance with the other requirements of this Agreement; and
- (b) provide Services to the Customer which:
- (i) comply with the Specifications and other requirements of the Agreement;
 - (ii) be consistent with the User Documentation, as it relates to the Cloud Services;
 - (iii) are new and unused (except to the extent set out in the Order Documents);
 - (iv) achieve Acceptance, where applicable;
 - (v) are compatible and interoperable with the Customer Environment (to the extent specified in the Order Documents);
 - (vi) where applicable, are safe to people and the environment and comply with all applicable Laws and Policies, Codes and Standards regarding product safety; and
 - (vii) 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 the Specifications, Best Industry Practice, and 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 relevant Statement of Work or Order Documents (such as service credits, service rebates or termination rights).
- (c) The parties acknowledge and agree that any service credits or service rebates will be calculated in accordance with the relevant Statement of Work or Order Documents and:
 - (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 any written or electronic reports and reporting tools that may be agreed to by the parties in a Statement of Work, which may specify details including as agreed:

- (a) a monthly (unless a different frequency is specified in the Order Documents) 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 Documents;
- (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 Order Documents 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 the Order Documents 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 Documents (or as otherwise agreed between the parties). Without limiting the foregoing, the Supplier must reasonably participate in any performance reviews initiated by the Customer (acting reasonably) from time to time.
- (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.

15.6 Notice

The Supplier must notify the Customer as soon as reasonably practicable after the Supplier 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 Documents 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 and its subparts only apply if the Order Documents provide for Liquidated Damages to be payable in relation to a failure by the Supplier to meet a Key Milestone for Professional Services.
- (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, the Order Documents 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 the Order Documents.
- (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 17 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 Item 17 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), the Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate, distribute and otherwise exploit in any manner any Intellectual Property Rights in the Supplier's Existing Materials for internal business operations and any purpose (except bureau services and other commercialisation) 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) The rights and licences granted by the Supplier to the Customer under clause 17.2(a) 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, including to any:
- (i) contractor, subcontractor or outsourced service provider (as long as they are not the Supplier's Competitors) 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
 - (ii) Government Agency.
- (c) Unless otherwise specified in Item 17 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 17 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), 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 17 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 Item 17 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable) , the Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate, distribute and otherwise exploit in any manner the Intellectual Property Rights in such New Materials, for internal business operations or any (except bureau services and other commercialisation) 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) The rights and licences granted by the Supplier to the Customer under clause 17.4(a) are sub-licensable by the Customer (on the same terms and for the same purposes as set out in that clause) 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 17 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), the licences granted under clauses 17.2 and 17.4 will be perpetual in relation to the purposes specified in those clauses.

17.6 Software (including Cloud Services) licence

- (a) Unless otherwise specified in item 18 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), then notwithstanding clauses 17.2, 17.4 and 17.5, the parties agree that the licence rights with respect to any New Software and/or Cloud Services will be on the terms specified in this clause 17.6.
- (b) The Supplier must provide the Customer:
- (i) a licence to the New Software:
 - A. for the Term or such other relevant licence period (including extension periods) set out in the Order Documents; or
 - B. where a perpetual licence is granted, on a perpetual basis; and
 - (ii) the right to access and use the Cloud Services for the Term or such other period specified in the Order Documents (the **Cloud Period**).
- (c) Unless otherwise specified in Item 17 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable):

- (i) the Supplier grants (or must procure a grant) to the Customer and its Personnel a non-exclusive licence to access and use the New Software; and
- (ii) Customer Users may access and use the Cloud Services for the Cloud Period;

for any purpose in connection with:

- (iii) the Customer performing its obligations, and exercising its rights, under the Agreement;
 - (iv) the full use of the New Software and/or Cloud Services (as applicable) and any associated applications as contemplated under the Agreement, including, where applicable, installing, operating, supporting, enhancing, upgrading and maintaining the New Software and/or Cloud Services (as applicable) or integrating the New Software and/or Cloud Services with other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (v) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the New Software and/or Cloud Services (as applicable) and associated Deliverables or systems that may integrate or interoperate with the New Software and/or Cloud Services (as applicable);
 - (vi) the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; and
 - (vii) such other Permitted Purpose/s specified in the Order Documents.
- (d) Unless otherwise specified in Item 17 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), in respect of any New Software that is made available as part of a Deliverable that also incorporates New Materials, the Supplier grants to the Customer a perpetual licence to such New Software on the terms set out in clause 17.4 (as if such New Software was New Materials).
- (e) Unless otherwise specified in Item 18 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), then for clarity, the Customer may use or make such number of copies of the New Software as are reasonably required for:
- (i) evaluation and training;
 - (ii) backup or disaster recovery;
 - (iii) archiving or record-keeping;
 - (iv) security purposes;
 - (v) the Customer's internal business or operational purposes; or
 - (vi) exercising any of the Customer's rights at Law or under this Agreement.
- (f) Unless otherwise specified in Item 18 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), the Customer may sub-license and/or transfer its rights under clause 17.6 to any class of Customer Users. The Customer must use its reasonable endeavours to ensure that Customer Users only access and use the New Software and/or Cloud Services (as applicable) for the Permitted Purpose and in accordance with this clause 17.6.

- (g) Unless otherwise specified in Item 18 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), if the Customer has paid for the New Software in advance and the number of Customer Users that it has paid for exceeds the Customer's requirements at any time, the Customer may sublicense and transfer its excess licences and associated licensing rights and obligations under the Agreement to any Government Agency or other Eligible Customer, unless otherwise specified in the Order Form. Transfers under this clause 17.6(g) will:
- (i) take effect from the effective transfer date as notified by the Customer to the Supplier in writing; and
 - (ii) be on the same licensing terms and conditions as this clause 17.6 or such other terms as agreed by the parties in writing. From the effective transfer date, the Government Agency (or, where applicable, other Eligible Customer) will be deemed to be a Customer User under this Agreement.
- (h) The parties acknowledge and agree that unless otherwise specified in Item 18 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable):
- (i) the rights and licences specified in this clause 17.6 are included in the Price and will be provided to the Customer and Customer Users on a royalty-free basis and at no additional charge to the Customer and Customer Users, unless otherwise specified in the Order Form;
 - (ii) the Customer obtains no right, title or interest with respect to the New Software or the Cloud Services (as applicable), except to the extent expressly set out in this Agreement, including in this clause 17.6; and
 - (iii) nothing in this Agreement is intended to exclude or restrict any rights that the Customer has at Law, including under Part III, Division 4A of the *Copyright Act 1968* (Cth).

17.7 Licensing model – Licence to New Software and Access to Cloud Services

- (a) The parties agree that the licensing model and/or access rights specified in the Order Form applies to the New Software and/or Cloud Services (as applicable) being provided under this Agreement.
- (b) Where the New Software and/or the Cloud Services (as applicable) is/are licensed or made accessible on a User Licensing Model as established in the Order Form, the following terms apply unless otherwise stated in the Order Form:
- (i) there is no cap on the number of Customer Users who may access and use the New Software and/or Cloud Services (as applicable), except where clause 17.7(b)(ii) applies; and
 - (ii) where the Order Form specifies that there is a cap on the number of Customer Users, the Customer:
 - A. must ensure that only the number of Customer Users specified in the Order Form (or as otherwise agreed between the parties in writing) access the New Software and/or Cloud Services (as applicable); and
 - B. may, at its sole discretion, increase the number of Customer Users, subject to paying the additional Fees in accordance

with the rates and charges specified in Payment Particulars or as otherwise agreed between the parties in writing.

- (c) Where the New Software and/or Cloud Services (as applicable) is/are not licensed or made accessible on a User Licensing Model, the Customer must ensure that it does not exceed any applicable consumption or other ceiling with respect to its use of the New Software and/or access to Cloud Services (as applicable) as specified in the Order Form. The Customer may, at its sole discretion, increase its consumption or ceiling at any time, subject to paying the additional licence Fees in accordance with the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing and subject to the execution of a mutually agreed amendment to the existing Order Form.

17.8 Supplier Licence to use Customer owned New Materials

Where it is specified in Item 17 of the Order Form that Intellectual Property Rights in any New Materials are owned by the Customer as applicable, 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.

17.9 Third party Intellectual Property Rights

Unless otherwise specified in Item 18 of the Order Form (including the parties may specify in the Order Form this clause is inapplicable), then 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 this Agreement;
- (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.

17.10 Open Source Software

Where the Supplier develops or enhances (or has previously developed or enhanced) any Deliverable using Open Source Software, or incorporates (or has previously incorporated) any Open Source Software into any Deliverable, the Supplier must ensure that the use and/or incorporation 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;
- (b) diminish the Supplier's obligations or the Customer's rights under this Agreement;
- (c) require the Customer to comply with any terms and conditions other than those terms and conditions expressly set out in this Agreement; or
- (d) cause the Customer to breach the terms or conditions applying to any Open Source Software.

17.11 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.

17.12 Prohibited activities

To the extent applicable in the Order Form, 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.

17.13 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.

17.14 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.

17.15 Replacement of Deliverables

Without limiting the Customer's rights under clause 30.1(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. Title and risk

18.1 Application of this clause

This clause 18 applies only to tangible Deliverables (including any Deliverables comprising hardware).

18.2 Title

- (a) Title to each Deliverable (excluding Intellectual Property Rights) passes to the Customer upon the earlier of:
 - (i) delivery to the Site; or
 - (ii) payment for the relevant Deliverable.
- (b) The Supplier warrants that, at the time title to a Deliverable passes to the Customer pursuant to clause 18.2(a), the Deliverable is free from any lien, security interest, mortgage or other encumbrance.

18.3 Risk

- (a) Until risk passes to the Customer in accordance with clause 18.3(b), the Supplier will bear the risk of, and indemnify the Customer against, any loss or damage to the Deliverables (including any unfixed goods and Materials intended for incorporation into the Deliverables but not yet incorporated).
- (b) Risk in each Deliverable will pass to the Customer upon delivery to the Customer in accordance with this Agreement.
- (c) If any Deliverable is collected or returned (for example, for repair), risk in that Deliverable will revert to the Supplier when the Deliverable is collected by, or on

behalf of, the Supplier or when the Deliverable is delivered to a carrier for return to the Supplier.

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. However, the Supplier is entitled to track meta data for the usage of Cloud Services, provided that:
 - (i) the Supplier must ensure that such meta data is deidentified in accordance with Best Industry Practice; and
 - (ii) the Supplier must only undertake tracking of meta data in a deidentified manner.
- (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) Each Party must comply with its obligations under applicable Data Protection Requirements (defined below) in the performance of its obligations under the Agreement, including but not limited to providing the level of privacy protection as is required under applicable Data Protection Requirements.

"Data Protection Requirements" means any applicable laws, regulations, and other legal requirements relating to the processing of Personal Information:

- (i) for the Supplier, in any jurisdiction where the Supplier or its Related Bodies Corporate operate and/or provides its Cloud Services including but not limited to the *Privacy Act 1988* (Cth); and
 - (ii) for the Customer, in any jurisdiction where the Customer operates,
- both (i) and (ii) as may be amended, supplemented or replaced from time to time.
- (e) 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 (including subcontractors and Subprocessors) who access, or have the ability to access, Customer Data are appropriate to do so;
 - (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;
 - (vii) ensure that its Personnel (including subcontractors and Subprocessors) comply with this clause 19.1(e) and manage and safeguard Customer Data in accordance with all other requirements of this Agreement; and
 - (viii) notify Customer within the time frame, if any, specified by applicable Data Protection Requirements, if Supplier can no longer meet its obligations under applicable Data Protection Requirements.
- (f) Customer must comply with all laws and regulations applicable to its use of the Cloud Services, including laws related to biometric data, confidentiality of communications, and the Data Protection Requirements. Customer is responsible for determining whether its use of the Cloud Services is appropriate and consistent with Customer's legal and regulatory obligations.

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 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 Australia:
 - (i) if expressly permitted under the Order Form, at the locations specified in the Order Documents (or as otherwise agreed to in writing in advance by the Customer); and

- (ii) subject to the Supplier's and its Personnel's compliance with the Data Location Conditions.
- (c) For clarity, the Supplier must not move the Customer Data out of the Customer's selected hosting deployment location without the Customer's prior written approval.

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 Order Documents).
- (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 Documents).

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 (or such other format as mutually agreed in writing by the parties) 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,

and without limiting the Supplier's obligations above:

- (v) the parties may mutually agree on the scope of termination assistance services and the Fees and expenses payable for such termination assistance services; and
- (vi) the Supplier must make all Customer Data available to Customer as a native database export provided through the Supplier's Secure File Transfer Protocol (SFTP) server.

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

- (a) Subject to the Order Documents, 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, subject to the retention policies as per Item 20 of the Order Form; and
 - (ii) make copies of the records referred to in clause 19.7(a)(i) available to the Customer promptly 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 metadata as permitted under this Agreement); and
 - (ii) at the Customer's direction (subject to clause 19.7(c)):
 - A. promptly (within 5 business days upon receipt of Customer's written request) make all Customer Data available to Customer as a native database export provided through the Supplier's secure file transfer service; and
 - B. permanently delete all (including online or network accessible) instances of Customer Data within 30 days after the termination or expiration of Cloud Services and provide written notice to the Customer confirming that this has occurred.
- (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 28.1.

19.8 General

- (a) If requested by the Customer, but no more than once during each annual period of the Term, the Supplier must respond to an audit questionnaire (i.e. a questionnaire

that is based on ISO and the Australian Government Information Security Manual), and must provide procedural documentation regarding its information security program, processes and controls. To the extent such procedural documentation is readily available, the Supplier will supply such documentation that Customer may reasonably request, so long as such documentation does not: (a) threaten the confidentiality, integrity or availability of data or services of Supplier's other customers; or (b) violate the confidentiality, integrity and availability of data or services of third parties providing Services to Customer on behalf of Supplier. For clarity, procedural documentation provided by the Supplier will not include proof of internal training, proof of internal testing, results of internal risk assessments. The Supplier must respond to the audit questionnaire within 30 days of the receipt of such audit questionnaire. If this timeframe cannot be met, the Supplier must work with the Customer to mutually agree a reasonable time frame for completion. All such documentation shall be Supplier's Confidential Information.

- (b) The Supplier must implement reasonably necessary controls to address the Critical Risk and High Risk findings resulting from this audit.
- (c) Once in each 12-month period during the Subscription Term, Supplier shall, at its cost and expense, engage a duly qualified independent auditor to conduct a review of the design and operating effectiveness of Supplier's defined control objectives and control activities in connection with the Cloud Services (excluding Support). Supplier shall cause such auditor to prepare a SOC I Type 2 report for all Cloud Services and, for multi-tenant Cloud Services only, a SOC II Type 2 report (collectively, the "Audit Report"). The Audit Report is Supplier's Confidential Information, but is available to City on the Supplier support portal. City may share a copy of such Audit Report with its auditors and regulators, provided that the auditors and regulators are informed that such Audit Report is Supplier's Confidential Information and must be protected accordingly. In addition, Supplier shall annually, at its cost and expense, engage a duly qualified independent auditor to conduct a review of its information security in connection with certain multi-tenant Cloud Services stated on trust.infor.com, as well as Support for both On Premise Software and Cloud Services, in each case under the International Organization for Standardization (ISO) 27001 standard. Supplier shall cause such auditor to prepare a report in accordance with such standard. The audit report will not be available to City; however City may obtain a copy of the resulting certificate from Supplier's cloud security site (trust.infor.com) at any time. The certificate will identify the software subject to the report. As part of this ISO 27001 certification, the Supplier maintains an Information Security Management System manual for the Software included in the certification and the related Support, which helps to ensure the protection, confidentiality, integrity and availability of the Supplier assets used to provide such Services. Additional third party certifications are available at trust.infor.com.
- (d) The Customer may obtain a copy of the audit certificate from the Supplier's cloud security site (trust.infor.com) at any time.
- (e) Where applicable, the Supplier must comply with any additional obligations relating to Customer Data as may be specified in the Order Documents.
- (f) 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 (other than as permitted by the Data Location Conditions) 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 Australia Customer's selected hosting deployment location (which as of the date of this Agreement is Australia) or access it, or allow it to be accessed, from outside Customer's selected hosting deployment location (which as of the date of this Agreement is Australia) unless permitted in the Order Form and subject to the Supplier's and its Personnel's compliance with the Data Location Conditions, or in accordance with clause 20.1(a)(v) below;
 - (v) Notwithstanding clause 20.1(a)(iv), the Supplier may transfer, store, process, access, disclose or view Personal Information outside of Australia:
 - A. if expressly permitted under the Order Form, at the locations specified in the Order Documents (or as otherwise agreed to in writing in advance by the Customer); and
 - B. subject to the Supplier's and its Personnel's compliance with the Data Location Conditions.
 - (vi) protect the Personal Information from unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Agreement;
 - (vii) if it becomes aware that there has been an actual Security Incident (or has reasonable grounds to suspect that there has been a Security Incident) involving Personal Information:
 - A. comply with clause 22;
 - B. cooperate with Customer's reasonable investigation or Customer's efforts to comply with any notification or other regulatory requirements applicable to such Security Incident;
 - C. take all reasonable steps to prevent such breach from recurring; and
 - D. 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) Supplier must provide reasonable assistance to the Customer at the Customer's request, including by providing generally available information relating to the Services and Cloud Services to extent such information is needed by the Customer in connection with Customer conducting and documenting data protection impact assessments, prior consultation with a regulator, and/or complying with the Customer's obligations under applicable Data Protection Requirements.

- (c) In the event that the Supplier receives any legally binding requests for the disclosure of Personal Information issued by an Authority, or any direct access requests to Personal Information by an Authority, the Supplier will, as permitted by Law, attempt to redirect such request to the Customer. If the Supplier cannot redirect such request to the Customer, then the Supplier must:
- (i) reject the request unless required by Law to comply;
 - (ii) challenge such request where the request conflicts with applicable Law, is overbroad, or another appropriate objection applies;
 - (iii) promptly notify the Customer and provide a copy of the demand unless legally prohibited from doing so;
 - (iv) if compelled by an Authority to do so, disclose only the minimum amount of Personal Information necessary to satisfy the request; and
 - (v) if permitted by Law, at the Customer's written request, provide the Customer with as much relevant information as possible on the requests for disclosure received.

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. Customer acknowledges that the Supplier does not share its internal privacy and data protection policies. The Supplier has a number of policies addressing responsible data handling, employee privacy notices and policies, incident response, third party access request response, data subject rights request response, etc. the Supplier's public facing privacy policy is available at www.infor.com/about/privacy.
- (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; and
 - (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.
- (d) The Supplier must review (and update if needed at its discretion) the Data Management and Protection Plan annually or at such other times as reasonably determined by Supplier to address a Security Incident or updates to Privacy Laws.
- (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 under Privacy Laws 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,
- including as further defined in the Scope section of the ISP.
- (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 19 of the Order Form,
- (Security Program)**, provided that, where clause 21 and the standards or requirements specified in the Order Documents 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, Services and Customer Data;
 - (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) 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.
- (d) If specified in Item 19 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 19 of the Order Form from an accredited, independent, third party register or accredited, independent third party certification body. Unless otherwise specified in Item 19 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 Documents.
- (e) Without limiting this clause 21.2, the Supplier must comply with any additional security obligations or standards specified in the Order Documents.

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) Once in each 12-month period during the Term, the Supplier must, at its sole cost and expense, engage a duly qualified independent auditor to conduct a review of the design and operating effectiveness of the Supplier's defined control objectives and control activities in connection with the Cloud Services (excluding Support). The Supplier must ensure that such auditor prepares a SOC I Type 2 report for all Cloud Services and, for multi-tenant Cloud Services only, a SOC II Type 2 report (collectively, the "**Audit Report**"). The Audit Report is the Supplier's Confidential Information, but must be made available to the Customer on the Supplier's support portal. The Customer may share a copy of such Audit Report with its auditors and regulators, provided that the auditors and regulators are informed that such Audit Report is the Supplier's Confidential Information and must be protected accordingly.
- (c) In addition, the Supplier must annually, at its sole cost and expense, engage a duly qualified independent auditor to conduct a review of its information security in connection with the Cloud Services, as well as the Support Services provided to the Customer for both Software and the Cloud Services, in each case under the International Organization for Standardization (ISO) 27001 standard. The Supplier must ensure that such auditor prepares a report in accordance with such standard. The Supplier must ensure that the Customer may obtain a copy of the resulting certificate from the Supplier's cloud security site (trust.infor.com) at any time. The certificate will identify the Software subject to the report. As part of this ISO 27001 certification, the Supplier must maintain an Information Security Management System manual for the Software included in the certification, and the related Support Services, which must ensure the protection, confidentiality, integrity and availability of the Supplier's assets used to provide such Software and Services. The Supplier must make available all additional third party certifications at trust.infor.com.
- (d) Without limiting clause 11.3(a)(ii), the Supplier must run initial and annual mandatory security awareness training for all of the Supplier's employees 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.

- (e) Supplier must address the relevant Critical and High-Risk findings based on the Common Vulnerability Scoring System (CVSS) as per supplier's timelines. Up on Customer request once annually, Supplier to share the executive summary of its tests and current status of the vulnerabilities.

22. Security Incidents

22.1 Notification of Security Incidents

If the Supplier becomes aware that there has been a Security Incident, the Supplier must immediately (and in any event within 48 hours of becoming aware of such Security Incident):

- (a) notify the Customer; and
- (b) provide to the Customer, to the extent known at the time, the date of the Security Incident and a description of the Security Incident.

22.2 Actions required in relation to a Security Incident

- (a) Where the:

- (i) Supplier becomes aware of any Security Incident; or
- (ii) Customer notifies the Supplier that the Customer reasonably believes a Security Incident has occurred or is about to occur,

then, the Supplier must, as soon as possible (and in any event within the timeframe reasonably required by the Customer, taking into account the complexity and severity of the Security Incident):

- (iii) investigate and diagnose the Security Incident;
- (iv) manage and contain the Security Incident and mitigate the impact of the Security Incident (working on a 24 x 7 basis if required);
- (v) investigate and take steps to identify the root cause of the Security Incident and seek to understand the risks posed by the Security Incident and identify how these risks can be addressed; and
- (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, to the extent such cause or potential mitigating factors are within the Supplier's control (**Remediation Plan**).

- (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), provide to the Customer, to the extent known at that time:
 - A. a list of actions taken by the Supplier 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 to the extent the cause or potential mitigating factors are within the Supplier's control;
- (ii) promptly on the Customer's request provide summaries of the results of the Supplier's analysis and the Remediation Plan to the Customer, and provide updates to the Customer every 24 hours after notifying the Customer of such Security Incident (or such other frequency as agreed by the parties) until such Security Incident has been resolved;
- (iii) provide any assistance reasonably required by the Customer or any Authority in relation to any criminal, regulatory or other investigation relating to the Security Incident; and
- (iv) 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 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) 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 Invoicing

- (a) The Supplier must Invoice the Customer at the time stated in the 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 24.2(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/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 Documents or reasonably required by the Customer.

24.3 Payment

- (a) Subject to the Supplier satisfying any conditions precedent to payment specified in the Order Documents, the Customer will pay any Correctly Rendered Invoice:
 - (i) by electronic funds transfer to the bank account details nominated by the Supplier in Item 21 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.
- (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.

24.4 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.

24.5 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 24.5 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 24.5 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.

24.6 Taxes

- (a) Subject to clause 24.6(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; and
 - (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. Insurance

- (a) Unless otherwise specified in Item 22 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 22 of the Order Form.
- (b) Without limiting clause 25(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 22 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 25(a) and 225(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).

26. Termination

26.1 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) in any of those circumstances specified in clauses 12.7(b), 13.6, 14.4(a)(ii), 14.4(c)(iii), and 32.4 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. For clarity, where the Customer terminates this Agreement or reduces its scope under this clause 26.1, the Customer is not required to pay the Supplier any early termination fees or charges (or similar amounts) (whether under clause 26.2(b) or Item 23, or otherwise).

26.2 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, (including but not limited to the event 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 (for avoidance of doubt, the Customer is not required to pay the Supplier any early termination fees of charges or similar amounts or charges (or similar amounts) (whether under clause 26.2(b) or Item 23, or otherwise)) by written notice to the Supplier immediately terminate this Agreement or – if mutually agreed - 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 26.2(a), the Supplier:
- (i) must take all reasonably practicable steps to mitigate the costs referred to in clause 26.2(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 23 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 26.2 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 26.2.

26.3 Consequences of reduction of scope

If the Customer exercises its right to reduce the scope of this Agreement pursuant to clause 26, the parties agree that the Price will be reduced proportionately and in accordance with any methodology specified in the Payment Particulars.

26.4 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 24.4;
- 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 26.4(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 17.12 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 26.4 exhaustively sets out the Supplier's rights to terminate this Agreement.

26.5 Dispute resolution

For clarity, the processes described in clause 31 are independent of, may be undertaken contemporaneously with, and do not constrain or delay, a party exercising its rights under this clause 26.

26.6 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.

27. Transition-Out Services

27.1 Application of this clause

This clause 27 applies if it is specified in the Order Documents that the Supplier is required to provide Transition-Out Services as part of any Stage or part of the Supplier's Activities.

27.2 Transition-Out Plan

- (a) If the Order Documents 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 Documents 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 27.
- (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.

27.3 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 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.

28. Consequences of expiry or termination

28.1 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 maximum of 35 days 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).

28.2 Confidential Information and intellectual property

Subject to clauses 23 and 28.1 and any requirements at Law applicable to the parties, on the expiry or termination of this Agreement, the Supplier and its Personnel must unless otherwise agreed in writing by the Customer 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.

29. Warranties

29.1 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.

29.2 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.

29.3 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.

29.4 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 29.4) 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.

30. Indemnities and liability

30.1 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 Party or any of the Supplier's Personnel;
- (b) breach of the Supplier'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) (which are subject to the liability cap set forth in clause 30.5(d) below);
- (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 17.14, however, the Customer must:
 - (i) promptly notify the Supplier as soon as reasonably practical of any such Claim;
 - (ii) allow the Supplier control of the defense of any such Claim and of all negotiations for its settlement or compromise, so long as such settlement or compromise does not result in payment of money by the Customer or an admission of guilt by the Customer; and
 - (iii) reasonably cooperate with the Supplier to facilitate the settlement or defense of the Claim. If the Customer chooses to represent its own interests in any such action, the Customer may do so at its own expense, but such representation must not prejudice the Supplier's right to control the defense of the Claim and negotiate its settlement or compromise; and
- (d) of the Supplier's or its Personnel's fraud, recklessness or Wilful Misconduct.

30.2 Third Party IP Claims

- (a) In relation to Claims of the kind referred to in clause 30.1(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:
 - (i) 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:
 - A. such combination, operation or use is authorised under this Agreement;
 - B. 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;
 - C. 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; or
 - D. the Claim arises directly from Customisations; and
 - (ii) 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.
- (b) If the Cloud Services are the subject of an Intellectual Property Rights infringement claim, then the Supplier, at its sole option and expense, will either:

- (i) obtain for the Customer the right to continue using the Cloud Services per the terms of this Agreement;
- (ii) replace the Cloud Services with products or services that are substantially equivalent in function, or modify the Cloud Services so they become non-infringing and substantially equivalent in function; or
- (iii) if (i) or (ii) are not available on commercially reasonable terms, terminate the applicable SOW and refund to Customer the un-used portion of the Fees that have been paid by the Customer in advance in respect of the Cloud Services.

30.3 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.

30.4 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.

30.5 Liability cap

- (a) Subject to clause 30.5(c) and 30.5(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 30.5(a), the "**Limitation Amount**" means the amount specified in Item 24 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 24 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
<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>	

- (c) The Supplier's liability under this Agreement is uncapped, and the limitation of liability set out in clause 30.5(a) does not apply in relation to each of the following:
- (i) liability arising under any of the indemnities in clause 30.1 (but subject to clause 30.5(d)); and
 - (ii) the Supplier's abandonment or repudiation of its obligations under this Agreement.
- (d) In relation to the Supplier'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), the Supplier's liability is limited to an amount equal to:
- (i) the greater of:
 - (A) [REDACTED] paid or payable by the Customer for the period of 12 months immediately preceding the date such liability first arose; and
 - (B) [REDACTED]
- (the **Super Cap Amount**).

30.6 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 30.6(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;
 - (ii) where the Customer is the recovering party:
 - A. any Loss against which the Supplier is required to indemnify the Indemnified Entities under clause 30.1, to the extent such Loss relates to monies, amounts or liabilities owed, due, paid or payable, or obligations owed, to a third party; and
 - B. 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 30.6(b)(i)):
 - 1) repairing or replacing the relevant Deliverable or New 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;
 - 2) implementing any reasonably necessary temporary workaround in relation to the New Software, Services or Deliverables;
 - 3) 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

- 4) activities undertaken by, or on behalf of, the Customer in connection with the mitigation of Loss;
- (iii) where the Supplier is the recovering party, the Customer's infringement or misappropriation of the Supplier's Intellectual Property Rights; and
- (iv) where either party is a recovering party, disclosure of Confidential Information in breach of the Agreement or either party's wilful misconduct.

30.7 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 30 only apply to the extent permitted by Law.

30.8 Mitigation

The Supplier's obligation to indemnify the Indemnified Entities against Loss under clause 30.1 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.

31. Dispute resolution

31.1 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 clause 31.2.
- (b) Either party may give written notice of a dispute to the other party setting out the particulars of the dispute (**Dispute Notice**).
- (c) Nothing in this clause 31 limits the ability of either party to commence legal action against the other party for urgent interlocutory relief.

31.2 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 31.2(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.

31.3 Acknowledgment

The parties acknowledge and agree either party may commence any other form of dispute resolution to determine the dispute, however not until the procedure set out in clause 31.2 has been complied with in relation to the dispute.

31.4 Costs

Each party will bear its own costs in respect of complying with this clause 31.

31.5 Continue to perform

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

32. Force Majeure

32.1 Force Majeure Event

Subject to clauses 32.2 and 32.3, 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.

32.2 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.

32.3 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.

32.4 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 26.1(c).

33. Reports and audits

33.1 Records and reports

The Supplier must keep and maintain true and accurate records and accounts of:

- (a) all of the Supplier's Activities performed under this Agreement;
- (b) the Supplier's compliance with its obligations under this Agreement; and
- (c) all associated records and accounts, including all supporting material, used to generate and substantiate the Invoices that it submits under this Agreement.

33.2 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 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 33, 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 (without unreasonably interfering with the Supplier's business activities, and only during regular Australian business hours):
 - (i) upon Supplier's reasonable request will execute a deed of confidentiality in the format of Schedule 4 or such other deed in favour of the Supplier (Deed of Confidentiality and Privacy), prior accessing the facility;

- (ii) access the premises and facilities of the Supplier to the extent reasonably required to carry out the audit or inspection;
- (iii) 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
- (iv) require assistance in respect of any inquiry into or concerning the Supplier's Activities, including any parliamentary or statutory review or inquiry,

as long as such access, inspection and copy of documents, resources and books and records, is not in breach of the required confidentiality obligations under this Agreement, and will not lead to unsanctioned publication of Supplier's Confidential Information in breach of the terms of this Agreement.

- (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 33.2(a) 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;
 - (ii) Customer or its nominee must comply with the Supplier's reasonable security requirements during such physical access; and
 - (iii) Customer or its nominee must comply with the requirements on confidentiality set out under this Agreement, as well as any other reasonable requirements related to such physical access to the Supplier's facilities.
- (e) The Supplier must use best endeavours to provide all reasonable access, assistance and co-operation required by the Customer or its nominee in carrying out an audit under this clause 33.2.
- (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 █████ 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 33.2(f)(ii), each party must bear its own costs of executing its rights under, or complying with, this clause 33.

Proactive Audit for Cloud Services.

- (h) The Supplier will conduct audits of its security controls applied to processing Customer Data for Cloud Services, as follows:
- (i) The Supplier must ensure that each audit will be performed:
 - A. according to the rules of the official accreditation body for each applicable control standard or framework; and
 - B. by qualified, independent, third party security auditors at the Supplier's selection and expense.
 - (ii) The Supplier must ensure that each audit will result in:
 - A. the generation of an audit report which the Supplier must make available to the Customer through the Supplier's Support portal or alternate equivalent method; and/or
 - B. a resulting certificate which the Supplier must make available to the Customer at <https://trust.infor.com>,

and such reports are the Supplier's Confidential Information and subject to non-disclosure and distribution limitations of the Supplier and the auditor.

Supplemental Audit.

- (i) The Customer may audit the Supplier's compliance with the Data Protection Requirements and its processing of Customer Data (including auditing the Supplier's IT security practices and applicable control environments) more than once a year in the event that:
 - (i) the Supplier has not provided sufficient evidence of its compliance with the technical and organizational measures described in this Agreement;
 - (ii) a Security Incident has occurred;
 - (iii) the Supplier has notified Customer that it is subject to an access request from an Authority;
 - (iv) an audit is formally requested by Customer's data protection Authority; or
 - (v) a mandatory Data Protection Requirement allows the Customer a direct audit right (and provided that Customer will only audit the Supplier once in any 12-month period unless mandatory Data Protection Requirements requires more frequent audits).
- (j) Before the commencement of an audit under clause 33.2(i), Customer and the Supplier will mutually agree upon the scope, cost, timing, duration, control and evidence requirements. Customer may use an independent accredited third party audit firm to perform the audit on its behalf, provided the third party auditor is not include a third party auditors who is either a competitor of the Supplier or not suitably qualified or independent. The Customer agrees that the audit will be conducted without unreasonably interfering with the Supplier's (or the Supplier's Subprocessor's) business activities, during regular business hours with reasonable advance notice, and subject to the Supplier's (or the applicable Subprocessor's) security policies and confidentiality procedures. Where on-site audits of physical data centers, systems, or facilities are not permitted, the Supplier must work with the Customer (and the Subprocessor if applicable) to reach a mutually agreeable resolution sufficient to provide information necessary for the Customer to comply with audit requirements under the applicable Data Protection Requirements. Neither the Customer, nor the auditor, shall have access to any data from the Supplier's

other customers or to the Supplier's systems or facilities not involved in the Services provided to the Customer.

- (k) Each party is responsible for its own costs and Fees related to the audit, unless such audit reveals a material breach by the Supplier of this Agreement, in which case the Supplier must bear both parties' expenses arising from that audit, which have been mutually agreed prior to the start of such audit.

33.3 Conduct of audits and inspections

The Customer and its nominee must, in conducting an audit or inspection under this clause 33:

- (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).

33.4 Survival

This clause 33 survives for the Term and a period of seven years following the termination or expiry of this Agreement.

34. 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 34(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

35. General

35.1 Exports

- (a) The parties acknowledge and agree that:
- (i) certain Export Laws may apply to the supply of the Deliverables and associated Materials; and
- (ii) these Export Laws may include Export Laws in Australia.
- (b) The parties will take all necessary steps within their control to ensure that no Deliverables or Materials resulting from the Agreement will be:
- (i) exported, directly or indirectly, in breach of any applicable Export Laws;
or

- (ii) used for any purpose prohibited by such Export Laws, including nuclear, chemical or biological weapons proliferation or development of missile technology.
- (c) The Supplier has informed the Customer that any Supplier's Software and Cloud Services are U.S. origin and are subject to U.S. export control laws and other applicable export and import laws. Accordingly, the Customer agrees that it will not export, reexport, transfer, or use the Software or Cloud Services outside of Australia.

35.2 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 35.
- (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 35.2(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 35.2(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 35.2, 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.

35.3 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.

35.4 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.

35.5 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.

35.6 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. Each party acknowledges that, in entering into this Agreement, it does not rely upon, and shall have no remedy in respect of, any statement or representation of any person other than as expressly set out in this Agreement.

35.7 Variation

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

35.8 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, 19, 20, 21, 23, 25(a)(iv), 26.4(a), 27, 28, 29.4, 30.8, 33, 34 and this clause 35; and
 - (ii) any other provisions that are expressed to or which by their nature survive termination or expiry.

35.9 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.

35.10 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.

35.11 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.

35.12 Further assurances

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

35.13 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 to an entity who is:
 - (i) subject to sanctions imposed by the Australian Government; or
 - (ii) is based in country subject to sanctions imposed by the Australian Government;
- (b) Furthermore, the Supplier must ensure that it has completed due diligence on the financial good standing of the assignee/transferee and that the entity is not subject to any sanctions or limitations.
- (c) 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 terminate as a result of an assignment or novation (acting reasonably).

- (d) Subject to clause 35.13(e), 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.
- (e) Notwithstanding clause 35.13(d), 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.
- (f) Any rights of Customer to assign are conditioned upon the Customer is not in breach of this Agreement and such successor has agreed, in writing to the non-assigning party, to assume all obligations of the assigning party hereunder. Any such assignment by Customer must be in its entirety. Supplier agrees to co-operate in good faith and provide all reasonable assistance to execute documentation to effectuate an assignment by the Customer in respect of any such assignment or novation made by the Customer under this clause 35.13.
- (g) The Supplier must (to the extent permitted by Law):
 - (i) notify the Customer if the Supplier or any parent company of the Supplier undergoes a Change in Control or Other Changes, as soon as it becomes aware that the Change in Control or Other Changes has occurred; and
 - (ii) provide the Customer with all public 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.

35.14 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 35.14 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 35.14.

35.15 Construction

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

35.16 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.

35.17 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.

35.18 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:

This document was signed in counterparts and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed for and on behalf of The Council of the City of Sydney ABN 22 636 550 790 by its authorised representative, but not so as to incur personal liability, in the presence of:

Signed by:
[Redacted Signature]

D72EC22111484AF...
Signature of witness

[Redacted Name]

Name of witness in full

Date: 19/12/2024 | 1:52:07 PM AEDT

Signed by:
[Redacted Signature]

5D95DC21FD6D4B4...
Signature of authorised representative

[Redacted Name]

Name of authorised representative in full

Executed by Infor Global Solutions (ANZ) Pty Limited ABN 25 003 538 314 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signed by:
[Redacted Signature]

EC9A818C6716476...
Signature of Secretary/other Director

[Redacted Name]

Name of Secretary/other Director in full

Signed by:
[Redacted Signature]

08C2F5F1CDE54DA...
Signature of Director or Sole Director and Secretary

[Redacted Name]

Name of Director or Sole Director and Secretary in full

Signed by:
[Redacted Signature]

94E1A6BFB95742E...
Signature of witness

[Redacted Name]

Name of witness in full

Signed by:
[Redacted Signature]

94E1A6BFB95742E...

[Redacted Name]

Date: 19/12/2024 | 12:33:05 PM AEDT

Schedule 1 - Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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 Documents 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.

Additional Activities has the meaning given to that term in clause 6.8(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 and which are stated or referenced in Item 9 of the Order Form.

Additional Order means an Additional Order for Services and/or Deliverables that is placed in accordance with item 8 of the Order Form or clause 3.3.

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.

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 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 3 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.

Cloud Period has the meaning given to that term in clause 17.6(b)(ii).

Cloud Services means the Cloud Services identified in the Order Documents, which also includes:

- (a) online access to Supplier's Software-as-a-Service; and
- (b) any Platform-as-a-Service or Infrastructure-as-a-Service identified in the Order Documents,

including all related features and functionality, as well as related Support Services.

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

Common Vulnerability Scoring System or **CVSS** means the published standard developed to capture the principal characteristics of a vulnerability and produce a numerical score between 0 and 10 reflecting its severity, as further described at <https://www.first.org/cvss/v4.0/specification-document>.

Competitors means entities located in Australia that provide cloud services to local councils that have substantially similar functionality to the Cloud Services that the Supplier is providing to the Customer under this Agreement.

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.

Core Terms means clauses 1 to 35 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 24.2(a) to 24.2(b) and satisfies any additional criteria relating to Invoices specified in the Order Documents.

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 Statement of Work.

Critical Risk means a vulnerability or threat that has a score of 9.0 or more on the Common Vulnerability Scoring System.

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

Customer means the entity named as such on the first page of this Agreement.

Customer Data means in relation to the Cloud Services 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, as applicable to the respective Services, 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 1 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 Statement of Work to be provided by the Customer to the Supplier.

Customer User(s) means any Personnel of the Customer, any other persons specified in the Order Form, and any other persons that the Customer permits to access and/or use the Deliverables or Services.

Customisations means any additional manual add-ins or code injections made into the configuration of the On-Premise Software solely by the Customer in the on-premise environment without the Supplier's prior written consent. Support Services for Customisations are not included as part of the Services and may only be purchased pursuant to a separate Statement of Work under this Agreement between the parties.

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;
- (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 agreed by the parties in Item 18 of the Order Form.

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 30.5(b).

Defect means:

- (a) with respect to Cloud Services, a material deviation between the then current general release of the Cloud Service and the specifications set out in the User Documentation applicable to the Cloud Services; and
- (b) with respect to Deliverables and Services other than Cloud Services, means a material 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 6.6(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 31.1(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).

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.

Export Laws means all applicable export and re-export control laws and regulations in Australia.

Fees means the fees, charges and other amounts 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.

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).

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).

High Risk means a vulnerability or threat that has a score of 7.0 – 8.9 on the Common Vulnerability Scoring System.

ICT means information and communication technologies.

Indemnified Entities means the Customer, Customer Users, and 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 Schedule 2 (Order Form).

Key Milestone means a Date for Delivery of a Deliverable, or for the completion of a particular Service, that is specified as such in the Payment Particulars or Order Documents, as may be adjusted under the 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 jurisdiction where the Supplier operates to provide the Services to the Customer or where Customer operates to use the Services (including the Commonwealth or any State or Territory government), and any applicable common law and rule or principle of equity, as respectively applicable to the parties.

Licensed Software means:

- (a) the perpetual software set out in the Order Documents that the Supplier licensed to the Customer pursuant to the existing Perpetual Software Licence Agreements, (and excluding any software accessible in connection with Cloud Services); and
- (b) any Updates or New Releases of that software that may be provided to the Customer from time to time under the terms of this Agreement.

New Software means:

- (a) on-premise software provided by the Supplier to the Customer which is not Licensed Software; and
- (b) any Updates or New Releases of New Software that may be provided to the Customer from time to time under the terms of this Agreement.

Limitation Amount has the meaning given to that term in clause 30.5.

Liquidated Damages means any damages specified as such in an Order Document 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.

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.

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, New Software and Cloud Services by providing additional functionality or performance enhancement (whether or not Defects in that Licensed Software, New Software and Cloud Services are also corrected) while still retaining the original designation of the Licensed Software, New Software and Cloud Services. 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, including any Personnel of the Supplier specifically named in the Order Documents, any Personnel of the Supplier identified as Nominated Personnel in the Order Documents and any Personnel of the Supplier agreed as being Nominated Personnel by the parties in writing.

Notice has the meaning given to that term in clause 35.14.

On-Premise Software means Licensed Software and New Software.

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 <https://opensource.org/>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <https://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 Documents, and includes an Additional Order.

Order Documents means:

- (a) the Order Form; and
- (b) all applicable Plans.

Order Form means:

- (a) the document set out at Schedule 2;
- (b) any Additional Order;
- (c) any Statement of Work or Supplier's Documents; 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 or the Statement of Work.

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 Purpose means the use and purposes specified in clause 17.6(c) and any other purposes specified in the Order Documents.

Perpetual Software Licence Agreements means:

- (a) the Supply and Implementation Agreement and the Software Maintenance Agreement entered into between the Customer and Geac Computers Pty Ltd (ACN 002 862 295) in 2003;
- (b) the letter agreement entered into between the Supplier and the Customer in 2014; and
- (c) the software agreement entered into between the Supplier and the Customer in 2020,

as such agreements are further described in the Solution Description.

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:

- (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) Data Management and Protection Plan;
- (c) Test Plan;
- (d) Transition-In Plan and Transition-Out Plan; and
- (e) any additional plans required to be complied with under this Agreement.

Policies, Codes and Standards means:

- (a) the policies, codes, standards and guidelines and associated requirements specified in this Agreement, including within the Order Documents; and
- (b) 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, as may be applicable to a Party:

- (a) the Data Protection Requirements as defined in this Agreement;
- (b) all applicable legislation protecting personal data as may be amended, supplemented or replaced from time to time, including in particular (without limitations):
 - (i) the GDPR;
 - (ii) for the Supplier, all other applicable laws, regulations, or other legal requirements relating to or impacting the processing of Personal Information in any jurisdiction where the Supplier or its Affiliates operate as a processor for Customer to provide the Cloud Services;
 - (iii) for the Customer, all other applicable laws, regulations, or other legal requirements relating to or impacting the processing of Personal Information in any jurisdiction where Customer group or Affiliates operates as the controller;
 - (iv) the Privacy Act 1988 (Cth);
 - (v) the Privacy and Personal Information Protection Act 1998 (NSW);
 - (vi) the Health Records and Information Privacy Act 2002 (NSW); and
 - (vii) 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:

- A. any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
- B. 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.

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 6.4(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 7 of the Order Form.

Schedule means a Schedule to this Agreement. Those Schedules that are applicable to an Order will be identified in Item 11.

Security Incident means in relation to this Agreement:

- (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;
- (d) any similar events relating to Customer Data or Personal Information 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; and
- (e) any other event as described in the ISP.

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.

Professional Services means:

- (a) the professional 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 professional services which are agreed between the parties. For avoidance of doubt Standard Support Services as well as Cloud Services not Part of the Professional Services.

Services means:

- (a) the services that the Supplier is required to perform or provide under this Agreement as described in the Order Documents;
- (b) any related or ancillary professional services which are agreed between the parties.

Site has the meaning given to that term in clause 6.9(a).

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 Schedule 2 (Order Form).

Subprocessor means a third party subcontractor engaged by the Supplier to process Personal Information.

Supplier means the entity named as such in Item 2 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 3 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 27.2.

Transition-Out Services means any transition-out or disengagement Services provided by the Supplier pursuant to clause 27, 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 On-Premise Software or Cloud Services without significantly altering the Specifications whether or not that On-Premise Software or Cloud Service has also been extended, altered or improved by providing additional functionality or performance enhancement.

User Documentation means:

- (a) in respect of the On-Premise Software and/or Cloud Services, the then-current documentation made generally available through the Supplier's support portal (or alternative online equivalent method) describing in sufficient detail the features, functions, and operation of the Cloud Services or On-Premise Software; and
- (b) in respect of any Deliverables and other Services that are not the Cloud Services, any user manuals, operating manuals, technical manuals, published specifications, security configurations or other documentation that are: specified in the Order Documents.

User Licensing Model means where the New Software and/or Cloud Services (as applicable) is/are licensed to the Customer on a per-user basis.

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:

- (a) for the Cloud Services, the Initial Term and any Renewal Period; and
- (b) for all other Services and Deliverables, 12 months from provision of the Service or Deliverable 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

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's Representative	Generally Schedule 1	Name: [REDACTED] Position: Digital Development Manager Email: [REDACTED] Phone: [REDACTED] or such other person nominated by the Customer from time to time on notice to the Supplier.
2.	Supplier	Generally Schedule 1	Infor Global Solutions (ANZ) Pty Limited ABN 25 003 538 314
3.	Supplier's Representative	Generally Schedule 1	Name: [REDACTED] Position: Director - Sales Email: [REDACTED] Phone: [REDACTED]
4.	Notices for the Customer	35.14(b)	Customer's address: 456 Kent St, Sydney NSW 2000 Customer's email: [REDACTED]
	Notices for the Supplier	35.14(b)	Supplier's address: L21, 8 Chifley Square, Sydney NSW 2000 Supplier's email: [REDACTED]
TERM			
5.	Commencement Date	5.1 Schedule 1	The Commencement Date is the date on which this Agreement is executed by the last party to do so.
6.	Initial Term	5.1 Schedule 1	The Initial Term is 60 months from the Commencement Date.
7.	Renewal Period	5.2 Schedule 1	There are 2 Renewal Periods and each Renewal Period is 24 months in length.
	Notice period for renewals	5.2	30 Days prior to the end of the then-current Term.

No	Item	Ref	Description or selection
ORDERING AND PURCHASING			
8.	Additional Orders	3.3 Schedule 1	<p>Yes, the Customer is permitted to place Additional Orders to:</p> <p>(a) increase the volume or quantum of Services and/or Deliverables, by following the process set out in clause 3.3, subject to the Customer's relevant procurement and delegations policies; and</p> <p>(b) carry out additional Supplier's Activities, including providing:</p> <p>(i) an increased volume or quantum of Services and/or Deliverables; or</p> <p>(ii) providing new, additional, different or alternative services and deliverables that relate to this Agreement,</p> <p>by following the process set out in the Additional Condition titled 'Additional Orders and Further Statements of Work', subject to the Customer's relevant procurement and delegations policies.</p>
9.	Additional Conditions	3.5 Schedule 1	The Additional Conditions are as set out in Annexure C (Additional Conditions) to this Order Form.
10.	Reseller arrangements	3.6	Not applicable.
11.	Schedules	Generally Schedule 1	<input checked="" type="checkbox"/> Schedule 1 - Definitions and interpretation <input checked="" type="checkbox"/> Schedule 2 - Order Form <input checked="" type="checkbox"/> Schedule 3 - Change Request Form (Note: The Change Request Form should be included for all Orders.) <input checked="" type="checkbox"/> Schedule 4 - Deed of Confidentiality and Privacy
SUPPLIER'S ACTIVITIES			
12.	Scope	Generally	<p>Under this Agreement, the Supplier must provide:</p> <p><input checked="" type="checkbox"/> Cloud Services</p> <p><input checked="" type="checkbox"/> Professional Services (other than Cloud Services)</p> <p><input checked="" type="checkbox"/> On-Premise Software (to the extent described under the Software Module)</p> <p><input type="checkbox"/> Hardware</p>
13.	Policies, Codes and Standards	12.1(c) Schedule 1	The Supplier must comply with (and must ensure that its Personnel comply with) and to the extent applicable, ensure that the Deliverables and Services comply with ISO27001 Information Security Standard or equivalent.

No	Item	Ref	Description or selection
14.	Deed of Confidentiality and Privacy	11.4(a) Schedule 1	If requested by the Customer from time to time, the Supplier must require the Supplier's subcontractors engaged to provide Professional Services on behalf of the Supplier to sign a Deed of Confidentiality and Privacy.
15.	Permitted subcontractors	11.5(a)	Is the Supplier permitted to subcontract? Yes, subject to the Subprocessor terms in clause 11.5(g) in the Agreement and only to the permitted subcontractors specified in Annexure D to this Order Form, and only with respect to the services stipulated in Annexure D to this Order Form.
PERFORMANCE AND DELIVERY			
16.	Acceptance Testing	14 Schedule 1	<p>The default position (i.e. Acceptance Testing as set out in clause 14 is required).</p> <p>With respect to Acceptance Testing for the single tenant Cloud Services, the following testing process applies:</p> <p>(a) Upon completion of the implementation and the go-live phase of the Cloud Services, the Supplier must ensure that the Customer is involved in the approval and scheduling process for all Updates and New Releases, including:</p> <ul style="list-style-type: none"> (i) providing the Customer with before and after notifications as agreed upon in Supplier or Customer-initiated Change Requests; (ii) using best efforts to accommodate the Customer's requests with respect to maintenance windows; and (iii) providing the Customer with all maintenance schedules if the Customer logs an incident via Infor Concierge. <p>(b) The Supplier must ensure that:</p> <ul style="list-style-type: none"> (i) the Supplier's scheduled maintenance windows are positioned accordingly to minimize the impact to Customer's operations, and are only undertaken during the Customer's local business hours; and (ii) any patches, Updates or New Releases that require downtime must be scheduled during a time that is convenient to the Customer's business schedule. <p>(c) The Supplier must alert the Customer if an Update or New Release is available by sending the Customer a notice via the Supplier's Support portal. The Customer may then enter a request to install the Update or New Release via the Supplier's support portal. Once the Customer has initiated such request, the Supplier's cloud operations team will then coordinate and schedule the deployment, and will then ensure such Update or New Release is deployed in the test environment. The Supplier must ensure that Customer is then able to perform a functional test on the newly installed Update or</p>

No	Item	Ref	Description or selection
			<p>New Release and once approved by the Customer, the Customer will then submit a new request via the Supplier's Support Portal and after receiving such approval the Supplier must install the Update or New Release to the Customer's production environment. Depending on the impact of what Update or New Release is to be installed, the Customer may require a full production backup to be performed by the Supplier's cloud operations team prior to the implementation in the Customer's production environment.</p> <p>(d) The Supplier must ensure that all changes to the single tenant Cloud Services during maintenance windows is noted within the release notes and made available to the Customer at all times through the Supplier's support portal.</p>
		14.1	Not applicable
		14.2 Schedule 1	Acceptance Tests are to be performed, as further described in the Statement of Work. This will apply also to the Licensed Software and New Software as agreed by the parties in the respective Statement of Work.
INTELLECTUAL PROPERTY			
17.	Ownership of Existing Materials	17.1	The default position applies in all circumstances.
	Licence to use Existing Materials	17.2(a) 17.2(c)	<p>The parties agree 17.2(a) is deleted in its entirety and replaced with the following:</p> <p>“(a) The Supplier grants to the Customer a non-exclusive, non-transferable, revocable, royalty-free licence to use, copy, adapt and modify any Intellectual Property Rights in the Supplier's Existing Materials solely for the purposes of:</p> <ul style="list-style-type: none"> (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




No	Item	Ref	Description or selection
			<p>Crown, including any statutory requirements concerning State records or auditing.</p> <p>The default position applies in relation to the Supplier’s licence to the Customer’s Existing Materials (clause 17.2(c)). The Supplier acknowledges and agrees that the Supplier’s licence to the Customer’s Existing Materials (granted under clause 17.2(c)) is not perpetual and ends when this Agreement expires or is terminated for any reason.</p> <p>Notwithstanding the foregoing, the parties acknowledge and agree that the scope of the license related to the Licensed Software are subject of the respective Perpetual Software Licence Agreements and are out of scope of this ICT Agreement.</p> <p>For clarity, Cloud Services are licensed on the terms of the Cloud Module.</p>
	Ownership of New Materials	17.3	The default position applies in all circumstances.
	Licence to use New Materials	17.4(a) 17.5 17.6 17.7 17.8 17.9 17.10 17.11 17.12 17.13 17.14 17.15	<p>Clauses 17.3(a) and 17.4(a) applies (i.e. the Supplier owns the New Materials, and these are licensed to the Customer in accordance with clause 17.4(a)).</p> <p>In relation to the perpetual Licensed Software, the parties acknowledge that such perpetual Licensed Software is perpetually licensed under the previously agreed Perpetual Software License Agreements, and such perpetual licence grant is not covered by this Agreement.</p> <p>In relation to the Professional Services, the parties acknowledge and agree that the Supplier owns and shall own all proprietary rights to any work product provided under a Statement of Work for the Professional Services under this Agreement, (the “Work Product”), provided that:</p> <ol style="list-style-type: none"> 1. to the extent such Work Product contains Customer Data or the Customer’s Confidential Information, the Customer will continue to own all proprietary and Intellectual Property Rights in such Customer Data and Customer Confidential Information; 2. the Supplier’s ownership of New Materials and any Existing Materials does not prevent the Customer from maintaining and continuing to conduct its operational practices, processes and procedures; and 3. the Customer will continue to own all Intellectual Property Rights in its operational practices, processes and procedures, to the extent that such Intellectual Property Rights exist. <p>In relation to the Work Product:</p> <ol style="list-style-type: none"> 1. subject to paragraph (2) below, the Supplier grants the Customer a non-exclusive, non-transferable, royalty-free licence to use, modify, adapt and make a reasonable

No	Item	Ref	Description or selection
			<p>number of copies of the Work Product for the internal operations of City; and</p> <p>2. the Supplier grants the Customer a non-exclusive, worldwide, transferable, perpetual, royalty-free licence to use, copy, adapt, reproduce, communicate, distribute and otherwise exploit (excluding the right to commercialise) the elements of graphics, design, organisation, presentation, layout, user interface, navigation and stylistic convention (including the digital implementations thereof) that are generally associated with the Customer and which are included in any Work Product for Customer’s own business operations.</p>
	Cloud Services – Cloud Period	17.6(b)(ii)	The Cloud Services must be provided for the duration of the Term, in accordance with the SaaS Solution Description attached at Annexure E to this Order Form .
	Cloud Services – scope of licence	17.6(c) and 17.7	<p>Scope of licence (clause 17.6(c)) is not applicable to the Cloud Services.</p> <p>Customer acknowledges and agrees that the Cloud Services and User Documentation are provided or made available in accordance with this Agreement and the Cloud Module, and subject to the following terms:</p> <p>Subject to this Agreement and the applicable Supplier Document(s) attached hereto entitled Solution Description, including applicable “User Restrictions” identified therein, the Supplier hereby grants the Customer:</p> <ul style="list-style-type: none"> (i) the right, for it and its Customer Users to access, in the Supplier’s operating environment, the Cloud Services specified in the Solution Description, during the Initial Term or any Renewal Period, solely for the internal operations and business purposes of the Customer; and (ii) a non-exclusive, non-transferable license (without the right to sublease or sublicense) to make a reasonable number of copies of User Documentation for the internal operations of the Customer in accordance with this Agreement. <p>Customer shall ensure Customer Users comply with the Agreement and applicable User Restrictions and shall be liable for any noncompliance by Customer Users.</p> <p>The Service Levels in respect to the Cloud Services are described in the Service Level Agreement (SLA) as well as availability, scheduled maintenance, business continuity, disaster recovery, the current version is attached to the Solution Description, which forms part of the Ordering Documents.</p> <p>The Information Security Plan (ISP) is setting forth the security measures with respect to the Cloud Services and forms part of the Ordering Documents as a Supplier’s Document. ISP may change from time to time but without degrading the terms</p>

No	Item	Ref	Description or selection
			<p>stated and could be found at https://www.infor.com/security-plan.</p> <p>Customer and Customer Users are prohibited from (i) attempting, causing or permitting the reverse engineering, disassembly or de-compilation of the Cloud Services (ii) using the Cloud Services to provide service bureau services to, or to otherwise provide data processing services for the benefit of, third parties; (ii) allowing the Cloud Services or Documentation to be used by, any person except Customer Users; iv) removing or altering any Intellectual Property Rights notice(s) embedded in, or that Supplier otherwise provides with, the Cloud Services or User Documentation, (iii) violating or circumventing any restrictions specified in this Agreement.</p> <p>Customer acknowledges the Cloud Services are subject to U.S. export control laws and other applicable export and import laws. Customer and Customer Users will not export, reexport, transfer, or use the Cloud Services in violation of applicable export or import laws, economic sanctions laws, or other applicable laws.</p> <p>In addition to the rights to access Cloud Services as stated immediately herein above, Cloud Services may be used by the Customer for any administrative, business or operational purpose of the Customer.</p>
	Licensed Software – licence period	17.6(b)(ii)	Clause 17.6(b)(ii) is inapplicable, as the Customer has already licensed the perpetual software under the existing Perpetual Software Licence Agreements.
	Licensed Software – scope of licence	17.6(c) and 17.7	17.6(c) and 17.7 are inapplicable, as the Customer has already licensed the perpetual software under the existing Perpetual Software Licence Agreements.
DATA AND SECURITY			
18.	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 Australia, except as expressly permitted in the Data Location Conditions.
	Data Location Conditions	19.3(b) Schedule 1	<p>Clause 19.3(b) and Clause 20.1(a)(v) does apply to the extent that the Supplier and its Personnel are permitted to access the Customer Data outside of Australia to provide the Support Services and for the processing the Cloud Services in accordance with the restrictions set out below:</p> <ol style="list-style-type: none"> For Support Services, the Supplier and its Personnel may remotely access (“viewing-only”) limited amounts of the Customer Data from Australia, Belgium, Czech Republic, Germany, India, United Kingdom, United States, Mexico and Philippines solely for the purposes of providing Support Services to the Customer. For clarity, the Supplier is not permitted to extract or store a subset of the Customer Data outside of Australia under any circumstances (other than a temporary cache copy of the support ticket). By listing the locations, it does not necessarily mean that (i) Support will be provided from all

No	Item	Ref	Description or selection
			<p>those countries; (ii) Personal Information will be accessed from all those locations. The Supplier has the right to change Support locations in accordance with the process stipulated in clause 11.5(g).</p> <p>2. For the processing of Cloud Services, the Supplier and its Personnel may remotely access ('viewing only') and process limited amounts of Personal Information from the locations listed in Annexure D, for the purposes of providing the services as described in Annexure D.</p>
19.	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 (a) when on the Customer's premises; (b) who are granted an internal email account from the Customer; (c) when accessing Customer Data or CSI; or (d) when accessing any of the Customer's facilities, computer systems, equipment and information, comply with:</p> <p>(i) the Customer's policies as made available or advised by the Customer from time to time and amended or supplemented by the Customer from time to time, including the Customer's:</p> <ul style="list-style-type: none"> A. IT Systems Security Policy; B. Third Party Access Management Procedure; C. IT Network Access Control Standard; D. Code of Conduct; E. Internet Policy; F. Email Policy; G. Social Media Policy; H. Mobile Device Policy; I. Records Management Policy; J. IT Products and Services Acquisition, Management and Retirement Policy; K. Privacy Management Plan; L. Access to Information Policy; and M. Digital & Print Accessibility Policy; and <p>(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), including that the Supplier must ensure that its Personnel:</p>

No	Item	Ref	Description or selection
			<p>A. provide proof of identity prior to being issued with a Customer contractor identification pass;</p> <p>B. clearly display their Customer issued contractor identification pass when on the Customer's premises; and</p> <p>C. return the identification pass to security or issuing person prior to departure.</p> <p>(b) The Supplier must ensure that all of the Supplier's Personnel who attend the Customer's premises or who are granted an internal email account from the Customer, undertake all training and other similar things required by the Customer in relation to the onboarding of such Personnel.</p>
	Security certifications	21.2(d)	The Supplier must have, obtain and maintain from the Commencement Date and for the duration of the Supplier's Activities ISO27001 Information Security Standards certification (or equivalent) from an accredited, independent, third party register or accredited, independent third party certification body.
20.	Backup of Customer Data	19.4	<p>The Supplier is required to make and securely store backup copies of Customer Data as part of the Supplier's Activities under and in accordance with this Agreement, including as described in Supplier's Document (Data Management clause of the SaaS Delivery Guide).</p> <p>For clarity, for the single tenant production environment of the Cloud Services, the Supplier must ensure that:</p> <p>(i) transaction log backups are retained for 14 days;</p> <p>(ii) differential backups are retained for 14 days; and</p> <p>(iii) full backups are retained for 14 days.</p>
	Retention of Customer Data	19.7	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 under and in accordance with the terms of this Agreement, including as described in Supplier's Document (Data management clause in SaaS Delivery Guide).
FEES AND PAYMENT			
21.	Supplier's nominated bank account	24.3(a)(i)	The Supplier's bank account to which payments will be made will be as notified to the Customer by the Supplier in connection with the Customer's standard supplier on boarding process.

No	Item	Ref	Description or selection
RISK ALLOCATION AND MANAGEMENT			
22.	Insurance	25(a)	<p>The Supplier must hold and maintain each of the following types of insurances, for the periods and in the amounts specified below:</p> <ul style="list-style-type: none"> (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; and (iv) professional indemnity insurance with a limit of cover of at least \$10 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.
	Cyber security and other insurances	25(a) 25(b)	<p>The Supplier is required to hold:</p> <ul style="list-style-type: none"> (i) cyber security insurance with a limit of cover of at least \$10 million in respect of each claim, 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 or use of Personal Information.
23.	Termination for convenience	26.2(b)(ii)B	<p>Pursuant to clause 26.2, in case of termination for convenience, Customer agrees to immediately pay the Supplier the termination Fees stated in the column   </p>
24.	Limitation Amount	30.5(b)	The Default Amount as agreed applies.
25.	Prolonged Force Majeure Event	32.4	Fourteen (14) days.

Annexure A to Order Form – Supplier's Documents

The following documents are incorporated as Supplier's Documents into this Annexure A:

1. Infor Information Security Plan version 3.24 dated 2024;
2. Infor Support Operations Handbook version 4.9 published August 2024; and
3. Infor Software as a Service (SaaS) Delivery Guide dated 2023.



Information Security Plan

Scope: This Information Security Plan (“ISP”) is incorporated into the Order Form between Infor and the Customer named therein and sets forth Infor’s current security measures that are designed to safeguard:

- i. the hardware, equipment, and systems software configuration on which Infor provides:
 - a. Cloud Services (for clarity Cloud Services includes Support)
 - b. Professional Services, and
 - c. Support with respect to On-Premise Software

(all such hardware, equipment, and systems software configuration are collectively defined in this ISP as the “Systems”, and the Cloud Services, Professional Services and On-Premise Software Support are collectively defined in this ISP as the “Services”); as well as

- ii. Customer data provided to Infor, either:
 - a. as Customer Data, or
 - b. as provided to Infor for purposes of performing Professional Services and/or Support from within Infor's environment

(all such data is collectively defined in this ISP as “Data”).

Definitions: Capitalized terms used in this ISP and not defined within this ISP have the meaning given such terms in the Software Agreement between Infor and such Customer (the “Agreement”).

Exclusions: This ISP is not applicable: (i) to Infor Professional Services arrangements where Customer’s On-Premise Software is hosted by Infor pursuant to a separately negotiated Professional Services agreement, or (ii) when Infor is performing services on the Customer’s premises and/or is given access to Customer’s systems. In such cases, Infor shall comply with Customer’s administrative, technical, and physical conditions as mutually agreed in a statement of work, and in connection with any such access to Customer’s systems Customer shall be responsible for providing Infor personnel with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Customer deems appropriate.

Updates: Security threats, and the measures designed to protect against those security threats, are continually evolving, and Infor may change this ISP at any time without notice to Customer, provided Infor maintains a comparable or better level of security in the aggregate for the Systems and Data.

1. General Security Standards

Infor maintains administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of the Systems and Data which are: (i) no less rigorous than those maintained by Infor for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) required by applicable laws.

1.1. Security Officers

Infor has appointed one or more security officers responsible for coordinating and monitoring the security measures in this ISP.

1.2. Access Controls

Infor implements access controls to Data, including, without limitation, the following measures:

- i. Infor assigns a unique ID to each person with computer access to Data.
- ii. Infor identifies personnel who may grant, alter or cancel access to Data, and restricts access to Data on a least-privilege basis. Access to Data is allowed only to personnel who have a “need-to-know” for delivering Services, and Infor maintains and updates a record of such personnel. Access to Data is logged and monitored.
- iii. Infor instructs Infor personnel with access to Data to disable administrative sessions when computers are left unattended.
- iv. Infor deactivates Infor’s employees’ accounts from applications or data stores which contain Data when such employees are terminated or transferred, or when they no longer require access to such Data. Infor regularly reviews the list of people and services with access to Data and removes accounts that no longer require such access. Infor performs this review biannually at a minimum.
- v. Infor does not use manufacturer-supplied defaults for passwords and other security parameters on any Systems. Infor mandates the use of system-enforced “strong passwords” according to generally accepted industry best practices on all Infor’s Systems. Infor requires that all passwords and access credentials be kept confidential and not be shared among personnel, and Infor deactivates passwords that are known to have been corrupted or disclosed.
- vi. Infor maintains an “account lockout” by disabling accounts with access to Data when an account exceeds a specified number of consecutive incorrect password attempts.
- vii. Remote access to Systems holding Data requires two-factor authentication (e.g., requires at least two separate factors for identifying users).

1.3. Intrusion Detection and Prevention

Infor utilizes an intrusion detection system/intrusion prevention system (IDS/IPS) to monitor its Systems and its procedures for security breaches, violations and suspicious activity. This includes suspicious external activity (including, without limitation, unauthorized probes, scans or break-in attempts) and suspicious internal activity (including, without limitation, unauthorized system administrator access, unauthorized changes to the Systems, Systems misuse or theft, or mishandling of Data). Infor regularly reviews access logs for signs of malicious behavior or unauthorized access.

1.4. Firewall

Infor has implemented and maintains network firewall technologies designed to protect Data accessible from the Internet.

1.5. Updates

Infor keeps the Systems up-to-date with upgrades, updates, bug fixes, and new versions.

1.6. Data Encryption

- i. In transit over public networks, Data is encrypted with, at a minimum, TLS 1.2 or its logical successor.
- ii. While Data is at rest within Systems, Data is encrypted with, at a minimum, AES 256 bit or its logical successor (other than with respect to Support incidents for Infor resold IBM Series i or Z platform solutions).

1.7. Identity Management

Infor leverages a shared security model to distribute responsibility for identity management. Infor has the ability to federate the applications in the Systems back to Customer's identity management provider for authentication purposes.

1.8. Malicious Software

Infor maintains generally accepted industry standard anti-malware/anti-virus software and, to the extent possible, uses near real-time protection features in an effort to provide Cloud Services, or On-Premise Software, that do not contain any "time bombs", "worms", "viruses", "Trojan horses", "protect codes", "data destruct keys", or other programming devices that are intended to (i) with respect to Cloud Services, modify, delete, damage, deactivate or disable Customer Data or to prevent or limit Customer's access to Customer Data or (ii) with respect to On-Premise Software, modify, delete, damage, deactivate or disable Customer's data within the On-Premise Software .

1.9. Physical Security

Facilities containing the Systems will:

- i. be structurally designed to withstand adverse weather and other reasonably predictable natural conditions;
- ii. have appropriate physical environmental safeguards to help protect Systems from damage related to smoke, heat, water, fire, humidity, or fluctuations in electrical power;
- iii. be supported by on-site backup power generating systems; and
- iv. have appropriate controls designed to ensure that only authorised personnel are allowed physical access to the facility.

2. Audit

2.1. Audit Rights

As part of its vendor oversight program, Customer and (if applicable) its governmental regulatory agency may request, once per year in the form of a postal audit (i.e. a questionnaire that is based on ISO 27001), procedural documentation from Infor regarding its information security program, processes and controls. Infor agrees that to the extent such procedural documentation is readily available, Infor will supply such documentation that Customer may reasonably request, so long as such documentation does not: (a) threaten the confidentiality, integrity or availability of data or services of Infor's other customers or (b) violate the confidentiality, integrity and availability of data or services of third parties providing Services to Customer on behalf of Infor. Procedural documentation provided by Infor will not include evidence (for example, but not limited to, proof of training, proof of testing, results of risk assessments). Infor will respond to the questionnaire within 30 days; if this timeframe

cannot be met, Infor will work with the Customer to arrive at a mutually agreed to reasonable time frame for completion. All such documentation shall be Infor's Confidential Information. Infor will not consider Customer findings resulting from this postal audit.

2.2. Third Party Audit

Once in each 12-month period during the Subscription Term, Infor shall, at its cost and expense, engage a duly qualified independent auditor to conduct a review of the design and operating effectiveness of Infor's defined control objectives and control activities in connection with the Cloud Services (excluding Support). Infor shall cause such auditor to prepare a SOC I Type 2 report for all Cloud Services and, for multi-tenant Cloud Services only, a SOC II Type 2 report (collectively, the "Audit Report"). The Audit Report is Infor's Confidential Information, but is available to Customer on the Infor support portal. Customer may share a copy of such Audit Report with its auditors and regulators, provided that the auditors and regulators are informed that such Audit Report is Infor's Confidential Information and must be protected accordingly.

In addition, Infor shall annually, at its cost and expense, engage a duly qualified independent auditor to conduct a review of its information security in connection with certain multi-tenant Cloud Services stated on trust.infor.com, as well as Support for both On Premise Software and Cloud Services, in each case under the International Organization for Standardization (ISO) 27001 standard. Infor shall cause such auditor to prepare a report in accordance with such standard. The audit report will not be available to Customer; however Customer may obtain a copy of the resulting certificate from Infor's cloud security site (trust.infor.com) at any time. The certificate will identify the software subject to the report. As part of this ISO 27001 certification, Infor maintains an Information Security Management System manual for the software included in the certification, and the related Support, which helps to ensure the protection, confidentiality, integrity and availability of Infor assets used to provide such Services.

Additional third party certifications are available at trust.infor.com.

3. Change Management for Cloud Services

Infor follows a change control process that governs the identification and implementation of changes within Infor's Cloud Services delivery resources to help prevent unwanted changes to application source code, interfaces, operating systems or back-end changes to data within existing fields and tables. All requested changes to Infor's Cloud Services delivery resources must follow an implementation change control process. Infor documents and retains a detailed record of its compliance with this process, such as a ticketing system, and records of testing procedures for any change, including without limitation the date and time of any such change and a description of the nature of the change.

4. Segregation of Data; No Exploitation

4.1. Segregation

Data is kept logically separated from Infor's data and the data of any other Infor customer by appropriate technical means.

4.2. No Exploitation; Aggregated Statistics

Data is the Confidential Information of Customer, and Customer owns all proprietary rights to its Data. Infor will not commercially exploit Data and will not access Data other than as needed to perform Services and fulfil its obligations in accordance with the Agreement.

As it relates to Data, Infor may collect Aggregated Statistics, which are the sole property of Infor and are not considered Customer Data. “Aggregated Statistics” are statistical data and performance information, generated through instrumentation and logging systems, regarding Customer’s use and operation of the Services.

5. Asset Management

Infor has a formal asset management process that includes maintaining:

- i. an inventory of assets used to provide Services (“Assets”) designed to identify and establish clear ownership and control of Assets;
- ii. procedures designed to manage the return, destruction, or removal of Data from applicable Assets; and
- iii. procedures designed to protect Assets from threats and vulnerabilities, whether internal or external, deliberate or accidental.

6. Vulnerability Scanning and Penetration Testing

Infor maintains a vulnerability management process to scan for risks resulting from exploitation of published or identified flaws or weaknesses that could be exercised (accidentally or intentionally) and result in harm or unauthorized access to the Systems (“Vulnerabilities”). Infor will address Vulnerabilities within generally accepted industry standard time frames. Infor shall remediate or mitigate Vulnerabilities in a manner commensurate with the risk those Vulnerabilities represent, according to Infor’s defined framework, which is consistent with generally accepted industry standards.

On an annual basis, Infor engages, at its own cost, an independent third party to conduct penetration testing for multi-tenant Cloud Services, including human manual testing, to evaluate the security controls of Systems following generally accepted industry standard methodologies.

For multi-tenant Subscription Software, security testing assessments, including source code scans and Vulnerability scans, are conducted prior to code release and throughout the Cloud Services product lifecycle (i.e., in development and production environments) to help identify potential Vulnerabilities for remediation or mitigation. On an annual basis penetration testing is performed on multi-tenant Cloud Services to identify Vulnerabilities for remediation or mitigation.

7. Information Security Incident Response

If Infor becomes aware that Data has been, or is reasonably expected to have been, subject to a use or disclosure not authorized by the Agreement (an “Information Security Incident”), Infor shall: (i) promptly and without undue delay (and in any event within 48 hours of becoming aware of such Information Security Incident), notify an affected Customer of the occurrence of such Information Security Incident; (ii) investigate and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to Customer; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within Infor’s control; and (v) cooperate with Customer’s reasonable investigation or Customer’s efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident. Upon Customer’s request, and at Customer’s expense, in the event of an Information Security Incident, Infor shall deliver (to the extent allowed by law and subject to appropriate confidentiality protections) copies of records of applicable Systems

activity (solely with respect to the Information Security Incident as it relates to Customer) to Customer for use in any Customer legal or regulatory proceeding or in any Customer governmental investigation.

8. Logging and Monitoring

Infor monitors its resources used to provide Services using a set of tools, specifically configured to manage logs and alerts. Log records are kept physically and virtually secured to help prevent tampering. Sensitive information and passwords are not logged under any circumstances. In addition to capturing Service-related information, the monitoring tools allows administrators to keep track of user activity when entering and exiting the System.

9. Human Resource Security and Training

Infor personnel delivering Services are subject to confidentiality obligations, are knowledgeable regarding information security threats and concerns, receive general security training at least annually, and are equipped to support organizational information security policies in general as well as within their specific job functions.

10. Endpoint Device Controls (Infor Laptop, Workstations, and Mobile Devices)

Infor implements generally accepted industry practice security measures for the protection of endpoints including application and operating system patch management automation and anti-virus protection.

11. Data Return and Destruction

11.1. Return

Upon termination or expiration of Cloud Services, Infor shall promptly (within 3-5 business days upon receipt of Customer's written request by submission of a standard Support ticket) make all Customer Data available to Customer as a native database export provided through Infor's secure file transfer service. If Customer requires the return of Customer Data in an alternate format or requires any other termination assistance services, Infor and Customer shall mutually agree upon the scope of such termination assistance services and the fees and expenses payable for such termination assistance services. Prior to termination, Customer has access to Customer Data through application interfaces, and Customer may request, through the Support portal, copies of data backups up to two times per 12 month period; additional requests will be subject to fees.

Further for clarity, the return or destruction of Personal Data will be in accordance with the terms of the Data Protection Agreement.

11.2. Destruction

Other than with respect to Customer requested Transition Assistance, Infor will permanently delete all (online or network accessible) instances of Customer Data within 35 days after the termination or expiration of Cloud Services in accordance with NIST 800-88.

Data provided to Infor for purposes of performing Support (i.e. through a Support ticket logged into the Support portal) is purged five years from incident ticket closure date. Customer individual name and contact information (e.g. user email address, name, and phone number) used to manage Support ticket lifecycle is deactivated and anonymized on termination of Support.

12. Subcontractors

Infor subcontractors furnishing goods and services to Infor with respect to Infor's Services shall furnish such goods and services on terms substantially similar to those set forth in this ISP. Before engaging such third party subcontractor to perform any of the Services hereunder, Infor shall vet such third party with reasonable diligence in order to help ensure that such third party can comply with the confidentiality and security obligations hereunder. Infor is responsible for all actions of its subcontractors in supporting the Services.

Disclaimer: The following products may have additional or different security terms: Anael (SaaS) (France); Nexus AppXpress (SaaS), Nexus Live Visibility (SaaS), Nexus Factory Management (SaaS), Nexus Inventory Management (SaaS), Nexus Supply Chain Finance (SaaS), Nexus Supply Collaboration (SaaS), Nexus Transportation Management (SaaS), Nexus Supply Chain Visibility (SaaS), Nexus Procure to Pay (SaaS), Nexus Supply Chain Intelligence (SaaS); BPCS/LX, XA, System 21(SaaS).



REFERENCE GUIDE

Support Operations Handbook

Version 4.9, Published August 2024



Table of contents

01. Important notices	4
02. Publication information	4
03. Overview	5
04. Definitions	6
05. Infor Support model	8
06. Accessing Infor Support	10
07. Case management	11
08. Escalation management	12
09. Infor Support responsibilities	12

10. Support plans	15
11. Essential Support	15
12. Premium Support	18
13. Customer Success Plus	19
14. CareFor Success	20
15. CareFor Managed Services	20
16. Guidelines for optimal support on-premises	21
17. Appendix	22

Important notices

The material contained in this publication (including any supplementary information) constitutes confidential and proprietary information of Infor®. The material in this document is subject to change at Infor's discretion; however, any such changes will not cause a material decrease in the Support services provided to a Licensee during a paid Support Period.

By gaining access to this publication, you acknowledge and agree that the material (including, without limitation, any copy or partial copy, modification, translation, or adaptation of the material) and all copyright, trade secrets, and all other right, title, and interest therein are the sole property of Infor and that you shall not gain right, title, or interest in the material (including, without limitation, any modification, translation, or adaptation of the material) by virtue of your review thereof, other than the non-exclusive right to use the material solely in connection with, and in furtherance of, Support of the Infor-licensed Software made available to your company from Infor pursuant to a separate license agreement, and, if applicable, a separate Support agreement ("Purpose").

In addition, by accessing the enclosed material, you acknowledge and agree that you are required to maintain such material in strict confidence and that your use of such material is limited to the Purpose described above.

Although Infor has taken due care to ensure that the material included in this publication is accurate and complete, Infor does not warrant that the information contained in this publication is accurate or complete, does not contain typographical or other errors, or will meet your specific requirements.

As such, Infor does not assume and hereby specifically disclaims all liability, consequential or otherwise, for any loss or damage to any person or entity which is caused by or relates to errors or omissions in this publication (including any supplementary information), whether such errors or omissions result from negligence, accident, or any other cause.

Publication information

Release: Version 4.9

Publication Date: August 2024

Copyright © 2024 Infor. All rights reserved.

The Infor name and logo and all related product and service names and marks herein are trademarks and/or registered trademarks of Infor and/or its affiliates. All rights reserved.

All other trademarks listed herein are the property of their respective owners. This document is published for informational purposes only and does not constitute an offer or commitment by Infor of any kind. The matters and content described herein are subject to change at any time without notice.

Overview

This Support Operations Handbook has been developed to communicate how the Infor Support team engages with Licensees to provide Support. This document summarizes key features of Infor's Support offerings and addresses common areas of inquiry by Licensees. This document does not replace or amend any rights or obligations set forth in Licensees' agreement(s) with Infor. Licensees of Subscription Software should also reference the Infor Software as a Service (SaaS) Delivery Guide for additional details, as the Infor Software as a Service (SaaS) Delivery Guide serves as a supplement to this Support Operations Handbook.

Infor offers two Support plans as follows:

Essential Support includes support for an unlimited number of Cases, online support through the Infor Customer Portal, 24x7 access to Infor's Support portal, and priority queuing based on the priority level of a Case.

Note: The Essential Support plan is no longer available to new Licensees but Licensees who purchased Essential Support prior to May 2017 and have remained active on Essential Support may continue with the Essential Support plan for applicable Software.

Premium Support includes all the benefits of the Essential Support plan, plus extended Critical Case Support 24x7 (as specified herein) and live interactive briefings.

The services offered under each Support plan are subject to change and may not be available for all Software.

A general description of Infor's Support is located at infor.com/support.

Additional Customer Success offers are available for certain Infor products and provide enhanced Support and Success features:

- **CareFor Success**
- **Customer Success Plus**

Managed Services are also available to help run and operate your Infor solution:

- **CareFor Managed Services**

Visit infor.com/support/carefor or contact your Account Executive for more information and pricing.



Infor builds business software for specific industries in the cloud. With 16,500 employees and over 90,000 customers in more than 170 countries, Infor software is designed for progress. To learn more, please visit www.infor.com.



Copyright ©2023 Infor. All rights reserved. The word and design marks set forth herein are trademarks and/or registered trademarks of Infor and/or related affiliates and subsidiaries. All other trademarks listed herein are the property of their respective owners. This document is provided for informational purposes only and does not constitute a commitment to you in any way. The information, products and services described herein are subject to change at any time without notice, www.infor.com.

641 Avenue of the Americas, New York, NY 10011

Annexure B to Order Form – Statement of Work

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	Date for provision
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.]	[specify the date for provision of each 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]

9. Liquidated Damages

[Confirm whether Liquidated Damages apply, and if so, specify the:

- amount;*
- method of calculation; and*
- (if applicable) maximum number of days / percentage value of applicable Prices.]*

10. Transition-In Services

[Specify whether a Transition-In Plan with respect to the Transition-In Services is required, and if so, the date by which the Supplier must prepare and submit it to the Customer's Representative.]

[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.]

11. Transition-Out Services

[Specify whether a Transition-Out Plan with respect to the Transition-Out Services is required, and if so, the date by which the Supplier must prepare and submit it to the Customer's Representative.]

[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.]

[If the Supplier is required to perform Transition-Out Services, confirm the Transition-Out Period (if different from six months following the expiry or termination of this Agreement).]

12. Roles and responsibilities

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

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

[Insert the rate card and price details here or in the relevant sections of the Order Form. If you are also completing the other parts of the Order Form, you must ensure that the details identified here 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 MF 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 MF ICTA.

Annexure C to Order Form – Additional Conditions

Additional Conditions

1. No Fetter

- 1.1 Nothing in this Agreement in any way restricts or otherwise affects the Customer's unfettered discretion to exercise its statutory powers as a public authority.

2. Exclusion of third party licence terms

- 2.1 The Supplier represents, warrants and undertakes that the Customer's use of the Services and Deliverables will not 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).

3. Tender Response

- 3.1 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.

- 3.2 Where the Request for 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 Request for 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.

- 3.3 To the extent that there is any conflict or inconsistency between this Agreement and the Request for Tender or the Tender Response, the conflict or inconsistency will be resolved by giving priority to this Agreement.

- 3.4 To the extent that there is any conflict or inconsistency between the Request for Tender and Tender Response, the conflict or inconsistency will be resolved by giving priority to the Request for Tender, except to the extent that the Tender Response expressly provides otherwise in relation to particular section of the Request for 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 Request for Tender will not apply to this Agreement).

- 3.5 The following words and phrases have the following meanings in this Additional Condition:

Request for Tender means the relevant request for tender or proposal (however named) or other procurement process regarding the subject matter of and issued by the Customer prior to the parties entry into this Agreement, including any and all conditions, annexures, schedules, attachments, addenda, clarifications and other similar things.

Tender Response means:

- (a) the Supplier's tender, proposal or other response (however named) to the Request for Tender;
- (b) 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

- (c) 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.

4. **Additional Orders and Further Statements of Work**

Item 8 and clause 3.3

- 4.1 This Additional Condition applies where specified in Item 8 of the Order Form.
- 4.2 The parties acknowledge agree that where this Additional Condition applies, the Customer may from time to time require the Supplier to:
 - (a) increase the volume or quantum of Services and/or Deliverables, by following the process set out in clause 3.3; or
 - (b) carry out additional Supplier's Activities, including providing:
 - (i) an increased volume or quantum of Services and/or Deliverables; or
 - (ii) providing new, additional, different or alternative services and deliverables that relate to this Agreement,by following the process set out below in this Additional Condition.

Further Statements of Work

- 4.3 If, at any time during the Term, the Customer requires the Supplier to carry out additional Supplier's Activities as contemplated by this Additional Condition, the Customer may, in its sole discretion, submit a written notice to the Supplier:
 - (a) attaching a draft Further Statement of Work; or
 - (b) requesting the Supplier to prepare and submit to the Customer a draft Further Statement of Work,in each case substantially in the form of such other template reasonably required by the Customer.
- 4.4 On receipt of a written notice from the Customer under this Additional Condition, the Supplier must, acting reasonably and in good faith, work with the Customer to promptly negotiate and finalise the terms and conditions of the Further Statement of Work.
- 4.5 No Further Statement of Work will be binding on the Customer or the Supplier unless it has been executed by an authorised representative of each party.
- 4.6 Each Further Statement of Work entered into between the Customer and the Supplier constitutes a binding Further Statement of Work, under which the Supplier must provide the Supplier's Activities set out or referred to in that Further Statement of Work.
- 4.7 Except to the extent agreed by the parties in writing, any increased Deliverables and/or Services and/or additional Supplier's Activities under a Further Statement of Work must be supplied for the same rates and charges specified in the Initial Statement of Work.
- 4.8 The parties agree that each time the Customer and the Supplier enter into a Further Statement of Work, that Further Statement of Work forms part of this Agreement and will not constitute a separate contractual relationship between the parties.
- 4.9 No Further Statement of Work may be entered into under this Agreement, after the termination or expiration of this Agreement.

No minimum commitment

- 4.10 The Supplier acknowledges and agrees that the Customer is under no obligation to enter into any Further Statement of Work.

Term of Further Statements of Work

- 4.11 The parties acknowledge and agree that:
- (a) the term of each Further Statement of Work (i.e. the Further Statement of Work Term) will be specified in each Further Statement of Work; and
 - (b) notwithstanding the Term of this Agreement, each Further Statement of Work will be subject to the terms and conditions of this Agreement, and continue for the Further Statement of Work Term (which, for clarity, may expire before, on or after the Term).

Termination of Statements of Work

- 4.12 The parties acknowledge and agree that in circumstances where:
- (a) the Customer has the right to terminate this Agreement or reduce its scope (whether at Law or under the terms and conditions of this Agreement), the Customer may in its sole discretion elect to terminate or reduce the scope of this Agreement (including all Statements of Work) or may terminate or reduce the scope of a particular Statement of Work or Statements of Work only; and
 - (b) the Supplier has the right to terminate this Agreement, unless otherwise agreed in writing by the Customer, the Supplier is permitted to terminate the whole of this Agreement (including all Statements of Work) only, unless otherwise expressly agreed in writing by the Customer.

Definitions and interpretation

- 4.13 Where this Additional Condition applies, the following words and phrases have the following meanings when used in this Agreement:

Further Statement of Work means any further Statement of Work entered into in accordance with this Additional Condition.

Further Statement of Work Term means the term of a Further Statement of Work, as set out in that Statement of Work.

Initial Statement of Work means the Statement of Work (if any) set out or referred to in Annexure B to Schedule 2.

- 4.14 Where this Additional Condition applies, the following rules of interpretation apply to this Agreement unless the contrary intention appears:
- (a) references in this Agreement to an 'Additional Order' are deemed to include a reference to each Further Statement of Work;
 - (b) references in this Agreement to 'Statement of Work' are deemed to include a reference to the Initial Statement of Work (if any) and/or each relevant Further Statement of Work (as applicable);
 - (c) each Further Statement of Work is deemed to be incorporated into the Order Form; and
 - (d) unless expressly amended by the relevant Further Statement of Work, each Item in the Order Form applies to each Further Statement of Work.

5. Transition Out

5.1 The parties acknowledge and agree that:

- (a) this Additional Condition 5 supplements and applies in addition to the requirements of this Agreement (including clause 27 of the Core Terms);
- (b) 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;
- (c) 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
- (d) the Customer may require the Supplier to perform Transition-Out Services in relation to all or part of the Supplier's Activities.

5.2 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 5 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.

5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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 5.6.
- 5.8 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.
- 5.9 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.

- 5.10 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.
- 5.11 The Supplier must provide Transition-Out Services to the Customer regardless of the reason for the expiration or termination of this Agreement.

Annexure D to Order Form – List of Permitted Subcontractors

Table 1: Subprocessors

Product	Subprocessor	Subprocessor Location	Service Provided	Processing Location/s	Types of Personal Data Processed
Pathway (SaaS) Infor OS (SaaS) EPM (SaaS)	Amazon Web Services LLC	Region of deployment as selected by customer. Options may include: <ul style="list-style-type: none"> • Australia • United Kingdom • Singapore • Japan • Canada • Germany • United States 			
	PAGERDUTY INC	United States			
	SERVICENOW INC	United States			
	SUMO LOGIC INC	United States			
	SENDGRID INC	United States			
	PING IDENTITY CORPORATION	United States			

Table 2- Support

Product	Infor Support Affiliate	Sub-processor Location ¹	Service Provided	Types of Personal Data Processed
<u>Pathway (SaaS)</u>	Infor Global Solutions (ANZ) Pty Limited	Australia		
<u>Infor (OS) (SaaS)</u>	Infor (Belgium) N.V.	Belgium		
	Infor (Ceská republika) s.r.o.	Czech Republic		
	Infor (India) Private Limited	India		
	Infor (United Kingdom) Limited	United Kingdom		
	Infor (US) LLC	United States		
	Infor (US), Inc. ROHQ (Philippines)	Philippines		
	Infor PSSC, Inc.	Philippines		
<u>EPM (SaaS)</u>	Infor (Belgium) N.V.	Belgium		
	Infor (Ceská republika) s.r.o.	Czech Republic		
	Infor (Deutschland) GmbH	Germany		
	Infor Mexico Softwares S.A. de C.V.	Mexico		
	Infor PSSC, Inc.	Philippines		
	Infor (US), Inc. ROHQ (Philippines)	Philippines		
	Infor (United Kingdom) Limited	United Kingdom		
	Infor (US) LLC	United States		

Annexure E to Order Form – Solution Description

Solution Description Document

1. Background

- 1.1 This Solution Description Document (**Solution Description**) is incorporated into and forms part of the Medium Form ICT Agreement between the Council of the City of Sydney (**Customer** or the **City**) and Infor Global Solutions (ANZ) Pty Limited (**Supplier** or **Infor**) dated on or around 19 December 2024.
- 1.2 In 2003, the City entered into two agreements with Geac Computers Pty Ltd (ACN 002 862 295) (**Geac Computers**):
- 1.2.1 Supply and Implementation Agreement (which provides for a software licence and support arrangements, as well as various other IT services, e.g. supply and maintenance of hardware, software development in respect to on-premises software); and
- 1.2.2 Software Maintenance Agreement (which provides for helpdesk support, as well as software development and enhancement services),
- (collectively, the **2003 Agreements**).
- 1.3 The 2003 Agreements did not contemplate the provision of cloud services or any other managed services. There is also some overlap between both 2003 Agreements – for example, both agreements cover support services and software development services.
- 1.4 In 2014, the City entered into a ‘letter agreement’ with Infor which incorporates (and appears to replace) the 2003 Agreements (**2014 Agreement**). The 2014 Agreement refers to Geac Computers having previously assigned the 2003 Agreements to Infor. The term of the 2014 Agreement is tied to the term of the 2003 Agreements, which expire ‘upon completion of the Contractor’s obligations’.
- 1.5 Accordingly, the Parties acknowledge and agree that the City has a perpetual on-premises license to the Pathway software (i.e. the licensed software program hosted on-premises by the City), which was first procured under the 2003 Agreements, hereinafter referred to as “Licensed Software”.
- 1.6 In 2020, the City entered into a further agreement with Infor for the provision of a SaaS platform (**2020 Agreement**) – this includes the right to access and use the relevant software as a service, hosting and support services, and service credits.

Procurement of ePathway module and consolidation of existing contracts

- 1.7 The City is currently evaluating whether to procure an additional licensed software program from Infor – the cloud based ePathway module of the Pathway solution. Infor is offering to City Cloud Services and Professional Services, and the Support Services for the Licensed Software.
- 1.8 Given the complex patchwork of agreements under which the Existing Services are procured, the City’s strong preference is to enter into a new agreement which consolidates the procurement of the Existing Services (under the 2003, 2014 and 2020 Agreements) and the procurement, implementation, provision, and maintenance and support of the cloud based ePathway module and the perpetual Pathway software into one single agreement.
- 1.9 The City proposes to use this Medium Form ICT Agreement, which is based on the ICT Agreement prescribed for use under the NSW Government ICT Services Scheme for this purpose. The City presumes that this is an acceptable option for Infor, noting that:

- 1.9.1 Infor is a panel supplier for the NSW Government ICT Services Scheme, meaning that Infor has already agreed with the NSW Department of Customer Services that, when contracting with Eligible Customers (such as the City), it will do so on the terms of the ICT Agreement; and
- 1.9.2 this is a simplified version of the ICT Agreement, with some of the supplier's more onerous obligations removed.

Structure of Agreement

- 1.10 Under the City's proposed approach, the new agreement between the parties would comprise:
- 1.10.1 the ICT Agreement (including the Order Form); and
- 1.10.2 Statements of Work (SoW) for each of the Services procured by the City, including:
- (a) SoW 1 (on-premises software): the (existing) Pathway and (new) ePathway modules. This SoW would include maintenance and support services contemplated under the existing 2014 Agreement – e.g. helpdesk support;
 - (b) SoW 2 (cloud services): the Infor Operating Services (**Infor OS**); and
 - (c) further SoWs for professional services, which may be entered into as required on a discrete project-basis (e.g. software configuration services, data migration services, or services required to transition from on-premises to cloud services) or for any longer-term, ongoing professional services. The City intends to transition all existing professional services work orders in place under the 2014 and 2020 agreements (e.g. the DPE Integration SoW) under this new agreement.
- 1.11 For avoidance of doubt this ICT Agreement shall not amend or replace the terms of use for the Licensed Software for as long as the Licensed Software is in use by City. Infor acknowledges and agrees that the City has a perpetual licence to use the Licensed Software and any updates and upgrades hereto ("**Licensed Software**"), which was granted pursuant to license agreements the parties have executed in the past.

2. Transition to the Cloud

- 2.1 The Customer will commence its transition process from on-premises to the cloud, to be commenced during the fourth year of the Initial Term of the Agreement.
- 2.2 The Supplier must continue to provide the Customer with the Support Services as set out in section 5 below for all of the Licensed Software (including the perpetually licensed Pathway software) and in all existing on-premise environments without additional cost other than the Fees set out in this Statement of Work for the duration of the Term and until the Customer has fully completed its transition to the cloud.
- 2.3 The Supplier acknowledges and agrees that:
- 2.3.1 the Customer will retain the access and use of all current capabilities to its previously purchased on-premise Licensed Software from the Supplier under the previously agreed Perpetual Software Licence Agreements (for clarity, the Supplier acknowledges and agrees that there is no restriction on the number of the Customer users who may access and use the existing on-premise Licensed Software); and
 - 2.3.2 to the extent required by the Customer, the Supplier must (at the relevant time) enter into an Additional Statement of Work to document the additional Services that the Supplier must provide to facilitate and assist the Customer's transition to the cloud.

3. Product Description

3.1 Under each of the modules there are further individual product description names (**Authorised Functions**), which are referring to the product line and the area of application which must be made available to the Customer.. The items that the Customer is purchasing under the currently negotiated ICT Agreement are depicted in Column 1 and Column 2, however the parties acknowledge and agree that:

3.1.1 items highlighted in blue in Column 3 are on premise functionality that the Customer currently owns that the Supplier must continue to support in accordance with the terms of the ICT Agreement at no charge to the Customer; and

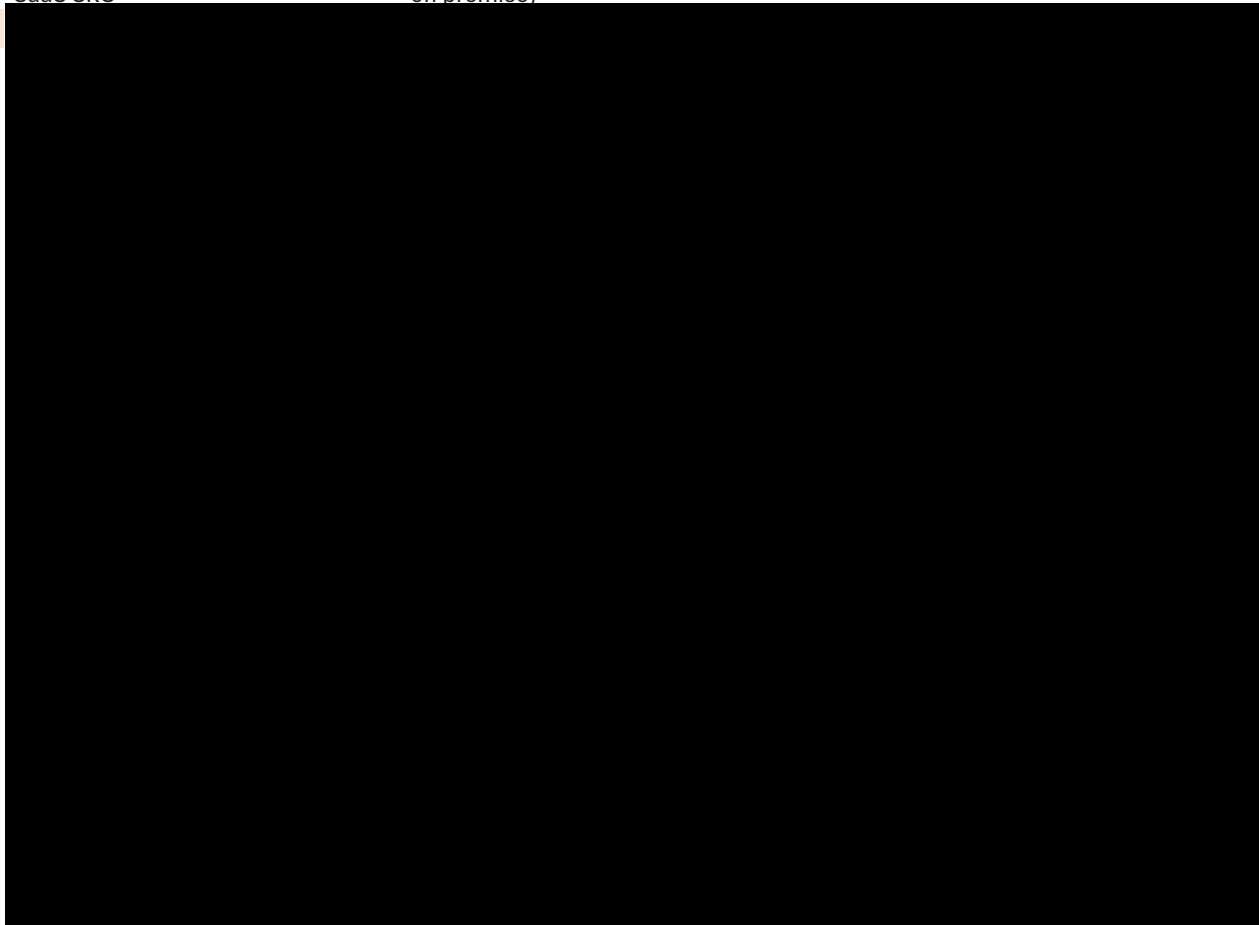
3.1.2 items highlighted in green in Column 3 are items that the Customer will receive under the Agreement. The Supplier must ensure that these items can be activated by the Customer on premise and used as such for the duration of the Term of the Agreement. The activation of these Authorised Functions will be at no additional cost.

3.2 The Supplier must provide to the Customer all additional authorised functions that the Supplier develops and includes as core functionality during the course of the Term, as and when such authorised functions become publicly available.

3.3 The Supplier must, throughout the entire duration of the Term, continue to provide the Customer with all critical and major functional updates, cybersecurity bug fixes and any necessary modifications to address legislative changes for the incumbent Smart Client (to the extent that any residual functions have not been fully ported with complete functionality to the UX Client) as well as the support for the Pathway Uniface components on premise.

3.4 Table of Product SKU and Authorised Functions

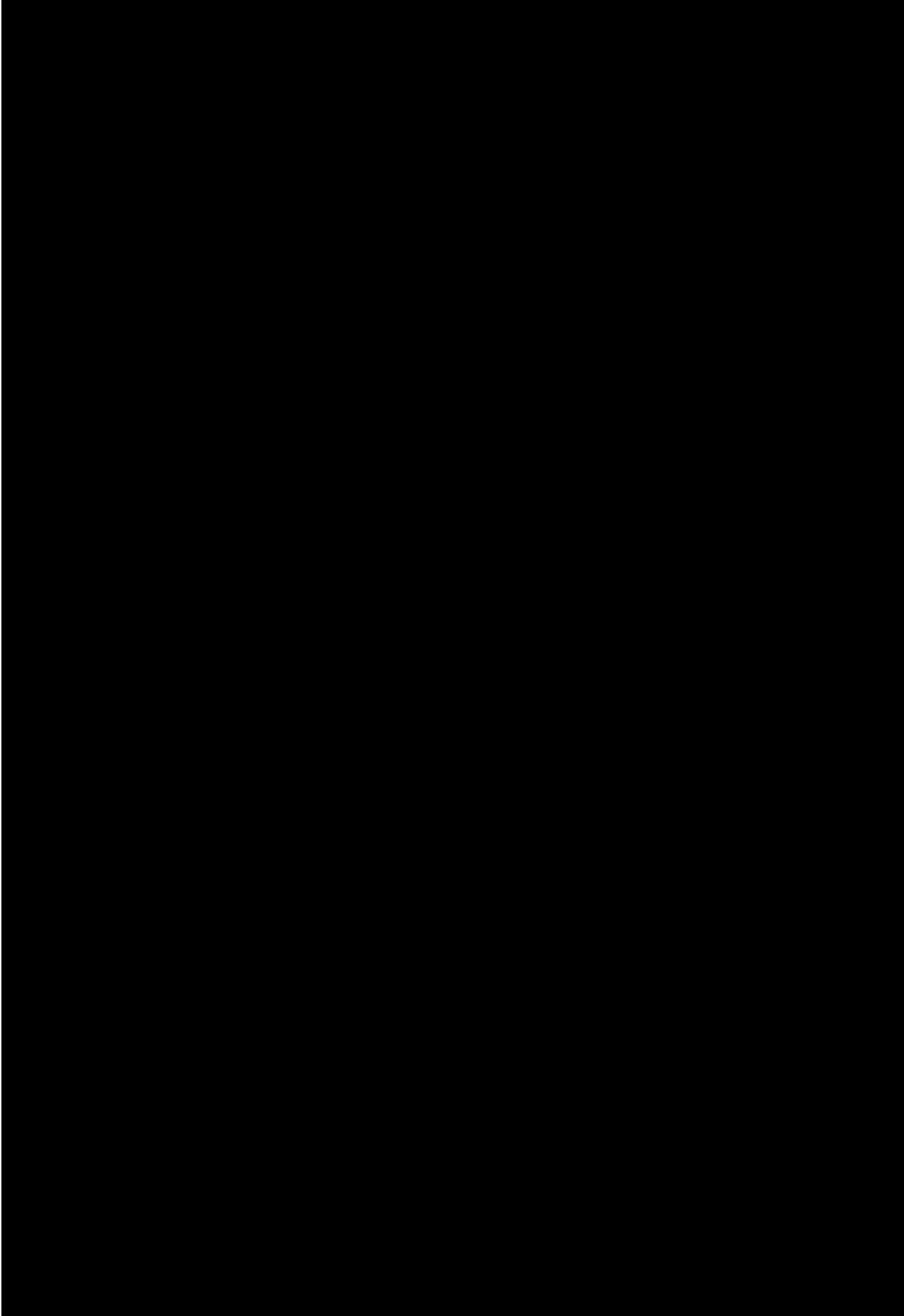
Column 1	Column 2	Column 3
SaaS SKU	Contains Equivalent Authorised Functions (existing on premise)	Function Code



Column 1

Column 2

Column 3

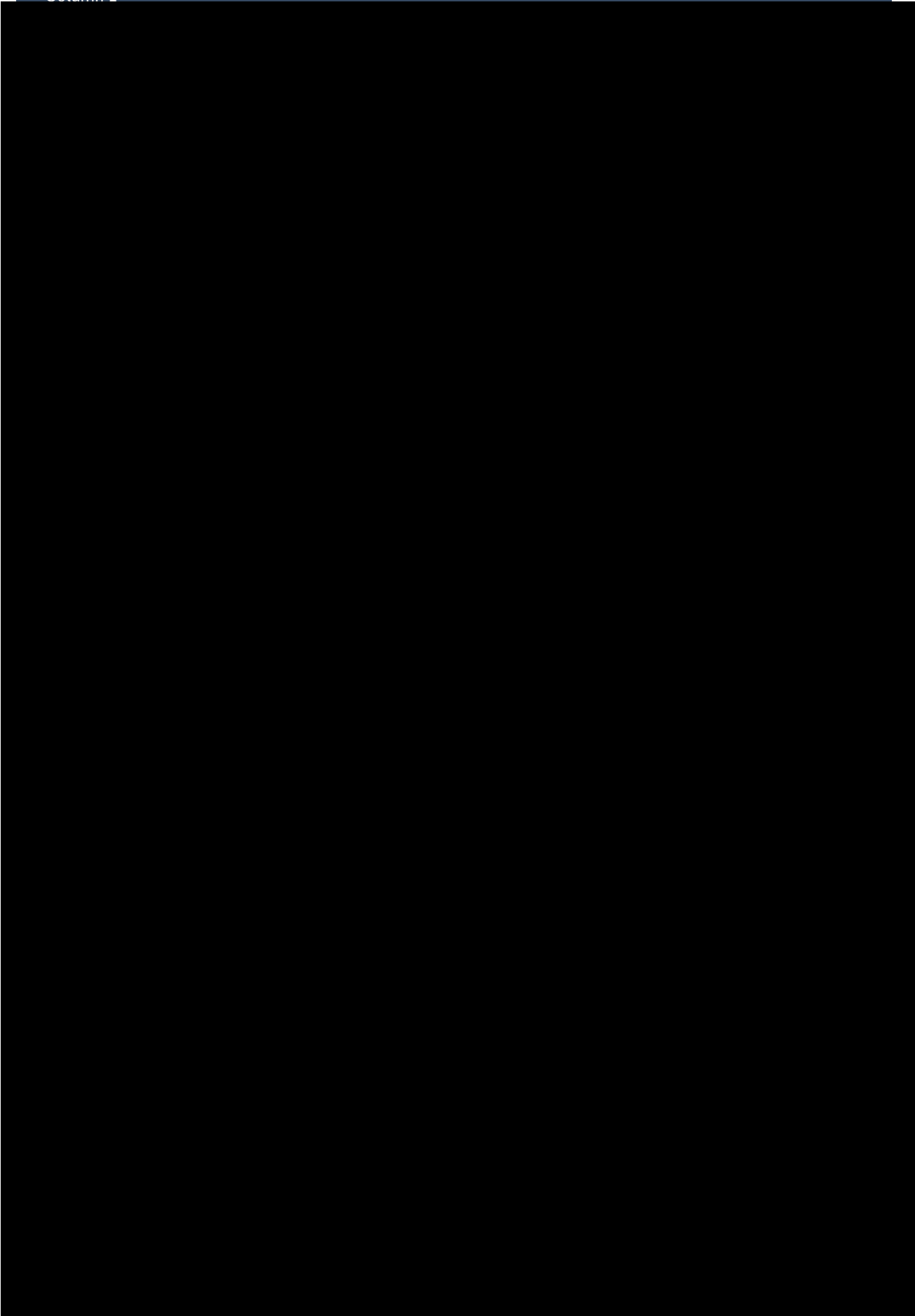


Column 1	Column 2	Column 3
[Redacted Content]		

Column 1

Column 2

Column 3



Column 1	Column 2	Column 3

3.5 **Configurations** (also referred to as **Extensions**) means any components deployed in the hosted environment other than the generally available New Software or components that Customer may deploy via the standard user interface or tools included in the generally available New Software. Support for such Configurations / Extensions is included under this Agreement.

3.6 **Software Customizations** means any Infor developed software for ePathway and Pathway that are developed by the Supplier under a Statement of Work to be deployed either on-premise or in a single-tenant hosted environment. Support for such Software Customizations is included under this Agreement.

4. Licensing Metrics for the New Software and Cloud Services being purchased by the Customer

Year 1-2

Line	Location*	Product Description	Use Restriction	Support Level
1	PROD:Sydney SaaS	Pathway CloudSuite - SaaS ±		CXTE
2	PROD:Sydney SaaS	Infor EPM Budgeting & Planning Bundle MT		CXTE
3	PROD:Sydney SaaS	Infor OS Essentials - SaaS MT		CXTE
4	PROD:Sydney SaaS	Infor Storage		NAX

Year 3-5

Line	Location*	Product Description	Use Restriction	Support Level
1	PROD:Sydney SaaS	Pathway CloudSuite - SaaS ±		CXTE
2	PROD:Sydney SaaS	Pathway Smart Mobile CloudSuite - SaaS ±		CXTE
3	PROD:Sydney SaaS	Pathway Feature Pack Extension (SaaS) ±		CXTE
4	PROD:Sydney SaaS	Pathway External Connector DPIE - SaaS ±		CXTE
5	PROD:Sydney SaaS	Infor Pathway Cloudsuite Accounts Receivable - SaaS ±		CXTE
6	PROD:Sydney SaaS	Infor Pathway Cloudsuite Bookings Management - SaaS ±		CXTE
7	PROD:Sydney SaaS	Infor EPM Budgeting & Planning Bundle MT		CXTE
8	PROD:Sydney SaaS	Infor OS Essentials - SaaS MT		CXTE
9	PROD:Sydney SaaS	Infor Storage		NAX
10	TEST:Sydney SaaS QA	Pathway CloudSuite - SaaS ±		CXTE

The Supplier acknowledges and agrees that, notwithstanding any other provision of this Agreement:

- (i) A **Named User** is an active user logged into Pathway. These are users who access the platform and interact with its functionality and are actively logged into Pathway. Multiple sessions by the same active user only counts as a single user requiring a single Named User licence.
- (ii) A **Registered Named User** is an individual user account set up within the system. These are the user accounts that are registered to use Pathway, regardless of whether they are actively using Pathway or not. It includes all the users who have access to the system, regardless of their frequency of use or activity level.
- (iii) Named Users are transferrable across the entire pool of Registered Named Users over the entirety of the Term. The single licence applies to any user with any login credential. Each logon is an active session during the entire logon period.

That is, the Customer may have any number of Registered Named Users, provided that the number of Registered Named Users who are logged into Pathway at any point in time does not exceed the licensed number of 'Named Users', as described above. For example:

- (a) there are currently [redacted] Registered Named Users in Pathway and [redacted] of them logged in at least once over the last 90 days; and
- (b) the [redacted] Named Users are transferrable across the entirety of the above [redacted] Registered Named Users (or any other higher future values of the Registered Named Users over the entirety of the Term).

Subject to the above, User/License Definitions if specified in the User Restriction field can be found at <https://licensedefinitions.infor.com/>

*PROD:Sydney SaaS (Year 1-2: Line 1-4, Year 3-5: Line 1-9) contain production and non-production environments as per clause 4.1.4.

TEST:Sydney SaaS QA (Year 3-5: Line 10) is an additional non-production environment, as per clause 4.1.5.

Support Level Definitions:

“CXT” = Infor Essential (24x5); “CXTP” = Infor Premium (24x7); “CXTE” = Infor Customer Success Plus program; “CCFS” = Infor CareFor Success program; NAX = Not applicable, Storage only Descriptions of these plans can be found at <http://www.infor.com/cloud/subscription/>

4.1 Additional Notes

4.1.1 The order form dated 28 April 2020 (the “**Prior Order Form**”) will be deemed to be terminated and superseded in its entirety by the terms of this Solution Description and the ICT Agreement.

Part # (if applicable)	Software	User Restriction	
		Quantity	Type
ION-S-ESSENTLS-CE	Infor OS Essentials - SaaS MT		
ION-S-STORAGE	Infor Storage		

4.1.2 The Supplier acknowledges and agrees that if the Customer exceeds the rateable count during the Term, the Supplier will not charge any additional fees for such additional use.

4.1.3 The subscription(s) to the Cloud Services set forth in the table above (4) replace any subscription(s) to Cloud Services that the Customer may have purchased previously from the Supplier. Furthermore, the table above (3.4) shows the Licensed Software licenses, including the Customer’s existing perpetual licence to the Pathway Software. Items highlighted in green in the table set out in clause 3 are inherited under the SaaS Subscription and the Supplier must provide such items to the Customer and ensure that these items can be activated in the current on premise environment.

4.1.4 Licensee shall be provided with two tenants (One (1) Production and One (1) Non-Production) on a single-tenant environment; and three tenants (One (1) Production and Two (2) Non-Production) on a multi-tenant environment. The Supplier must ensure that the Single Tenant Environment for Pathway is exclusive to the Customer and is not shared with the Supplier’s other customers. The Multi Tenant Environment is only for the Infor Operating Services (i.e. ION-S-ESSENTLS-CE).

4.1.5 Year 3-5, Line 10 (TEST:Sydney SaaS QA): This is an additional Non-Production License Software (TEST): Infor grants Customer non-production limited use access (“**Non-Production License**”) of the Licensed Software and Cloud Services set forth herein which shall remain valid only for so long as Customer maintains a subscription to the production environment of the Licensed Software and the Cloud Services subscription. At no time may a non-production environment be used as a production environment. In the event the production access terminates, this Non-Production License shall also terminate. The Customer may elect to purchase an optional additional Non-Production Environment: Pathway CloudSuite – SaaS for a fee of AUD [REDACTED]

4.1.6 **Option to Acquire Additional Licenses.** Provided that Customer is not in breach of the Agreement, including its obligations to pay all fees when due and payable, and provided that such New Software is then-currently made generally available for licensing to all Infor customers, then during the Term, Customer shall have the option (“**Option**”) of acquiring additional New Software licenses for the New Software specified in the Software table and in the same production environment as the New Software granted access to herein, for an additional Subscription Fee in the amount specified in the table below. Customer may exercise its Option by entering into a mutually-executed Statement of Work under the Agreement which sets forth the New

Software at issue. In the event such New Software is owned by a third party, the parties agree that the Option set forth herein shall only be valid so long as the Supplier maintains its agreement with the third-party owner of such New Software and such agreement allows for the discount set forth herein.

Product Description	Use Restriction	Annual Subscription Fee (excl. GST)
Pathway CloudSuite - SaaS	10 NU	

5. Support

5.1 The Supplier must provide the Customer with:

5.1.1 Support Services for Cloud Services and New Software for the duration of the Term in accordance with the support levels and procedures outlined in the ‘Customer Success Plus Support Plan’ set out in the Infor Support Operations Handbook attached at Annexure A – Supplier’s Document to Schedule 2 of the Agreement; and

5.1.2 Transitional Support Services for all Licensed Software (including for the Customer’s perpetual licenses to the Pathway Software), and with respect to the Licensed Software, the Supplier may only stop providing Transitional Support Services after the Customer has fully and successfully completed its transition to the cloud. Notwithstanding any other provision of the Agreement, the Supplier must not deprecate the functionality of the Licensed Software or reduce or deprecate the level of Transitional Support Services provided to the Customer until the Customer has fully and successfully completed its transition to the cloud.

5.2 “**Transitional Support Services**” are defined as phone support, incident logging and resolution, and issue correction commensurate with the level of support available for the version of the Licensed Software currently installed by Customer (which, for the avoidance of doubt, is the support levels and procedures outlined in the ‘Customer Success Plus Support Plan’ set out in the Infor Support Operations Handbook attached at Annexure A – Supplier’s Document to Schedule 2 of the Agreement).

However, Transitional Support excludes any tax and regulatory updates to the Licensed Software, support for third-party products or enhancements to the Licensed Software unless included in a Statement of Work.

5.3 The Supplier acknowledges and agrees that the support levels and procedures and the Support Services provided to the Customer must not materially degrade during the course of the Term from the support levels and procedures and the level of Support Services published in the Infor Support Operations Handbook attached at Annexure A – Supplier’s Document to Schedule 2 of the Agreement.

6. Pricing

Year(s) of Initial Subscription Term	Annual Subscription Fee (AUD) Cloud Services
1	
2	
3	
4	
5	
6 (at the Customer’s option)	

Year(s) of Initial Subscription Term	Annual Subscription Fee (AUD) Cloud Services
7 (at the Customer's option)	[REDACTED]
8 (at the Customer's option)	[REDACTED]
9 (at the Customer's option)	[REDACTED]

6.1 As soon as practicable after signing the new Agreement, the Supplier must pay to the Customer [REDACTED] or the amount paid in advance by the Customer for the existing maintenance and support arrangements (with the pro-rata credit being calculated on a straight-line basis across the relevant period). For clarity, the refund is calculated based on the following:

6.1.1 [REDACTED]

6.1.2 [REDACTED]

Primary-Use Address	Invoice Address
The Council of the City of Sydney Town Hall House 456 Kent Street Sydney NSW AUS 2000	The Council of the City of Sydney ABN: 22 636 550 790 Town Hall House, 456 Kent Street Sydney NSW AUS 2000
[REDACTED]	supplierinvoices@cityofsydney.nsw.gov.au

7. Service Level Agreement

The Supplier must comply with the Service Level Agreement set out below, which forms an integral part of the currently negotiated ICT Agreement.

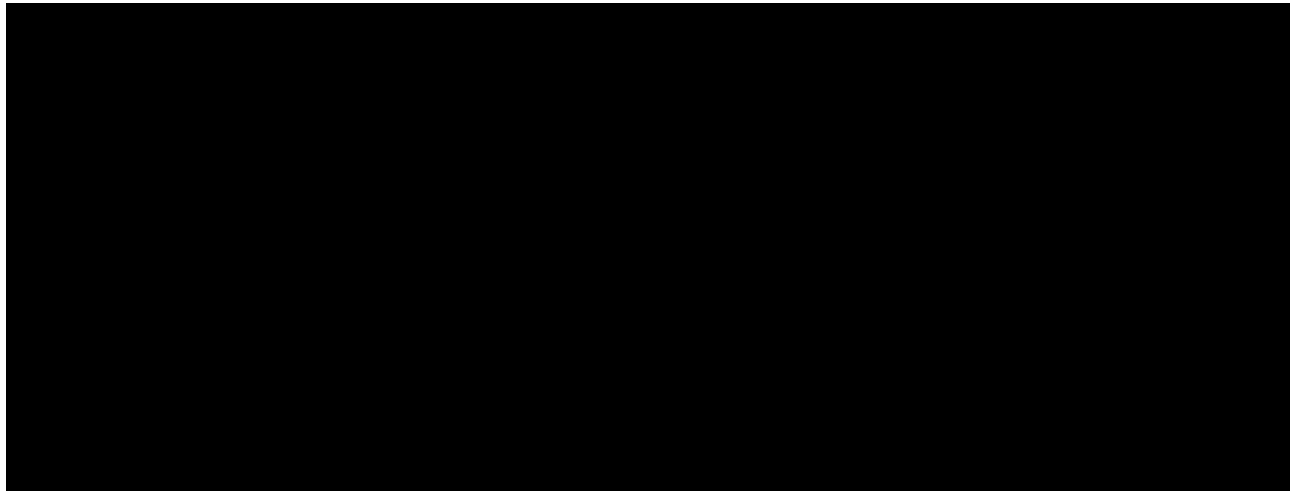
The Information Security Plan sets forth additional information in relation to the Supplier's information security practices. The Information Security Plan can be found in Annexure A (Supplier's Document) of the ICT Agreement. Infor may from time to time change the Information Security Plan, but only in accordance with clause 1.4 (Variations to Cloud Services) of the Cloud Module and without degrading the level of services provided to the Customer.

7.1 Availability

- "Availability" (ie when the Cloud Services are accessible) is calculated as the total minutes in a month less the number of Downtime Minutes in that month divided by total minutes in a month less the number of Scheduled Maintenance Minutes in that month. This result is then multiplied by 100, so that Availability is expressed as a percentage.
- "Downtime Minutes" means the number of minutes in a month when the production tenant of Cloud Services was not available. Scheduled Maintenance Minutes or Excluded Minutes (as defined below) are not considered Downtime Minutes.
- "Scheduled Maintenance Minutes" means the total minutes in a month associated with maintenance windows.

Customer is entitled to Service Level Credits as provided below if the Availability in a month does not equal or exceed [REDACTED]. For single-tenant and multi-tenant environments Service Level Credits are provided only for Availability below [REDACTED].

<u>Availability</u>	<u>Service Level Credit</u> (% of the monthly prorated Cloud Services Fee)
[REDACTED]	[REDACTED]



The Supplier shall provide Customer a report of Availability for a month if, within [REDACTED] days after the end of that month, Customer provides a written request for such report to its assigned Customer Success Manager (CSM). Once a report of Availability is provided to Customer, Customer has [REDACTED] days to request a Service Level Credit (which request must be made in writing); upon receipt of such request, the Supplier will promptly discuss the report, and the request for Service Level Credits, with Customer.

For Purposes of Availability, any minutes of unavailability caused by any of the factors below ("Excluded Minutes") do not count as Downtime Minutes.

- Outages due to Force Majeure Events;
- Outages attributable to the acts or omissions of Customer or its contractors, vendors (other than Infor) or Authorized Users;
- Periods of down-time at Customer's request;
- Outages that result from Customer's equipment, software, or other technology and/or third party equipment outside of Infor's control;
- Extensions or interfaces deployed via the standard user interface or tools included in the generally available Cloud Services;
- Customizations;
- Performance degradation due to Customer's use of Cloud Services in excess of the scope of Customer's usage restrictions.

Limiting of Cloud Services. In the event of excessive demand, the Supplier may queue or prioritize requests to maintain system performance for all Customers without limiting Availability, provided the foregoing does not relieve the Supplier from its obligations of supplying adequate computing infrastructure for the Cloud Services. Supplier will restrict a limitation in time and scope to the extent reasonably possible under the circumstances.

7.2 Scheduled Maintenance

The Cloud Services are subject to regularly scheduled monthly maintenance windows for which Customer will be given at least seventy-two (72) hours advance notice as described in the SaaS delivery guide (available at all times through Concierge). An annual maintenance window calendar is accessible through Infor Concierge, which is updated from time to time. In standard operating conditions, each instance of a scheduled maintenance window is estimated to extend up to six (6) hours. While most of Supplier's maintenance can be completed during regularly scheduled maintenance windows, in some urgent situations, maintenance must be performed outside of the scheduled maintenance windows (critical maintenance) to help maintain the integrity and security of the Cloud Services. In such cases, Supplier will provide Customer's subscribed contact (through the CloudSuite Portal) as much advance notice of the critical maintenance as is technically feasible. Supplier also performs maintenance not resulting in downtime from time to time, including outside of scheduled maintenance windows.

7.3 Backups, Business Continuity/ Disaster Recovery Plan

Supplier maintains a written business continuity plan ("BCP") designed to allow Infor to continue to provide Cloud Services without material interruption in the event of a business disruption. Supplier performs regular back-ups (weekly for full back up, daily for differentials) of Customer Data and periodically (no less than annually) tests its disaster recovery procedures in order to help maintain its ability to meet the following disaster recovery service level objectives. Relevant BCP controls are audited on an annual basis and reviewed within third party System and Organization Controls reports which reports are available to Customer through Infor Concierge or the Infor CloudSuite™ Self-Service Portal. Backups are replicated to geographically dispersed data centers within the same region where Cloud Services are provisioned and must be undertaken in accordance with the following frequencies:

- **Full Back up** - [REDACTED]
- **Differential Back up** - [REDACTED]
- **Transactional back up** - [REDACTED]

The Supplier's disaster recovery process supports the full production environment. Supplier initiated Cloud Service backups are exclusively for data recovery in the event of data loss (ie., are not intended to meet Customer's internal or legal data retention requirements) and restore requests can be raised by Customer through support incidents.

- **Recovery Point Objective:** The Recovery Point Objective ("RPO") is the acceptable amount of data loss measured in time and is the point in time to which data will be recovered. The service levels include an RPO of up to [REDACTED]
- **Recovery Time Objective:** The Recovery Time Objective ("RTO") is the duration of time within which Cloud Services will be restored after declaration of a disaster. The disaster recovery server will be operational within an RTO of [REDACTED]

7.4 Support

7.4.1 Telephone Technical Support

Generally, Supplier will provide telephone support Monday through Friday, 8:00 a.m. to 5:00 p.m., local time, in the Customer's time zone, excluding holidays observed by Supplier which fall within the applicable coverage window. Support hours may vary based on the applicable Cloud Services, in which case applicable Support hours are noted in specific Knowledge Base articles on Supplier Concierge, located at <https://conciierge.infor.com/>.

7.4.2 Electronic Support

Supplier provides 24x7x365 online access to Infor Concierge, which offers services such as online incident logging, tracking and management, Knowledge Base articles, latest Cloud Services release information and Documentation.

7.4.3 24 x7 Critical Incident Support

“Critical Incident Support” is defined as the delivery of Support for critical production service unusable (Severity 1) situations as defined in Section 2.2 below. Support covers Critical Incident Support 24 hours a day and 365 days a year, including holidays. Critical Incident Support will be provided until the Cloud Services are operational, a commercially reasonable workaround is in place, or the incident severity can be lowered.

7.4.4 Critical Solution Notification

Infor Concierge enables each Designated Contact to develop a unique profile. “Designated Contact(s)” means a Customer’s contact(s) who has/have a thorough understanding of the applicable Cloud Services, along with the relevant technical knowledge, required to assist in troubleshooting and the timely resolution of incidents. Each Designated Contact may also choose to sign up for Knowledge Base articles that may be of particular interest. When Infor develops a Knowledge Base article for a critical incident, the Designated Contact can receive notifications about its availability and how to access it.

7.5 Resolution of Support Incidents

7.5.1 Initiation of an Incident

The Designated Contact may contact the Supplier Support team via telephone or may log an incident online via Infor Concierge to initiate a Support request, referred to as an “incident”.

The general definition of a Support incident is a single, reproducible issue, problem, or symptom, a request for assistance, or a question fully and accurately logged within Infor Concierge that is related to the Cloud Services or information requests about Infor’s Cloud Premium Support Plan or CareFor Plan, and options.

To help ensure a timely response to a Support incident, the Designated Contact shall provide the following information: (a) the Infor Customer Number and contact details, (b) applicable Cloud Services software listed on the Order Form, (c) severity level of the Support incident, (d) details of the Support incident, including error messages and error reproduction steps, if any, applicable screen shots and output examples if logging online, and (e) description of the incident impact and frequency.

7.5.2 Severity Levels

The Designated Contact and Supplier will use reasonable business judgment to mutually identify the severity of the incident according to the following severity level descriptions:

Severity	Description	Definition
1	Critical Production Service Unusable	Service is unavailable for all users in production, or a critical business process in production has halted with no acceptable workarounds
2	Major impact	Service is severely impaired causing disruption to important business processes and there is no acceptable workaround
3	Medium impact	Service is partially impaired. There is disruption to important business processes, but there is an acceptable short-term workaround
4	Standard	Service is fully operational. There are questions regarding functionality of the Cloud Services or an issue where an acceptable workaround exists

7.5.3 Response

Supplier shall use commercially reasonable efforts to meet the Response Targets below. Supplier calculates a “Response Target” as the difference between the time an incident is appropriately logged into the Infor support system and the time of Infor’s first value-added communication.

Customer Success Plus

Severity Level	Infor Customer Success Plus Support Plan
1	
2	
3	
4	

“Business Hour” means each hour in the day when the Supplier office providing Support to Customer is open for business.

7.5.4 Resolution

A resolution can be, without limitation, an answer that resolves an incident; a code fix; a software patch release; a change in an operational process; a commercially reasonable workaround. Support incident resolution is often an iterative process that is dependent upon many variables. At times determination of root cause and resolution of an incident requires collaboration and troubleshooting by various teams within Infor and the Customer. The nature of this process makes providing specific target resolution times difficult. As Infor progresses through the troubleshooting process to resolve the issue, Infor works to provide regular updates and strives to allow Customer to continue doing business.

7.5.5 Escalation

Most Support incidents are best resolved through Infor’s standard operating procedures. If Customer believes a Support incident requires a higher level of attention, Customer can self-escalate the incident through Infor Concierge by using the “Request Escalation” feature on the incident. As part of this process Supplier asks that Customer accurately provide escalation reason, business impact, number of people impacted, timelines, and other relevant detail, to help Infor properly determine the level of urgency required regarding the escalation. If Customer would like a Support Manager to call, Customer can indicate that in the escalation request as well. Once escalated, the applicable Support Manager and Support Analyst are notified of the escalation, so they can take appropriate action. If Customer doesn’t have access to Infor Concierge, Customer can escalate by contacting Supplier’s regional Support Center.

The use of escalations is reserved for issues that truly merit a higher degree of attention. It is not intended for issues that are effectively addressed with Infor standard operating procedures.

7.5.6 Changes

Supplier may change the above descriptions of Support from time to time, any changes will not cause any material decrease in the Support provided to Customer during the annual Cloud Services Term for which Customer has paid the applicable Cloud Services Fees.


8. Miscellaneous

The parties agree, that the Licensed Software will be governed by the existing on-premises terms and conditions. Nothing in the ICT Agreement (“Agreement”) will modify or alternate the terms related to the Licensed Software.

Schedule 3 - Change Request Form

Change Request number	<i>[Number the Change Request to assist with tracking Change Requests and administrating 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>

<p>Customer</p> <p>Name (Print):</p> <p>Signature:</p> <p>Date:</p>	<p>Supplier</p> <p>Name (Print):</p> <p>Signature:</p> <p>Date:</p>
--	--

	<p>Guidance note: Only persons with the necessary authorisation or delegation may execute Change Request Forms.</p>
---	--

Schedule 4 - 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: The Council of the City of Sydney (ABN 22 636 550 790) of 456 Kent St Sydney NSW 2000 (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) personal information;
- (d) the Recipient knows or ought to know is confidential; or
- (e) 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:

- (f) in the public domain, unless it came into the public domain due to a breach of confidentiality;
- (g) independently developed by the Recipient; or
- (h) 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.

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.

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 word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) "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;
 - (ii) compliance with this Deed and the protection of Confidential 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 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, 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 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. However, if the Recipient is required by law to disclose any Confidential 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 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;
 - (ii) not copy or reproduce Confidential 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;
 - (iv) not commercialise or otherwise exploit any Confidential Information; and
 - (v) take all necessary precautions to prevent the loss; unauthorised use, disclosure or other misuse of Confidential Information in its possession or control.

3.2 Comply with 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 laws, including the *Personal Information Protection Act 1998* (NSW) and the *Privacy Act 1988* (Cth) 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 in its possession or control is kept secure at all times, including by:

- (a) where the Recipient has access to Confidential 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; 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.

3.5 Return of Confidential 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 in its or its personnel's possession, custody or control;
- (b) securely delete the Confidential 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
- (d) comply with any reasonable directions issued by the Customer in respect of the Confidential 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

Cloud Module

Background

- A. This Module forms part of the Digital.NSW ICT Purchasing Framework.
- B. The purpose of this Module is to set out the specific terms and conditions which apply to the provision of Cloud Services and related or ancillary goods and services (associated Deliverables), described in this Module.
- C. The specific Services and Deliverables that the Supplier will provide under the Agreement are described in the Order Form and Solution Description.

PART A: PRELIMINARIES

1. General

1.1 Scope

The Supplier must provide the Cloud Services and associated Deliverables described in the Order Form on the terms of this Module and the other terms of the Agreement.

1.2 Acknowledgements

The parties acknowledge and agree that the:

- (a) obligations in this Module supplement, and are in addition to, the parties' other rights and obligations under the Agreement. Except to the extent expressly provided in the Agreement, nothing in this Module is intended to limit or restrict any other provision under the Agreement; and
- (b) Customer is relying on the Supplier's expertise in providing the Cloud Services under this Module.

1.3 Services Period

The Cloud Services must be provided for the Term or for such other period specified in the Order Form (**Services Period**).

1.4 Variations to Cloud Services

- (a) Unless otherwise specified in the Order Form, the Supplier may, subject to this clause 1.4, unilaterally upgrade or vary the functions, features, performance and other characteristics of the Cloud Services (**Unilateral Variation**) at its sole cost., provided that the Unilateral Variation:
 - (i) does not degrade the security, functionality, performance or availability of the Cloud Services;
 - (ii) does not breach the service standards and any applicable Service Levels that apply under the Agreement; and
 - (iii) is consistent with the Supplier's obligations under the Core Terms, Module Terms and any Additional Conditions.

- (b) The Supplier must, to the extent reasonably practicable, provide the Customer with advance notice of each proposed Unilateral Variation. Where it is impracticable to provide advance notice, the Supplier must provide the Customer with written notice (via automated email) of the Unilateral Variation by publication of such on the Supplier's support portal within 24 hours of the Unilateral Variation being published.
- (c) Notice under clause 1.4(b) must be provided in writing and, notwithstanding clause 39.13 (**Notices**) of the Agreement, may, if specified in the Order Form, be provided in the form and via the medium specified in the Order Form.
- (d) If requested by the Customer, the Supplier must:
 - (i) use reasonable endeavours to provide the Customer with all information that may be reasonably requested by the Customer to understand the purpose, scope and effect of the Unilateral Variation; and
 - (ii) comply with the process stipulated in clause (c) of Item 16 of the Order Form.
- (e) Where this clause 1.4 applies, the parties agree that it governs the process with respect to Unilateral Variations to the Cloud Services only. Where this clause does not apply, all variations to the Services must be made by following the Change Control Procedure, except to the extent otherwise expressly permitted under the Agreement (including clause 4.4 below).

PART B: PROVISION OF CLOUD SERVICES

2. Provision and use of Cloud Services

2.1 Customer use and access to the Cloud Services

- (a) By the Dates for Delivery (or as otherwise agreed between the parties in writing), the Supplier must provide the Customer with access to:
 - (i) the Cloud Services;
 - (ii) User Documentation that:
 - A. contains sufficient information to enable the Customer and Permitted Users to use the Cloud Services for the Permitted Purpose and in the manner contemplated under the Agreement; and
 - B. complies with clause 8.4 (User Documentation) of the Agreement; and
 - (iii) any Third Party Components or other Deliverables that are specified in the Order Form or are needed to utilise the Cloud Services in accordance with the Agreement.
- (b) Where access codes are required to access the Cloud Services or User Documentation, the Supplier must provide the Customer with the relevant access codes by the date specified in the Order Form, or where no date is specified, on the Commencement Date.

2.2 Rights grant

- (a) Subject to this Agreement and the Solution Description, including applicable User Restrictions therein, the Supplier hereby grants the Customer the right, for it and the Permitted Users, to access, in the Supplier's operating environment, the Cloud

Services during the Term for the internal operations of the Customer. The Customer shall ensure Permitted Users comply with this Agreement and shall be liable for any noncompliance by Permitted Users.

- (b) Notwithstanding clauses 17.2, 17.4 and 17.5 of the Agreement, the parties agree that the licence rights with respect to the New Software will be on the terms specified in this Module.
- (c) Unless otherwise specified in the Order Form, Permitted Users may access and use the Cloud Services for the Services Period and for any purpose in connection with:
 - (i) the Customer performing its obligations, and exercising its rights, under the Agreement;
 - (ii) the full use of the Cloud Services and any associated applications as contemplated under the Agreement, including, where applicable, operating, supporting, enhancing, upgrading and maintaining the Cloud Services;
 - (iii) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Cloud Services (to the extent as described in the Order Form) and associated Deliverables or systems that may integrate or interoperate with the Cloud Services;
 - (iv) the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; or
 - (v) such other Permitted Purpose specified in the Order Form.

2.3 Licensing model

- (a) The parties agree that the licensing model specified in the Order Form and the Solution Description applies to the Cloud Services being provided under the Agreement.
- (b) Where the Cloud Services are licensed on a User Licensing Model, the following terms apply, unless expressly stated otherwise in the Order Form:
 - (i) there is no cap on the number of Permitted Users who may access and use the Cloud Services, except where clause 17.7(b)(ii) applies; and
 - (ii) where the Order Form specifies that there is a cap on the number of Permitted Users, the Customer:
 - A. must ensure that only the number of Permitted Users specified in the Order Form (or as otherwise agreed between the parties in writing) use the Cloud Services; and
 - B. may, at its sole discretion, increase the number of Permitted Users at any time during the Services Period, subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing.
- (c) Where the Cloud Services are not licensed on a User Licensing Model, the Customer must ensure that it does not exceed any applicable consumption or other ceiling with respect to its use of the Cloud Services as specified in the Order Form (for example, storage cap). The Customer may, at its sole discretion, increase its consumption or ceiling at any time during the Services Period, subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing.

2.4 Performance

The Cloud Services must be provided to meet or exceed any availability Service Levels and other Service Levels or, where none are specified, in a manner that ensures continuity of performance of the Cloud Services and minimises interruptions to the Customer's operations.

2.5 Backups

- (a) Unless otherwise specified in the Agreement and in particular in the Order Form:
 - (i) the Customer must take and maintain adequate backups of the data that is loaded into the Cloud Services; and
 - (ii) the Supplier must reasonably assist the Customer in relation to any transfer or restoration of such data and in relation to any backups made by the Customer.
- (b) Where it is specified in the Agreement and in particular in the Order Form that it is the Supplier's responsibility to backup any data that is loaded into the Cloud Services, the Supplier must:
 - (i) perform an initial backup of such data;
 - (ii) take and maintain adequate and regular backups of such data; and
 - (iii) carry out any other Data Services relevant to data backup specified in the Order Documents.
- (c) A backup undertaken under clause 2.5(b) must be undertaken in a manner which enables the relevant data to be accurately and completely restored, in the event that any failure of the Cloud Services causes damage to, or loss of, that data.

2.6 Records of usage and audits

- (a) If specified in the Agreement and in particular in the Order Form, the Supplier:
 - (i) must supply the Customer with reporting and monitoring tools to assist the Customer to verify its compliance with the licensing terms under this Module; and
 - (ii) may, acting reasonably, undertake audits in accordance with this clause 2.6 to verify the Customer's compliance with the licensing terms under the Agreement. All audits under this clause will be conducted at the Supplier's sole cost.
- (b) All audits under this clause 2.6 must be conducted in accordance with the auditing timeframe and procedure specified in the Order Documents.
- (c) Upon completion of each audit, the Supplier must promptly provide the Customer's Representative with a copy of the audit report or findings.
- (d) The Supplier must not install any tools or applications within the Customer Environment or systems in order to conduct any audits without the Customer's prior written agreement.

2.7 Additional Cloud Services terms

The parties must comply with any Additional Conditions specific to certain types of Cloud Services where specified in the Agreement and in particular in the Order Form.

3. Restrictions

- (a) Except to the extent permitted by Law or by the Agreement, the Customer must not without the Supplier's written consent:
 - (i) remove or alter any copyright or other proprietary notices appearing in the Cloud Services;
 - (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the Cloud Services' source code other than in accordance with any applicable escrow agreement; or
 - (iii) do, or omit to do, any additional things specified in the Order Form.
- (b) Nothing in this clause 3 restricts the Customer from providing the Permitted Users with access to, and use of, the Cloud Services and any associated application(s) on the terms of this Module.

4. Data

4.1 Customer Data

If any Customer Data is created by the Supplier in the course of providing the Cloud Services under this Module, then all rights, title and interest in that Customer Data vest in the Customer on creation in accordance with the Agreement.

4.2 Supplier's security controls for viewing and accessing Customer Data

- (a) Where the Supplier, the Supplier's Personnel or any third party associated with the Supplier are able to view or access Customer Data in the course of providing the Cloud Services or any other Supplier's Activities, then the Supplier must ensure that:
 - (i) such access is only in accordance with the Agreement;
 - (ii) such access is via a secure virtual private network;
 - (iii) only the Supplier's Personnel who have undergone security awareness training in accordance with clause 21.3(c) (Audits and compliance) of the Agreement are able to view or access Customer Data;
 - (iv) all access is logged in such a manner that access by any person is auditable and traceable. The Supplier must keep access logs for up to one year and provide the Customer with a copy of such access logs on request;
 - (v) all access is monitored by the Supplier and under the Supplier's control and supervision at all times; and
 - (vi) except where expressly authorised by the Agreement or by the Customer in writing, persons are not able to download, extract, edit, store, copy (whether electronic or hardcopy), print or otherwise retain any Customer Data.
- (b) If requested by the Customer, the Supplier must promptly:
 - (i) notify the Customer in writing of how it will comply (or is complying) with its obligations under this clause 4.2; and

- (ii) respond to any security-related questions received from the Customer in relation to the Cloud Services and provide reasonable assistance (including related information and Materials) to the Customer in relation to the security of the Cloud Services, including any related information and Materials held by the Supplier's subcontractors.

4.3 Storage and transfer of Customer Data

- (a) Unless otherwise agreed by the Customer in accordance with clause 4.4, the Supplier and its Personnel must ensure that it provides the Cloud Services from data centres in NSW or the primary data centre and any secondary data centre(s) as specified in the Order Form.
- (b) For the purposes of clause 19.3(b) (Location of Customer Data) of the Agreement, under this Module the Supplier may transfer, store, process, access, disclose or view Customer Data outside New South Wales, Australia:
 - (i) where necessary to comply with any applicable Law or a binding order of an Authority (such as a subpoena or court order) imposed on the Supplier, provided that the Supplier gives the Customer reasonable notice of any such legal requirement or order to enable the Customer to seek a protective order or other appropriate remedy;
 - (ii) via remote access for the sole purpose of:
 - A. subcontractors accessing or viewing Customer Data to perform support and maintenance services; or
 - B. Subprocessors to provide the Cloud Service, to the extent permitted in the Order Form; or
 - (iii) where otherwise permitted under clause 19.3 (Location of Customer Data) of the Agreement,and, in any event, subject to, and in compliance with, all other provisions of the Agreement, including the Data Location Conditions.
- (c) Nothing in this clause 4.3 relieves the Supplier of its obligations to protect and keep Customer Data secure in accordance with the Agreement, including the Supplier's obligations under clause 20 (Privacy) of the Agreement.

4.4 Change to location of Customer Data

- (a) The Supplier must not (and the Supplier must ensure that its Personnel do not) change the location of any data centres to a location outside NSW or to a location other than that specified in the Order Form without:
 - (i) notifying the Customer in writing at least six months prior to such proposed change or such other timeframe specified in the Order Form; and
 - (ii) obtaining the Customer's prior written consent which may be given or withheld at the Customer's sole discretion.
- (b) The Supplier must not propose changing the location of any data centres to any location that is identified as an "excluded location" in the Order Form or that would cause the Supplier to breach its obligations under the Agreement.
- (c) The Supplier must ensure that the notice it provides under clause 4.4(a) sets out:

- (i) the proposed change to location and any associated change to data centre conditions;
 - (ii) the date on which the Supplier proposes the change will occur;
 - (iii) the reason for the proposed change;
 - (iv) any impact of such changes on the Customer's or Permitted Users' ability to access, use and interact with the Cloud Services;
 - (v) the proposed data migration and security measures that the Supplier will apply; and
 - (vi) such other details as reasonably required by the Customer.
- (d) The Supplier agrees to provide all assistance reasonably requested by the Customer to assess the proposed change to the data centre location.
- (e) The Supplier acknowledges and agrees that where the Supplier or its Personnel changes the data centre location with respect to the Cloud Services:
- (i) the Supplier has no entitlement to additional costs as a result of the data centre change (including, the costs of any data migration or backup); and
 - (ii) the change to the data centre location will be at the Supplier's sole cost.
- (f) Without limiting the Customer's termination and other rights and remedies under the Agreement and at Law, the Customer may with written notice to the Supplier and its sole election:
- (i) immediately terminate the Agreement; or
 - (ii) remove all or any aspect of the Cloud Services from scope,

where the Supplier changes the data centre location (or signals its intention to do so) without the Customer's prior written consent or otherwise fails to comply with its obligations under this clause 4.4. The Supplier will have no Claim against the Customer where the Customer exercises its rights under, or seeks to enforce, this clause 4.4.

4.5 Media decommissioning process

- (a) The Supplier must conduct a media decommissioning process prior to the final disposal of any storage media used to store Customer Data. The Supplier must ensure that:
- (i) prior to final disposal, any storage media used to store Customer Data will be securely degaussed, erased, purged, physically destroyed, or otherwise sanitised to render the data unrecoverable, however if sanitisation is not feasible or secure, the Supplier must ensure that the media is physically destroyed using methods like pulverisation (crashing the media into small particles) or incineration (burning the media to ashes);
 - (ii) it maintains detailed records of media destruction activities, including:
 - A. Date of destruction;
 - B. Type of media destroyed;
 - C. Destruction method used;

- D. Names of individuals involved; and
- E. Verification of destruction; and
- (iii) it complies with any additional requirements in respect of decommissioning that may be set out in the Order Form.
- (b) If requested by the Customer, the Supplier must provide the Customer with a report or certification showing that clause 4.5(a) has been complied with.

4.6 Data control and other requirements

The Supplier must:

- (a) implement and comply with all relevant data retention and disposal requirements specified in the Agreement; and
- (b) ensure that the accessibility or usability of Customer Data does not change detrimentally in any respect, subject to any agreed downtime of the Cloud Services.

PART C: SUPPORT SERVICES

5. Provision of Support Services

5.1 Application

This Part C applies where it is specified in the Order Form that the Supplier will provide Support Services in relation to the Cloud Services.

5.2 Support Period

All Support Services under this Module must be provided for the Support Period.

5.3 General

- (a) The Supplier must carry out the Support Services specified in the Order Form.
- (b) The Supplier must carry out the Support Services:
 - (i) in accordance with the requirements in this Part C and any additional requirements specified in the other Order Documents;
 - (ii) to meet any applicable Service Levels;
 - (iii) in a manner that is consistent with the Customer's operating requirements (if any) and the Specifications; and
 - (iv) in a manner that causes minimal disruption to Permitted Users and the Customer's operations.

5.4 Help desk

- (a) If the Order Form specifies that the Supplier will provide help desk Services, the Supplier must provide help desk Services during the times of operation and in accordance with the Specifications and any other requirements of the Agreement.
- (b) The Supplier must:

- (i) respond to, and investigate, requests to the help desk in a timely and efficient manner and in accordance with any requirements and Service Levels specified in the Order Documents; and
- (ii) ensure the help desk is provided by Personnel who are sufficiently qualified and experienced to resolve and escalate issues.

PART D: GENERAL

6. Training

6.1 Training Services

- (a) This clause 6 only applies where it is specified in the Order Form that the Supplier will provide training Services or Deliverables.
- (b) Unless otherwise specified in the Order Documents, the Supplier must:
 - (i) provide training Services and any training materials at the times and in accordance with the requirements specified in the Order Documents; and
 - (ii) prepare and submit to the Customer's Representative for approval, by the date specified in the Order Documents, a training Plan for carrying out the training Services. The training Plan must:
 - A. describe the type of training Services to be provided (for example, user training, "train-the trainer" training or awareness training);
 - B. describe how the training will be delivered;
 - C. specify the responsibilities of both parties in connection with the training, including any Customer Supplied Items to be provided in connection with the training;
 - D. specify any maximum and/or minimum number of attendees per training course; and
 - E. include such other detail as specified in the Order Documents.
- (c) For clarity, the training Plan is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the training Plan, including any updates to it.
- (d) Training will occur at the location(s) specified in the Order Documents or such other location(s) agreed by the Customer in writing.

6.2 Training Reports

- (a) Where specified in the Order Form, the Supplier must provide the Customer's Representative with written reports in relation to the provision of training Services (**Training Reports**). Unless otherwise specified in the Order Form, the Training Reports must cover:
 - (i) the status of the training;
 - (ii) any issues that the Supplier has encountered in delivering the training;

- (iii) any "lessons learnt" or areas for future improvement; and
 - (iv) such other details as set out in the Order Form.
- (b) The Training Reports must be provided by the Supplier on a fortnightly basis for the duration of the training Services or at such other intervals as set out in the other Order Documents.

7. Additional and ancillary Deliverables and Services

7.1 Provision of additional and ancillary Deliverables and Services

The Supplier must supply:

- (a) any additional or related Deliverables or Services specified in the Order Documents, including (where specified):
 - (i) Data Services; and
 - (ii) the provision of Non-ICT Services and associated Deliverables; and
- (b) all other goods and services that are incidental or ancillary to the provision of the Deliverables and Services under this Module and that are required to ensure that the Cloud Services complies with the Specifications and other requirements of the Agreement.

7.2 Requirements

The Supplier must provide all additional, related, incidental and/or ancillary Deliverables and Services specified in clause 7.1 in accordance with all applicable requirements and timeframes under the Agreement.

8. Records

- (a) The Supplier must keep and maintain full and accurate records of all Deliverables and Services provided under this Module in accordance with the Agreement and this clause 8.
- (b) Unless otherwise specified in the Order Documents, the records must include the following details:
 - (i) any issues in relation to the Deliverables and Services that have arisen or been reported by the Customer;
 - (ii) a record of any Deliverables provided as part of the Cloud Services, including the:
 - A. date provided;
 - B. quantity provided; and
 - C. name and (where applicable) serial number of the Deliverables;
 - (iii) any repairs, replacements or other remedial action taken by the Supplier or its Personnel in relation to any Deliverables (or parts or components) that have been supplied as part of the Cloud Services;

- (iv) any Delays associated with the provision of the Deliverables and Services and the reason for those Delays;
 - (v) any actions that the parties need to take, or decisions that need to be made, to ensure the provision of the Deliverables and Services in accordance with the requirements of the Agreement;
 - (vi) the progress of the Deliverables and Services against any Project Plan; and
 - (vii) such other records in relation to the Deliverables and Services that are specified in the Order Form.
- (c) The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 8 to the Customer's Representative in accordance with the times set out in the Order Documents or as otherwise reasonably required by the Customer.

9. Exceptions

- (a) The Supplier is not liable for any failure of the Cloud Services to comply with the Agreement to the extent arising as a result of:
- (i) any Critical CSI not operating in accordance with the Agreement;
 - (ii) any misuse of the Cloud Services by the Customer;
 - (iii) the Customer's combination, operation or use of the Cloud Services with any other product, equipment, software or document of the Customer or a third party except where:
 - A. such combination, operation or use is authorised under the Agreement;
 - B. the Supplier supplied the Cloud Services on the basis that they can be combined, operated or used with the Customer's or relevant third party products; or
 - C. such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Cloud Services;
 - (iv) damage caused by the operation of the Cloud Services other than in accordance with any recommended and reasonable operating procedures specified in the Order Form and User Documentation; or
 - (v) any Virus, Denial of Service Attack or other malicious act that adversely affects the Cloud Services or associated Services and Deliverables (or any software installed on the Deliverables or connected to them), except to the extent that the Virus, Denial of Service Attack or other malicious act was:
 - A. introduced or carried out by the Supplier or its Personnel;
 - B. caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or
 - C. due to the Supplier or its Personnel breaching the Agreement, including any failure to comply with the security obligations under the Agreement.

- (b) The Customer may, at its sole discretion, request the Supplier to provide Services in respect of correcting or resolving any of the issues set out in clause 9(a) and, if so, the Supplier must provide such Services on a time and materials basis, based on the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing. However, any issue that results from one or more of the circumstances specified in clauses 9(a)(iii)A to 9(a)(iii)C or clauses 9(a)(v)A to 9(a)(v)C must be rectified at the Supplier's sole cost and in accordance with the Agreement.

Annexure A: Definitions and interpretation

1. Definitions and interpretation

1.1 Definitions

Terms used in this Module have the meaning set out in Schedule 1 (Definitions and interpretation) of the Agreement, unless otherwise defined below:

Agreement has the meaning given to it in the ICT Agreement entered into under the NSW Government's Digital.NSW ICT Purchasing Framework, of which this Module forms a part.

Australian Government Information Security Manual means the Australian Government's manual of the same name available at <https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism> (or such other link as notified by the Customer to the Supplier).

Cloud Services means the Cloud Services identified in the Order Documents, which also includes:

- (a) online access to Supplier's Software-as-a-Service;
- (b) any Platform-as-a-Service or Infrastructure-as-a-Service identified in the applicable Order Form,

including all related features and functionality, as well as related Support Services.

Customer Provided Data means:

- (a) the information provided, entered or uploaded by Permitted Users into the Cloud Services; and
- (b) all other information provided to the Supplier (or extracted by the Supplier as part of providing the Supplier's Activities) and in respect of which the Supplier is to provide the Data Services.

Customer Provided Data includes any data derived or generated from the Customer Provided Data as a result of the provision of the Supplier's Activities, and is the Confidential Information of the Customer.

Data Services means any data Services specified in the Order Form to be provided by the Supplier in respect of the Customer Provided Data.

Module means this document (including Annexure A), which is the Cloud Module under the Agreement.

Non-ICT Services means Services that form part of the Supplier's Activities, but which do not comprise ICT Services or Deliverables.

Permitted Purpose means the use and purposes specified in this Agreement and any other purposes specified in the Order Form.

Permitted Users means:

- (a) Customer Users; and
- (b) such other persons specified in the Order Form or who the Supplier has permitted to access and use the Cloud Services in accordance with the Agreement.

Services Period has the meaning given to this term in clause 1.3.

Support Period means the Initial Term and any Renewal Period.

Support Services means the support and maintenance Services to be provided by the Supplier in respect of the Cloud Services and as specified in the Order Form.

Third Party Components means software applications, components, plug-ins, products and programs (excluding Open Source Software) that are owned by third parties and are stated in the Order Form or which are otherwise used in the provision of the Deliverables and Services.

Training Reports has the meaning given to this term in clause 6.2(a).

Unilateral Variation has the meaning given to this term in clause 1.4(a).

User Licensing Model means where the Cloud Services are licensed to the Customer on a per-user basis.

1.2 Interpretation

Unless as otherwise expressly specified, in this Module:

- (a) the rules of interpretation set out in Schedule 1 (Definitions and interpretation) of the Agreement will apply to this Module; and
- (b) a reference to a clause or Part is a reference to a clause or Part in this Module.

Services Module

Background

- A. This Module forms part of the Digital.NSW ICT Purchasing Framework.
- B. The purpose of this Module is to set out the specific terms and conditions which apply to the provision of ICT Services and related or ancillary goods and services.
- C. The specific Services and Deliverables that the Supplier will provide under the Agreement are described in the Order Form.

PART A: PRELIMINARIES

1. General

1.1 Scope

The Supplier must provide the Services and associated Deliverables described in the Order Form on the terms of this Module and the other terms of the Agreement.

1.2 Acknowledgements

The parties acknowledge and agree that the:

- (a) obligations in this Module supplement, and are in addition to, the parties' other rights and obligations under the Agreement. Except to the extent expressly provided in the Agreement, nothing in this Module is intended to limit or restrict any other provision under the Agreement; and
- (b) Customer is relying on the Supplier's expertise in providing the Services under this Module.

1.3 Services Period

Except for Support Services, all Services under this Module must be provided for the Term or for such other period specified in the Order Form (**Services Period**).

PART B: SUPPORT SERVICES

2. Provision of Support Services

2.1 Application

This Part B applies where it is specified in the Order Form that the Supplier will provide Support Services.

2.2 Support Period

All Support Services under this Module must be provided for the Support Period.

2.3 General

- (a) The Supplier must carry out the Support Services specified in the Order Form.
- (b) The Supplier must carry out all Support Services:
 - (i) in accordance with the requirements in this Part B and any additional requirements specified in the other Order Documents;
 - (ii) to meet any applicable Service Levels;
 - (iii) in a manner that is consistent with the Customer's operating requirements (if any) and the Specifications; and
 - (iv) in a manner that causes minimal disruption to Customer Users and the Customer's operations.

2.4 Help desk

- (a) If the Order Form specifies that the Supplier will provide help desk Services, the Supplier must provide help desk Services during the times of operation and in accordance with the Specifications and any other requirements of the Agreement.
- (b) The Supplier must:
 - (i) respond to, and investigate, requests to the help desk in a timely and efficient manner and in accordance with any requirements and Service Levels specified in the Order Documents; and
 - (ii) ensure the help desk is provided by Personnel who are sufficiently qualified and experienced to resolve and escalate issues.

3. Software Support Services

3.1 Application

This clause 3 applies where it is specified in the Order Form that the Supplier will provide Software Support Services.

3.2 Updates and New Releases

- (a) This clause 3.2 applies where the Supplier provides Software Support Services and Updates and/or New Releases form part of those Software Support Services.
- (b) The Supplier must offer and provide the Customer all:
 - (i) Updates applicable to the Software; and/or
 - (ii) New Releases applicable to the Software,at no additional cost and when the Update and/or New Release becomes available, except where otherwise specified in the Order Form (in relation to either Updates or New Releases, or both).
- (c) All Updates and New Releases that the Supplier provides must conform to the security and other requirements of the Agreement and must not reduce or diminish the functionality, performance or availability of the Software.
- (d) To the extent reasonably practicable, the Supplier must:

- (i) provide the Customer with written notice of all Updates and New Releases prior to installation; and
 - (ii) if requested to do so by the Customer, at the Supplier's sole cost (unless otherwise specified in the Order Form), demonstrate the extent to which the relevant Update and New Release is capable of providing the functionality and performance specified in the Specifications and Order Documents (including, where available, through the provision of release notes pertaining to the Update and New Release).
- (e) Subject to clauses 3.2(f) and 3.2(g), the Customer is under no obligation to accept, approve or permit the installation (whether manually or automatically applied) of any Update or New Release offered by the Supplier pursuant to this clause 3.2 and a refusal by the Customer to implement an Update or New Release will not affect the Customer's entitlement to the Deliverables and Services.
- (f) Notwithstanding the above, the Customer must accept any Update that is designed to correct or redress a security vulnerability that is affecting the Software (**Security Correction**) but only to the extent that the Update complies with clause 3.2(c) and such other conditions specified in the Order Form.
- (g) If the Customer rejects the offer by the Supplier of an Update or New Release (other than any Security Correction), the Supplier must (unless otherwise specified in the Order Form) continue to maintain the version of the Software that the Customer is using for 18 months (or such other period as specified in the Order Form) from the date that the Customer provides written notice to the Supplier of the rejection of the Update or New Release. After this period, the parties acknowledge and agree that:
 - (i) the Software may have its usefulness reduced over time;
 - (ii) the Supplier may not be able to remedy any Defects in the Software; and
 - (iii) the Supplier is not responsible for any Defect in the Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the Update or New Release been installed.
- (h) If the Customer accepts an Update or New Release the:
 - (i) Specifications with respect to the Software will be deemed to be amended to the extent that the specifications for the Update and New Release supersede the existing Specifications;
 - (ii) Supplier must promptly update the User Documentation to the extent required to reflect the Update and New Release and, once updated, promptly provide a copy to the Customer;
 - (iii) Supplier must deliver the Update and New Release in a timely manner and in accordance with any timeframes agreed between the parties in writing; and
 - (iv) Agreement will continue to apply in all respects to the Update and New Release.

3.3 No restriction

Nothing in this clause 3 is intended to reduce or restrict the Supplier's obligations to respond to and redress Defects and Security Incidents (including through the provision of appropriate patches for security vulnerabilities). Such matters must be completed in accordance with any applicable Service Levels and all other requirements of the Agreement.

4. Support Services for Hardware and Other ICT Deliverables

4.1 Application

This clause 4 applies where it is specified in the Order Form that the Supplier will supply Support Services with respect to the Hardware and/or Other ICT Deliverables.

4.2 Provision of Support Services

The Supplier must carry out the Support Services with respect to the Hardware and/or Other ICT Deliverables specified in the Order Form. These Support Services may include either Preventative Maintenance or Remedial Maintenance (or both), as well as such other Support Services specified in the Order Form.

4.3 Preventative Maintenance

- (a) Where specified in the Order Form, the Supplier must carry out Preventative Maintenance to ensure that the Deliverables remain in good working order and comply with the Specifications and other requirements of the Agreement.
- (b) Preventative Maintenance will be carried out outside Business Hours or at such other times as specified in the Order Form or agreed by the Customer in writing.
- (c) Except to the extent specified in the Order Form, as part of Preventative Maintenance the Supplier must:
 - (i) maintain the Deliverable and any Machine Code to a standard that ensures continued performance in accordance with the Specifications and other requirements of the Agreement;
 - (ii) make available all necessary fixes, patches, upgrades and new releases and enhancements for the Machine Code and other software components incorporated within the Deliverable; and
 - (iii) detect problems in relation to the Deliverables and minimise their occurrence,

including undertaking system checks, replacing any unserviceable parts (excluding consumable items), cleaning and, where necessary, lubricating and adjusting mechanical and electro-mechanical devices in accordance with any manufacturer's instructions.
- (d) The Customer may, acting reasonably, postpone Preventative Maintenance with at least five Business Days' notice in writing to the Supplier's Representative. Where this occurs, the parties will co-operate with each other to reschedule the Preventative Maintenance on a date and time mutually agreed between the parties.

4.4 Engineering changes

- (a) Unless otherwise specified in the Order Form, the Supplier must make available to the Customer all engineering changes to any Hardware and Other ICT Deliverables that:
 - (i) are designed to improve the safety, performance and reliability of the Deliverables; and
 - (ii) the Supplier generally makes available to its other customers.
- (b) The Supplier must give the Customer advance written notice of all proposed engineering changes in accordance with any notice period specified in the Order

Form. This notice should include sufficient particulars about the proposed engineering changes to enable the Customer to determine whether to implement the proposed engineering changes.

- (c) Except where any engineering changes are classified by the Supplier or the manufacturer as being mandatory to ensure product security or safety in accordance with the Agreement (**Mandatory Engineering Changes**), the Customer may, at its sole discretion, elect not to proceed with any engineering changes.
- (d) For any engineering changes that the Customer proceeds with, the Customer may (at its sole discretion) elect to either:
 - (i) procure the Supplier to, at its own cost, provide a "user installable part" which the Customer must promptly Install in accordance with the Supplier's, and any manufacturer's, instructions; or
 - (ii) allow the Supplier to Install the engineering change, at the Supplier's own cost.
- (e) The Supplier must:
 - (i) perform relevant tests to demonstrate that the engineering change has been successfully implemented and, if requested by the Customer, provide written confirmation of such tests;
 - (ii) if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the engineering change; and
 - (iii) promptly following performance of the engineering change, make any necessary updates to the User Documentation in accordance with the Agreement.
- (f) Except for Mandatory Engineering Changes, a refusal of the Customer to implement an engineering change will not affect the Customer's entitlement to the Deliverables and Services under the Agreement.

4.5 Remedial Maintenance

- (a) Where specified in the Order Form, the Supplier must provide Remedial Maintenance as specified in the Order Form and in accordance with the requirements of this clause 4.5.
- (b) The Supplier must promptly, after being notified of a Defect or problem in relation to a Deliverable (including any Machine Code):
 - (i) repair or restore the Deliverable to enable it to operate in accordance with the Agreement;
 - (ii) comply with any applicable Service Levels and response times specified in the Order Documents;
 - (iii) to the extent that it is practical to do so, implement appropriate measures to minimise disruption to Customer Users and the Customer's operations during the provision of Remedial Maintenance; and
 - (iv) comply with any other requirements specified in the Agreement.

- (c) The Supplier must:
 - (i) perform relevant tests to demonstrate that the Remedial Maintenance has been successfully implemented and, if requested by the Customer, provide written confirmation of such tests;
 - (ii) if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the Remedial Maintenance; and
 - (iii) promptly following performance of the Remedial Maintenance make any necessary updates to the User Documentation in accordance with the Agreement.

PART C: OTHER SERVICES

5. Development Services

5.1 Application

This clause 5 applies where it is specified in the Order Form that the Supplier will supply Development Services.

5.2 Performance requirements

The Supplier must provide the Software Solution and carry out the Development Services to ensure that the Software Solution is compatible with the Customer Environment and complies with the Specifications and other requirements specified in the Order Documents.

5.3 Design process

- (a) This clause 5.3 applies where it is specified in the Order Form that the Supplier must prepare a design specification with respect to the provision of the Software Solution and the Development Services (**Design Specification**).
- (b) The Supplier must prepare a Design Specification for the Customer's approval by the date specified in the Order Documents or as otherwise agreed by the Customer in writing. The Design Specification must:
 - (i) be based on, and consistent with, the Specifications;
 - (ii) enable the Software Solution to be installed within the Customer Environment; and
 - (iii) provide a detailed technical explanation of how the Software Solution will provide the functions specified in the Specifications, including, as applicable, details of the processes, visual displays, screen layouts, system flowcharts, user interfaces and data flows.
- (c) The Design Specification will, when approved by the Customer in writing, become part of the Specifications.
- (d) For clarity, the Design Specification is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the Design Specification, including any updates to it.

5.4 Development process

- (a) The Supplier must carry out the Development Services:

- (i) to ensure minimal disruption to the Customer and Customer Users; and
 - (ii) in a controlled and traceable manner to maintain the integrity and traceability of all changes to the Software at all stages of development.
- (b) Without limiting the generality of clause 5.4(a), the Supplier must ensure that:
 - (i) it identifies and documents all changes to the Software that it or its Personnel make or implement; and
 - (ii) any changes to the Software are developed and documented in a way which would enable future modification or development to the Software Solution without further reference to the Supplier.
- (c) In the User Documentation, the Supplier must reference and document procedures to be undertaken in relation to the detection and remediation of development errors, faults and other Defects identified in respect of the Software Solution.
- (d) The Supplier must continually monitor and assess the quality of all Development Services against any applicable Service Levels and any other criteria set out in the Specifications (including the Design Specification) and the Order Documents.

5.5 Alternative project delivery methodology

The parties may, in an Order Form, specify an alternative project design and development methodology to that set out in clauses 5.3 and 5.4, in which case that alternative project methodology will apply to the performance of the Development Services.

5.6 Warranties in relation to Development Services

The Supplier warrants that, without limiting any other warranties or commitments made by it in the Agreement, it:

- (a) has established quality assurance arrangements for the provision of the Development Services; and
- (b) will comply with, and maintain, those quality assurance arrangements for so long as it is providing Development Services under the Agreement.

6. Systems Integration Services

6.1 Application

This clause 6 applies where it is specified in the Order Form that the Supplier will provide Systems Integration Services.

6.2 Provision of Systems Integration Services

- (a) The Supplier must provide the Systems Integration Services specified in the Order Documents. Except to the extent otherwise set out in the Order Documents, the Systems Integration Services will include:
 - (i) designing, providing, configuring, installing and testing the System; and
 - (ii) carrying out all other Systems Integration Services specified in the other Order Documents.
- (b) The Supplier must carry out all Systems Integration Services in accordance with clause 6 and the other requirements of the Agreement.

- (c) Except to the extent otherwise specified in the Order Documents, the Supplier will assume primary project management and control in relation to all Systems Integration Services, including:
 - (i) coordinating the Supplier's Activities with the Customer and Other Suppliers (where applicable); and
 - (ii) managing project risks and discharging responsibilities which are identified as the Supplier's responsibility in the Order Documents.
- (d) The Supplier must perform the Systems Integration Services at the times, and in accordance with the requirements, set out in the Order Documents (including any approved SI Plan and SI Specifications).

6.3 SI Plan and SI Specifications

- (a) The Supplier must, prior to performing the Systems Integration Services, prepare and deliver to the Customer for its approval:
 - (i) a systems integration implementation plan for carrying out the Systems Integration Services (**SI Plan**); and
 - (ii) specifications for the System (**SI Specifications**).
- (b) The SI Plan requirements and the SI Specifications will be specified in the Order Form.
- (c) Where the requirements for the SI Plan are not specified in the Order Form, the SI Plan must, at a minimum, include:
 - (i) an assessment and definition of:
 - A. the Customer Environment;
 - B. the System;
 - C. all relevant interfaces that are necessary in order for the System to properly interface with the Customer Environment;
 - D. the Customer's requirements and expectations in respect of the Systems Integration Services, including the Customer's business requirements and any objectives to be met by the Supplier in carrying out the Systems Integration Services;
 - E. the roles and responsibilities of the parties; and
 - F. any resources (including Customer Supplied Items) required to carry out the Systems Integration Services;
 - (ii) a strategy for the delivery of the Systems Integration Services that is appropriate for the Customer's needs, including the staging and implementation of the Systems Integration Services and associated testing;
 - (iii) a Data Migration Plan (where applicable); and
 - (iv) such other details specified in the other Order Documents.
- (d) Unless otherwise specified in the Order Form, the SI Specifications must, at a minimum, include:

- (i) detailed technical and functional specifications for the System; and
 - (ii) such other details specified in the other Order Documents.
- (e) For clarity, the SI Plan and SI Specifications are Document Deliverables. Clause 8 (Document Deliverables) of the Agreement therefore applies to the SI Plan and SI Specifications, including any updates to them.

6.4 Warranties in relation to Systems Integration Services

The Supplier warrants that:

- (a) all components of the System will properly combine and interact with each other in accordance with the SI Specifications and other applicable requirements of the Agreement; and
- (b) the System will be properly installed in accordance with any approved SI Plan.

7. Data Services

7.1 Application

This clause 7 applies where it is specified in the Order Form that the Supplier will provide Data Services.

7.2 Customer Provided Data

- (a) Unless otherwise specified in the Order Form, to enable the Supplier to carry out the Data Services, the Customer will use its reasonable endeavours to extract and provide the Customer Provided Data to the Supplier:
 - (i) in the format specified in the Order Form; and
 - (ii) at the times (including within any timeframes) and in accordance with any other requirements specified in the Order Documents.
- (b) The Customer acknowledges and agrees that the Supplier's ability to carry out the Data Services may depend in whole or in part on the completeness and quality of the Customer Provided Data.
- (c) If the Supplier identifies any errors or issues in relation to the Customer Provided Data (including due to data transmission issues), the Supplier must:
 - (i) advise the Customer's Representative as soon as the Supplier becomes aware of the issue;
 - (ii) co-operate with the Customer to resolve the issue; and
 - (iii) not commence the Data Services until the issue has been resolved to the Customer's reasonable satisfaction.
- (d) The Supplier acknowledges and agrees that Customer Provided Data is "Customer Data" as defined in Schedule 1 of the Agreement. For clarity (and without limiting those obligations in relation to Customer Data specified in Part C (Data and Security) of the Agreement):
 - (i) the Supplier obtains no right, title or interest with respect to any Customer Provided Data, other than a right to use Customer Provided Data for the sole purpose of carrying out the Supplier's Activities in accordance with the Agreement;

- (ii) as between the Supplier and the Customer, all rights in, and in relation to, Customer Provided Data remain with the Customer at all times and are not transferred; and
- (iii) the Supplier must not dispose of any Customer Provided Data other than in accordance with the Agreement.

7.3 Further restrictions

The Supplier and its Personnel must not attempt to use the Customer Provided Data in a manner that is contrary to the Privacy Laws or that attempts (without the Customer's express written authorisation) to:

- (a) extract any Personal Information from the Customer Provided Data; or
- (b) de-identify any Customer Provided Data.

7.4 Backups

- (a) Unless otherwise specified in the Order Form, the Customer must:
 - (i) take a complete backup of the Customer Provided Data; and
 - (ii) test and retain the backup referred to in clause 7.4(a)(i),
prior to giving a copy of the Customer Provided Data to the Supplier.
- (b) Once Customer Provided Data is supplied to the Supplier or (where applicable) extracted by the Supplier, the Supplier:
 - (i) is solely responsible for taking and backing up the Customer Provided Data; and
 - (ii) must ensure that all backups of Customer Provided Data:
 - A. occur securely and in accordance with the Agreement, including any requirements specified in the Order Form;
 - B. occur regularly and at the intervals or timeframes specified in the Order Documents; and
 - C. are undertaken in a manner which enables the Customer Provided Data to be accurately and completely restored, in the event of any damage to, or loss of, that Customer Provided Data.

7.5 Data cleansing

If the Order Form states that data cleansing is to be performed by the Supplier, the Supplier must cleanse the Customer Provided Data by:

- (a) eliminating records that are clearly duplicates;
- (b) correcting misspellings and errors;
- (c) ensuring that there are consistent descriptions, punctuation and syntax; and
- (d) resolving any other obvious inaccuracies, omissions or inconsistency issues,
to meet the level of accuracy and consistency stated in the Order Documents.

7.6 Data analysis

- (a) If the Order Form states that the Supplier is to provide data analytics Services with respect to the Customer Provided Data, the Supplier must conduct such analytics and, where specified in the Order Form, provide the Customer with the data analytics report(s).
- (b) The Supplier must complete the data analytics Services at the times, and in accordance with the requirements, specified in the Order Documents.

7.7 Data migration

- (a) If the Order Form states that data migration Services must be performed by the Supplier, the Supplier must:
 - (i) perform the data migration Services described in the Order Form. Unless otherwise specified in the Order Form, the data migration Services must include:
 - A. implementation of all activities set out in the Order Form and the Data Migration Plan for the migration of the Customer Provided Data;
 - B. completion of all necessary pre-migration activities to ensure the smooth migration of Customer Provided Data in accordance with the Agreement, including this clause 7;
 - C. development of appropriate business contingency arrangements should the migration of the Customer Provided Data not be successful; and
 - D. testing and acceptance of the migrated data in accordance with the requirements specified in the Order Documents; and
 - (ii) prepare a Data Migration Plan for the Customer's approval by the relevant Date for Delivery with respect to how the Supplier will effectively, securely and efficiently carry out any data migration activities in accordance with the requirements of the Agreement (**Data Migration Plan**).
- (b) The Data Migration Plan must include (unless otherwise specified in the Order Documents):
 - (i) an assessment and definition of the:
 - A. existing Customer systems from which the Customer Provided Data is to be extracted; and
 - B. Customer's data migration goals;
 - (ii) a data migration strategy that is appropriate for the Customer's needs and covers all appropriate planning and timetabling issues associated with the provision of the Data Services including the:
 - A. identification of the Data Services to be performed;
 - B. staging and implementation of the Data Services; and
 - C. preparation/pre-migration activities to be performed;

- (iii) a description of any data conversion proposed to be undertaken as part of the data migration strategy and of the activities required to be performed; and
- (iv) such other details specified in the other Order Documents.
- (c) For clarity, the Data Migration Plan is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the Data Migration Plan, including any updates to it.

7.8 Tools and Methodologies

- (a) Where the Data Services are to be performed using software, software tools, object libraries, methodologies or other tools owned by the Supplier or any other party (**Tools and Methodologies**), the Supplier must, at the Customer's request, provide the Customer with an overview of the Tools and Methodologies.
- (b) Where the Tools and Methodologies are required to perform the Data Services, or the Customer requires access to any of them after the completion of the Data Services, the Supplier must:
 - (i) where the Supplier owns any Tools and Methodologies, provide the Customer with a licence to use those Tools and Methodologies on the same licence terms as specified in clause 17 (Intellectual Property) of the Agreement; and
 - (ii) where any Tools and Methodologies are owned by a third party, comply with clause 17.9 (Third party Intellectual Property Rights) of the Agreement in relation to those Tools and Methodologies.

8. Other Professional Services

8.1 Application

This clause 8 applies where it is specified in the Order Form that the Supplier is to provide Professional Services.

8.2 General

- (a) The Supplier must provide the Professional Services in accordance with these Module Terms and the requirements set out in the Order Form.
- (b) The Professional Services must be provided to meet the Specifications, standards and Dates for Delivery under the Agreement.

8.3 Timeframe for provision

Where the Supplier is providing the Professional Services at the Site, the Professional Services will be provided during Business Hours or at such other times as specified in the other Order Documents or agreed by the Customer in writing.

9. Managed Services

9.1 Application

This clause 9 applies where it is specified in the Order Form that the Supplier will provide Managed Services.

9.2 General

- (a) The Supplier must provide the Managed Services in accordance with these Module Terms and the requirements set out in the other Order Documents.
- (b) The Managed Services must be provided to meet the Specifications, standards and Dates for Delivery under the Agreement.

9.3 Transition-In Services

- (a) Without limiting clause 7 (Transition-In) of the Agreement, where the Order Form specifies that the Supplier will provide Transition-In Services, the Supplier must (unless otherwise specified in the Order Form):
 - (i) perform due diligence to understand the Customer's goals, requirements and expectations with respect to the provision of the Managed Services; and
 - (ii) develop a Transition-In Plan that:
 - A. sets out the Supplier's understanding of the Customer's requirements in relation to the Managed Services and the objectives to be met by the Supplier;
 - B. specifies the Customer Users who will be supported by the Managed Services;
 - C. specifies any assets or items that may need to be procured in connection with the provision of the Managed Services;
 - D. specifies any resources required (including any Customer Supplied Items or Customer assistance); and
 - E. includes such other matters as specified in the Order Documents.
- (b) The due diligence and other Transition-In Services must be commenced without delay and completed by the date specified in the Order Documents or as otherwise agreed by the Customer in writing.
- (c) If, after completing the due diligence and other Transition-In Services, the Supplier reasonably determines that any:
 - (i) aspect of the Managed Services are different to that set out in the Order Documents; or
 - (ii) assumptions set out in the Order Documents are not true,

then the Supplier may provide the Customer with a Change Request to vary the scope of the Managed Services to the sole extent reasonably necessary to reflect the true extent and nature of the Managed Services. Any such Change Requests will be addressed in accordance with the Change Control Procedure under the Agreement.

9.4 Procedures Manual

- (a) Where specified in the Order Form, the Supplier must provide to the Customer for approval a procedures manual for the carrying out of the Managed Services (**Procedures Manual**). The Procedures Manual must be provided by the date specified in the Order Documents.

- (b) The Procedures Manual must specify:
 - (i) the governance processes, procedures and protocols for dealing with the Customer and any third parties;
 - (ii) the procedures and proposals for managing Security Incidents;
 - (iii) the procedures and protocols for identifying and managing risks;
 - (iv) the procedures and protocols to identify and rectify Defects or failures in the delivery of the Managed Services; and
 - (v) such other details specified in the Order Form.
- (c) For clarity, the Procedures Manual is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the Procedures Manual, including any updates to it.

9.5 Managed Third Party Contracts

- (a) This clause 9.5 applies where it is specified in the Order Form that the Supplier will assume responsibility for the management and performance of any Managed Third Party Contracts.
- (b) The Supplier must perform the Supplier's Activities with respect to each Managed Third Party Contract as described in this clause 9.5 and the other Order Documents or as otherwise agreed between the parties in writing.
- (c) The Supplier must use its best efforts to obtain the novation of each Managed Third Party Contract by the date specified in the Order Documents or as otherwise agreed by the Customer in writing. If a Managed Third Party Contract cannot be novated by this date:
 - (i) the Supplier must use its best efforts to procure the right to assume management responsibility on behalf of the Customer in respect of the Customer's rights and obligations under the relevant Managed Third Party Contract and the Customer must provide all reasonable assistance to the Supplier in that regard; and
 - (ii) if the Supplier cannot procure the rights specified in clause 9.5(c)(i), the parties will consult and co-operate with each other in order to agree and implement appropriate workarounds or other alternative solutions to enable the Supplier to provide the Managed Services. Such workarounds or other alternative solutions may include, if agreed by the parties, the Supplier entering into an agreement directly with the relevant Managed Third Party Contract supplier.
- (d) Unless and until a Managed Third Party Contract has been properly novated to the Supplier in accordance with the Agreement, the Supplier must not without the express written approval of the Customer:
 - (i) vary, terminate, repudiate, extend or exercise any rights under the Managed Third Party Contracts;
 - (ii) waive or purport to waive any rights of the Customer under the Managed Third Party Contracts;
 - (iii) grant any consent or approval, or exercise any of the Customer's rights under the Managed Third Party Contracts; or

- (iv) purport to act for, or on behalf of, the Customer or bind the Customer in any respect, whether at Law or in contract.
- (e) The Supplier must immediately notify the Customer's Representative in writing of any actual, suspected or alleged:
 - (i) breach;
 - (ii) Claim;
 - (iii) dispute; or
 - (iv) matter or circumstance that impacts the Customer's or Supplier's rights and remedies (as applicable),under, or in connection with, any Managed Third Party Contract.
- (f) The Supplier must, if requested by the Customer, provide all necessary support and assistance required by the Customer in relation to the investigation, resolution and management of any of the matters or circumstances specified in clause 9.5(e).
- (g) Unless otherwise specified in the Payment Particulars, all costs associated with the management and novation of Third Party Contracts form part of the Price for the provision of the Managed Services.
- (h) The parties may specify an alternative approach in relation to the administration of Managed Third Party Contracts in the Order Form, in which case they will comply with that alternative approach.

9.6 Assets

- (a) This clause 9.6 applies where the Order Form specifies that a transfer of Assets is required to carry out the Managed Services.
- (b) From the date specified in the Order Form (or at such other time as agreed by the Customer), title to the Assets will be transferred from the Customer to the Supplier to enable the Supplier to provide the Managed Services. Once the transfer occurs, risk in the transferred Assets passes to the Supplier and the Supplier will be fully responsible for the Assets, including their condition and ongoing maintenance.
- (c) The Customer warrants that, upon title passing to the Supplier in accordance with clause 9.6(b), the Assets will pass to the Supplier free and clear of all liens, security interests, mortgages and other encumbrances.

9.7 Transition-Out Services

Without limiting clause 27 (Transition-Out Services) of the Agreement, where the Order Form specifies that the Supplier will provide Transition-Out Services, the Supplier must (unless otherwise specified in the Order Form):

- (a) assist the Customer to transition the Managed Services to a new service provider or to the Customer; and
- (b) if requested by the Customer:
 - (i) assist the Customer to obtain the novation or assignment of the Managed Third Party Contracts to a new service provider or to the Customer;

- (ii) deal with any Assets that were used in the provision of the Managed Services in accordance with the Customer's reasonable requirements; and
- (iii) grant or assist the Customer (or new service provider) to procure sufficient rights and licences to continue using assets, software or other Materials used in the provision of the Managed Services.

PART D: GENERAL

10. Training

10.1 Training Services

- (a) This clause 10 only applies where it is specified in the Order Form that the Supplier will provide training Services or Deliverables.
- (b) Unless otherwise specified in the Order Documents, the Supplier must:
 - (i) provide training Services and any training materials at the times and in accordance with the requirements specified in the Order Documents; and
 - (ii) prepare and submit to the Customer's Representative for approval, by the date specified in the Order Documents, a training Plan for carrying out the training Services. The training Plan must:
 - A. describe the type of training Services to be provided (for example, user training, "train-the trainer" training or awareness training);
 - B. describe how the training will be delivered;
 - C. specify the responsibilities of both parties in connection with the training, including any Customer Supplied Items to be provided in connection with the training;
 - D. specify any maximum and/or minimum number of attendees per training course; and
 - E. include such other detail as specified in the Order Documents.
- (c) For clarity, the training Plan is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the training Plan, including any updates to it.
- (d) Training will occur at the location(s) specified in the Order Documents or such other location(s) agreed by the Customer in writing.

10.2 Training Reports

- (a) Where specified in the Order Form, the Supplier must provide the Customer's Representative with written reports in relation to the provision of training Services (**Training Reports**). Unless otherwise specified in the Order Form, the Training Reports must cover:
 - (i) the status of the training;

- (ii) any issues that the Supplier has encountered in delivering the training;
 - (iii) any "lessons learnt" or areas for future improvement; and
 - (iv) such other details as set out in the Order Form.
- (b) The Training Reports must be provided by the Supplier on a fortnightly basis for the duration of the training Services or at such other intervals as set out in the other Order Documents.

11. Additional and ancillary Deliverables and Services

11.1 Provision of additional and ancillary Deliverables and Services

The Supplier must supply:

- (a) any additional or related Deliverables or Services specified in the Order Documents, including (where specified):
 - (i) installation Services; and
 - (ii) the provision of Non-ICT Services and associated Deliverables; and
- (b) all other goods and services that are incidental or ancillary to the provision of the Services under this Module and that are required to ensure that the Services comply with the Specifications and other requirements of the Agreement.

11.2 Requirements

The Supplier must provide all additional, related, incidental and/or ancillary Deliverables and Services specified in clause 7.1 in accordance with all applicable requirements and timeframes under the Agreement.

12. Records

- (a) The Supplier must keep and maintain full and accurate records of all Services provided under this Module in accordance with the Agreement and this clause 8.
- (b) Unless otherwise specified in the Order Documents, the records must include the following details:
 - (i) any issues in relation to the Services that have arisen or been reported by the Customer;
 - (ii) a record of any Deliverables provided as part of the Services, including the:
 - A. date provided;
 - B. quantity provided; and
 - C. name and (where applicable) serial number of the Deliverables;
 - (iii) any repairs, replacements or other remedial action taken by the Supplier or its Personnel in relation to any Deliverables (or parts or components) that have been supplied as part of the Services;

- (iv) any Delays associated with the provision of the Services and the reason for those Delays;
 - (v) any actions that the parties need to take, or decisions that need to be made, to ensure the provision of the Services in accordance with the requirements of the Agreement;
 - (vi) the progress of the Services against any Project Plan; and
 - (vii) such other records in relation to the Services that are specified in the Order Form.
- (c) Without limiting the generality of the foregoing, where the Supplier provides any:
- (i) Development Services, the Supplier must keep records that adequately detail and describe all changes to the Software; and
 - (ii) Managed Services, the Supplier must keep records relating to all actions and tasks the Supplier has taken, and the requests or communications it has made, with respect to any Managed Third Party Contracts.
- (d) The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 8 to the Customer's Representative in accordance with the times set out in the Order Documents or as otherwise reasonably required by the Customer.

13. Exceptions

- (a) The Supplier is not liable for any failure of the Services or associated Deliverables to comply with the Agreement to the extent arising as a result of:
- (i) any Critical CSI not operating in accordance with the Agreement;
 - (ii) any misuse of the Services or associated Deliverables by the Customer;
 - (iii) in relation to Support Services for Hardware or Other ICT Deliverables, the Customer not implementing any Mandatory Engineering Changes;
 - (iv) in relation to Development Services for Software, the Customer's combination, operation or use of the relevant Software with any other product, equipment, software or document of the Customer or a third party except where:
 - A. such combination, operation or use is authorised under the Agreement;
 - B. the Supplier supplied the Software on the basis that it can be combined, operated or used with the Customer's or relevant third party products; or
 - C. such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Development Services and the associated Software;
 - (v) damage caused by the operation of any Deliverables other than in accordance with any recommended and reasonable operating procedures specified in the Order Form and User Documentation; or

- (vi) any Virus, Denial of Service Attack or other malicious act that adversely affects the Services or associated Deliverables (or any software installed on the Deliverables or connected to them), except to the extent that the Virus, Denial of Service Attack or other malicious act was:
 - A. introduced or carried out by the Supplier or its Personnel;
 - B. caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or
 - C. due to the Supplier or its Personnel breaching the Agreement, including any failure to comply with the security obligations under the Agreement.

- (b) The Customer may, at its sole discretion, request the Supplier to provide Services in respect of correcting or resolving any of the issues set out in clause 9(a) and, if so, the Supplier must provide such Services on a time and materials basis, based on the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing. However, any issue that results from one or more of the circumstances specified in clauses 13(a)(iv)A to 13(a)(iv)C or clauses 13(a)(vi)A to 13(a)(vi)C must be rectified at the Supplier's sole cost and in accordance with the Agreement.

Annexure A: Definitions and interpretation

1. Definitions and interpretation

1.1 Definitions

Terms used in this Module have the meaning set out in Schedule 1 (Definitions and interpretation) of the Agreement, unless otherwise defined below:

Agreement has the meaning given to it in the ICT Agreement entered into under the NSW Government's Digital.NSW ICT Purchasing Framework, of which this Module forms a part.

Assets means the physical assets and items specified in the Order Form (or as otherwise agreed between the parties in writing) which are to be transferred to the Supplier in accordance with clause 9.5(h).

Customer Provided Data means the Customer Data provided by the Customer to the Supplier (or extracted by the Supplier as part of providing the Supplier's Activities) and in respect of which the Supplier is to provide the Data Services. Customer Provided Data includes any data derived or generated from the Customer Provided Data as a result of the provision of the Supplier's Activities.

Data Migration Plan has the meaning given to this term in clause 7.7(a)(ii).

Data Services means any data Services specified in the Order Form to be provided by the Supplier in respect of the Customer Provided Data.

Design Specification has the meaning given to this term in clause 5.3(a).

Development Services means the Software development Services as described in clause 5.

Hardware means the physical ICT equipment, including all components and parts, specified in the Order Form which is to be acquired or maintained under the Agreement (as the case may be) and any substituted equipment, components or parts.

Install means the installation and set-up of the Hardware in accordance with this Module, including the integration of the Hardware into the Customer Environment, and **Installation** has a corresponding meaning.

Machine Code means any microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, firmware and any other code, delivered with the Hardware for the purpose of enabling the Hardware to function as specified in the Order Form and Order Documents. Machine Code excludes the operating system and any On-Premise Software that is provided pursuant to the Software Module under the Agreement.

Managed Services means the managed services as described in clause 9.

Managed Third Party Contracts means a contract, deed or agreement with a third party as specified in the Order Form (or such other third party contracts, deeds or agreements as agreed between the parties in writing).

Mandatory Engineering Changes has the meaning given to this term in clause 4.4(c).

Module means this document (including Annexure A), which is the Services Module (Non-Cloud) under the Agreement.

Non-ICT Services means Services that form part of the Supplier's Activities, but which do not comprise ICT Services or Deliverables.

Other ICT Deliverables means ICT Deliverables and components and parts other than:

- (a) On-Premise Software provided under the Software Module;
- (b) Hardware; or
- (c) Deliverables provided under the Cloud Module.

Preventative Maintenance means scheduled maintenance Services required to be performed by the Supplier in accordance with clause 4.3 to ensure that the Hardware and Other ICT Deliverables remain in working order in accordance with the Specifications and other requirements of the Agreement.

Procedures Manual has the meaning given to this term in clause 9.4(a).

Professional Services means the professional Services required to be provided by the Supplier as described in the Order Form.

Remedial Maintenance means unscheduled maintenance Services required to be performed by the Supplier pursuant to clause 4.5 to restore the Hardware and Other ICT Deliverables to a condition allowing performance in accordance with the Specifications and other requirements of the Agreement.

Security Correction has the meaning given to this term in clause 3.2(f).

Services Period has the meaning given to this term in clause 1.3.

SI Plan has the meaning given to this term in clause 6.3(a)(i).

SI Specifications has the meaning given to this term in clause 6.3(a)(ii).

Software means, in relation to this Module, the software specified in the Order Form that is subject to the Software Support Services and/or Development Services, and where applicable, includes the Software Solution.

Software Solution means the Software to be implemented, developed or created by the Supplier for the Customer as stated in the Order Form.

Software Support Services means the support and maintenance Services to be provided by the Supplier in respect of the Software and as specified in the Order Form.

Support Period means the period during which the Supplier will provide the specific category of Support Services as specified in the Order Form or as otherwise agreed between the parties in writing.

Support Services means the support and maintenance Services to be provided by the Supplier in respect of the Supported Deliverables and as specified in the Order Form.

Supported Deliverables means the Software, Hardware and other Deliverables (as well as all associated components and parts) that are specified in the Order Form and in respect of which the Supplier will provide the Support Services.

System means the system specified in the Order Form (or as otherwise agreed by the parties in the SI Plan). The System comprises the software, hardware and other ICT infrastructure to be integrated with the Customer Environment.

Systems Integration Services means the Services for Systems integration specified in the Order Form or other Order Documents and which is to be provided by the Supplier.

Tools and Methodologies has the meaning given to this term in clause 7.8(a).

Training Reports has the meaning given to this term in clause 10.2(a).

1.2 Interpretation

Unless as otherwise expressly specified, in this Module:

- (a) the rules of interpretation set out in Schedule 1 (Definitions and interpretation) of the Agreement will apply to this Module; and
- (b) a reference to a clause or Part is a reference to a clause or Part in this Module.

Software Module (Non-Cloud)

Background

- A. This Module forms part of the Digital.NSW ICT Purchasing Framework.
- B. The purpose of this Module is to set out the specific terms and conditions which apply to the provision of On-Premise Software, Software Support Services and related or ancillary goods and services.
- C. The specific Deliverables and Services that the Supplier will provide under the Agreement are described in the Order Form.

PART A: PRELIMINARIES

1. General

1.1 Scope

The Supplier must provide the On-Premise Software, Software Support Services and associated Deliverables described in the Order Form on the terms of this Module and the other terms of the Agreement.

1.2 Acknowledgements

The parties acknowledge and agree that the:

- (a) obligations in this Module supplement, and are in addition to, the parties' other rights and obligations under the Agreement. Except to the extent expressly provided in the Agreement, nothing in this Module is intended to limit or restrict any other provision under the Agreement; and
- (b) Customer is relying on the Supplier's expertise in providing the Deliverables and Services under this Module.

PART B: SOFTWARE LICENSING

2. New Software

2.1 Provision of New Software

- (a) Except where otherwise specified, this Part B applies where it is specified in the Order Form that the Supplier will provide New Software.
- (b) By the Dates for Delivery (or as otherwise agreed between the parties in writing), the Supplier must deliver or provide the Customer with access to (as applicable):
 - (i) the New Software;
 - (ii) User Documentation that:
 - A. contains sufficient information to enable the Customer and Permitted Users to use the New Software for the Permitted Purpose and in the manner contemplated under the Agreement; and

- B. complies with clause 8.4 (User Documentation) of the Agreement; and
- (iii) any Third Party Components or other Deliverables that are specified in the Order Form or are needed to operate the New Software in accordance with the Agreement.
- (c) Unless the Order Form specifies that the Supplier is responsible for installing the New Software, the Customer:
 - (i) is responsible for downloading (if applicable) and/or installing the New Software; and
 - (ii) must perform the installation in accordance with any instructions in the User Documentation or other instructions specified in the Order Documents.
- (d) Where the Supplier makes the New Software and User Documentation available for download from a website, the Supplier must provide the Customer with the relevant access codes by the date specified in the Order Form, or where no date is specified, on the Commencement Date.

2.2 Installation by the Supplier

Where the Order Form specifies that the Supplier is to install the New Software, the Supplier must:

- (a) properly install the New Software within the Customer Environment and at the times, and in accordance with the requirements, specified in the Order Documents (or as otherwise agreed between the parties in writing); and
- (b) following installation, carry out all necessary tests to ensure that the installed New Software complies with the Specifications and operates in accordance with all requirements of the Agreement.

2.3 Backups

- (a) Unless otherwise specified in the Order Form:
 - (i) prior to loading data into the New Software, the Customer must take and maintain adequate backups of the data that is loaded into the New Software; and
 - (ii) the Supplier must reasonably assist the Customer in relation to any transfer or restoration of such data and in relation to any backups made by the Customer.
- (b) Where it is specified in the Order Form that it is the Supplier's responsibility to backup any data that is loaded into the New Software, the Supplier must:
 - (i) perform an initial backup of such data;
 - (ii) take and maintain adequate and regular backups of such data ; and
 - (iii) carry out any other Data Services relevant to data backup specified in the Order Documents.
- (c) A backup undertaken under clause 2.3(b) must be undertaken in a manner which enables the relevant data to be accurately and completely restored, in the event that any failure of the On-Premise Software causes damage to, or loss of, that data.

3. Licensing

3.1 Licence Period

- (a) The Supplier provides the Customer with a licence to use the New Software:
 - (i) for the Licence Period (including any Extended Periods); or
 - (ii) where a perpetual licence is granted, on a perpetual basis.
- (b) The Customer may, at its sole discretion, exercise one or more options to extend the Licence Period for any Extended Period specified in the Order Form, by giving the Supplier a notice in writing at least 15 Business Days prior to the end of the then-current Licence Period or such other notice period as may be specified in the Order Form.

3.2 Licensing model

- (a) The parties agree that the licensing model specified in the Order Form applies to the New Software being provided under the Agreement.
- (b) Where the New Software is licensed on a User Licensing Model, the following terms apply, unless otherwise expressly stated in the Order Form:
 - (i) there is no cap on the number of Permitted Users who may access and use the New Software, except where otherwise specified in the Order Form; and
 - (ii) where the Order Form specifies that there is a cap on the number of Permitted Users, the Customer:
 - A. must ensure that only the number of Permitted Users specified in the Order Form (or as otherwise agreed between the parties in writing) use the New Software; and
 - B. may, at its sole discretion, increase the number of Permitted Users at any time during the Licence Period (or while a licence is in place to use the New Software), subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars.
- (c) Where the New Software is not licensed on a User Licensing Model, the Customer must ensure that it does not exceed any applicable consumption or other ceiling with respect to use of the New Software as specified in the Order Form. The Customer may, at its sole discretion, increase its consumption or ceiling at any time during the Licence Period (or while a licence is in place to use the New Software), subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars.

3.3 Scope of licence

- (a) Notwithstanding clauses 17.2, 17.4 and 17.5 of the Agreement, the parties agree that the licence rights with respect to the New Software will be on the terms specified in this Module.
- (b) Unless otherwise specified in the Order Form, the Supplier grants (or must procure a grant) to the Customer and its Personnel a non-exclusive licence to access and use the New Software for any purpose in connection with:

- (i) the Customer performing its obligations, and exercising its rights, under the Agreement;
 - (ii) the full use of the New Software as contemplated under the Agreement, including, where applicable, installing, operating, supporting, enhancing, upgrading and maintaining the New Software or integrating it with other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (iii) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the New Software and associated Deliverables or systems that may integrate or interoperate with the New Software;
 - (iv) the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; or
 - (v) such other Permitted Purpose specified in the Order Form.
- (c) For clarity, the Customer may use or make such number of copies of the New Software as are reasonably required for:
- (i) evaluation and training;
 - (ii) backup or disaster recovery;
 - (iii) archiving or record-keeping;
 - (iv) security purposes;
 - (v) the Customer's internal business or operational purposes; or
 - (vi) exercising any of the Customer's rights at Law or under the Agreement.
- (d) The Customer may sub-license or transfer its rights under clause 3.3 to any class of Permitted Users. The Customer must use its reasonable endeavours to ensure that Permitted Users only access and use the New Software for the Permitted Purpose and in accordance with this Module.
- (e) The parties acknowledge and agree that:
- (i) the rights and licences specified in this clause 3.3 are included in the Price and will be provided to the Customer and Permitted Users on a royalty-free basis and at no additional charge to the Customer and Permitted Users, unless otherwise specified in the Order Form;
 - (ii) the Customer obtains no right, title or interest with respect to the New Software, except to the extent expressly set out in the Agreement, including in this clause 3.3; and
 - (iii) nothing in this Module is intended to exclude or restrict any rights that the Customer has at Law, including under Part III, Division 4A of the *Copyright Act 1968* (Cth).

4. Updates and New Releases

4.1 Application

This clause 4 applies where:

- (a) it is specified in the Order Form that the Customer is entitled to Updates and/or New Releases for the On-Premise Software as part of the licence; or
- (b) the Supplier provides Software Support Services and Updates and/or New Releases form part of those Software Support Services.

4.2 Updates and New Releases

- (a) The Supplier must offer and provide the Customer all:
 - (i) Updates applicable to the On-Premise Software; and/or
 - (ii) New Releases applicable to the On-Premise Software,at no additional cost and when the Update and/or New Release becomes available, except where otherwise specified in the Order Form (in relation to either Updates or New Releases, or both).
- (b) All Updates and New Releases that the Supplier provides must conform to the security and other requirements of the Agreement and must not reduce or diminish the functionality, performance or availability of the On-Premise Software.
- (c) To the extent reasonably practicable, the Supplier must:
 - (i) provide the Customer with written notice of all Updates and New Releases prior to installation; and
 - (ii) if requested to do so by the Customer, at the Supplier's sole cost (unless otherwise specified in the Order Form), demonstrate the extent to which the relevant Update and New Release is capable of providing the functionality and performance specified in the Specifications and Order Documents (including, where available, through the provision of release notes pertaining to the Update and New Release).
- (d) Subject to clauses 4.2(e) and 4.2(f), the Customer is under no obligation to accept, approve or permit the installation (whether manually or automatically applied) of any Update or New Release offered by the Supplier pursuant to this clause 4.2 and a refusal by the Customer to implement an Update or New Release will not affect the Customer's entitlement to the Deliverables and Services.
- (e) Notwithstanding the above, the Customer must accept any Update that is designed to correct or redress a security vulnerability that is affecting the On-Premise Software (**Security Correction**) but only to the extent that the Update complies with clause 4.2(b) and such other conditions specified in the Order Form.
- (f) If the Customer rejects the offer by the Supplier of an Update or New Release (other than any Security Correction), the Supplier must (unless otherwise specified in the Order Form) continue to maintain the version of the On-Premise Software that the Customer is using for 18 months (or such other period as specified in the Order Form) from the date that the Customer provides written notice to the Supplier of the rejection of the Update or New Release. After this period, the parties acknowledge and agree that:
 - (i) the On-Premise Software may have its usefulness reduced over time;

- (ii) the Supplier may not be able to remedy any Defects in the On-Premise Software; and
 - (iii) the Supplier is not responsible for any Defect in the On-Premise Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the Update or New Release been installed.
- (g) If the Customer accepts an Update or New Release the:
- (i) Specifications with respect to the On-Premise Software will be deemed to be amended to the extent that the specifications for the Update and New Release supersede the existing Specifications;
 - (ii) Supplier must promptly update the User Documentation to the extent required to reflect the Update and New Release and, once updated, promptly provide a copy to the Customer;
 - (iii) Supplier must deliver the Update and New Release in a timely manner and in accordance with any timeframes agreed between the parties in writing; and
 - (iv) Agreement will continue to apply in all respects to the Update and New Release.

4.3 No restriction

Nothing in this clause 4 is intended to reduce or restrict the Supplier's obligations to respond to and redress Defects and Security Incidents (including through the provision of appropriate patches for security vulnerabilities). Such matters must be completed in accordance with any applicable Service Levels and all other requirements of the Agreement.

5. Transfer of licences

5.1 Transfer rights

If the Customer has paid for the New Software in advance and the number of Permitted Users that it has paid for exceeds the Customer's requirements at any time, the Customer may sub-licence and transfer its excess licences and associated licensing rights and obligations under the Agreement to any Government Agency or other Eligible Customer specified in the Order Form.

5.2 Effect of transfer

Transfers under clause 5.1 will:

- (a) take effect from the effective transfer date as notified by the Customer to the Supplier in writing; and
- (b) be on the same licensing terms and conditions as this Module or such other terms as agreed by the parties in writing. From the effective transfer date, the Government Agency (or, where applicable, other Eligible Customer) will be deemed to be a Permitted User under this Module.

6. Additional licensing conditions

6.1 Restrictions

- (a) Except to the extent permitted by Law or by the Agreement, the Customer must not without the Supplier's written consent:
 - (i) remove or alter any copyright or other proprietary notices on the New Software;
 - (ii) sell, lease, licence, sub-licence, assign or transfer the New Software to any third party;
 - (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the New Software other than in accordance with any applicable escrow agreement; or
 - (iv) do, or omit to do, any additional things with respect to the New Software as specified in the Order Form.
- (b) Nothing in this clause 6.1 restricts the Customer from:
 - (i) providing the Permitted Users with access to, and use of, the New Software in accordance with these Module Terms; or
 - (ii) exercising any of the Customer's rights under clause 5.

6.2 End of Licence Period

- (a) Except where a perpetual licence has been granted to the Customer under the Agreement, within 20 Business Days following the end of the Licence Period (or such later period specified in the Order Form), the Customer must in accordance with the Order Form either destroy or return (as applicable) to the Supplier all copies of the New Software that are in its possession or control.
- (b) Notwithstanding clause 6.2(a), the Customer may retain a copy of the New Software for archival or record-keeping purposes or to the extent authorised or required by Law.

7. Third parties

7.1 Third Party Components

- (a) This clause applies where the Supplier supplies any Third Party Components.
- (b) Any Third Party Components will be licensed to the Customer on the same terms and conditions as the On-Premise Software or pursuant to such other terms as specified in the Order Form.

7.2 Third party warranties

- (a) This clause 7.2 applies where it is specified in the Order Form that pass-through or third party warranties apply.
- (b) Without limiting any other warranty or obligation of the Supplier under the Agreement or this Module, the Supplier must ensure that the Customer receives all relevant third party warranties in relation to the On-Premise Software stated or referred to in the Order Form.

8. Audits

8.1 Records of usage

If specified in the Order Form, the:

- (a) Customer must maintain records of the location of all copies of the New Software and the usage of the New Software;
- (b) Customer must provide copies of the records kept under this clause 8 to the Supplier at the times and the intervals specified in the Order Form or as otherwise agreed between the parties in writing; and
- (c) Supplier must supply the Customer with reporting and monitoring tools to assist the Customer to verify its compliance with the licensing terms under this Module.

8.2 Audit and verification

- (a) Subject to clause 8.2(c), the Supplier may, acting reasonably, undertake audits in accordance with this clause 8.2 to verify the Customer's compliance with the New Software terms under the Agreement (**Software Audits**). All Software Audits will be conducted at the Supplier's sole cost.
- (b) The Supplier may undertake Software Audits in accordance with the approved Audit Procedure and at the times and the intervals specified in the Order Form or as otherwise agreed between the parties in writing.
- (c) The Supplier must:
 - (i) provide the Customer with at least 90 days' written notice prior to undertaking any Software Audits (or such other notice specified in the Order Form);
 - (ii) at the time of providing notice pursuant to clause 8.2(c)(i), provide to the Customer, for its approval, a draft copy of the processes and procedures that will be used to carry out the relevant Software Audit (**Audit Procedure**) and such other information that is reasonably required by the Customer to sufficiently understand the Audit Procedure; and
 - (iii) if requested by the Customer, within two Business Days of the Customer's request, provide the Customer with information in relation to the Customer's licences and entitlements under the Agreement.
- (d) The Supplier must not install any tools or applications within the Customer Environment or systems in order to conduct any Software Audits without the Customer's prior written agreement.

8.3 Results and consequences of Software Audit

- (a) Upon completion of each Software Audit, the Supplier must promptly provide the Customer's Representative with a copy of the Software Audit's report or findings.
- (b) If the results of any Software Audit demonstrate that the Customer has exceeded the scope of the licences granted to it under the Agreement and, as a result, the Customer has underpaid the Supplier under the Agreement, then:
 - (i) the Supplier must notify the Customer's Representative of the excess scope and any unpaid licence fees; and

- (ii) if requested by the Supplier, the Customer must pay to the Supplier the unpaid licence fees as calculated in accordance with the then current rates and charges that the Customer is paying for the New Software under the Agreement, unless otherwise set out in the Order Form. The parties agree that this will be the Supplier's sole and exclusive remedy with respect to this matter (to the fullest extent permitted by Law).

PART C: SOFTWARE SUPPORT SERVICES

9. Provision of Software Support Services

9.1 Application

This Part C applies where it is specified in the Order Form that the Supplier will provide Software Support Services with respect to the On-Premise Software.

9.2 Support Period

All Software Support Services under this Module must be provided for the Support Period.

9.3 General

- (a) The Supplier must carry out the Software Support Services specified in the Order Form.
- (b) The Supplier must carry out all Software Support Services:
 - (i) in accordance with the requirements in this Part C and any additional requirements specified in the other Order Documents;
 - (ii) to meet any applicable Service Levels;
 - (iii) in a manner that is consistent with the Customer's operating requirements (if any) and the Specifications; and
 - (iv) in a manner that causes minimal disruption to Permitted Users and the Customer's operations.

10. Help desk

- (a) If the Order Form specifies that the Supplier will provide help desk Services, the Supplier must provide help desk Services during the times of operation and in accordance with the Specifications and any other requirements of the Agreement.
- (b) The Supplier must:
 - (i) respond to, and investigate, requests to the help desk in a timely and efficient manner and in accordance with any requirements and Service Levels specified in the Order Documents; and
 - (ii) ensure the help desk is provided by Personnel who are sufficiently qualified and experienced to resolve and escalate issues.

PART D: GENERAL

11. Training

11.1 Training Services

- (a) This clause 11 only applies where it is specified in the Order Form that the Supplier will provide training Services or Deliverables.
- (b) Unless otherwise specified in the Order Documents, the Supplier must:
 - (i) provide training Services and any training materials at the times and in accordance with the requirements specified in the Order Documents; and
 - (ii) prepare and submit to the Customer's Representative for approval, by the date specified in the Order Documents, a training Plan for carrying out the training Services. The training Plan must:
 - A. describe the type of training Services to be provided (for example, user training, "train-the trainer" training or awareness training);
 - B. describe how the training will be delivered;
 - C. specify the responsibilities of both parties in connection with the training, including any Customer Supplied Items to be provided in connection with the training;
 - D. specify any maximum and/or minimum number of attendees per training course; and
 - E. include such other detail as specified in the Order Documents.
- (c) For clarity, the training Plan is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the training Plan, including any updates to it.
- (d) Training will occur at the location(s) specified in the Order Documents or such other location(s) agreed by the Customer in writing.

11.2 Training Reports

- (a) Where specified in the Order Form, the Supplier must provide the Customer's Representative with written reports in relation to the provision of training Services (**Training Reports**). Unless otherwise specified in the Order Form, the Training Reports must cover:
 - (i) the status of the training;
 - (ii) any issues that the Supplier has encountered in delivering the training;
 - (iii) any "lessons learnt" or areas for future improvement; and
 - (iv) such other details as set out in the Order Form.
- (b) The Training Reports must be provided by the Supplier on a fortnightly basis for the duration of the training Services or at such other intervals as set out in the other Order Documents.

12. Additional and ancillary Deliverables and Services

12.1 Provision of additional and ancillary Deliverables and Services

The Supplier must supply:

- (a) any additional or related Deliverables or Services specified in the Order Documents, including (where specified):
 - (i) installation Services;
 - (ii) Data Services; and
 - (iii) the provision of Non-ICT Services and associated Deliverables; and
- (b) all other goods and services that are incidental or ancillary to the provision of the Deliverables and Services under this Module and that are required to ensure that the On-Premise Software and Software Support Services comply with the Specifications and other requirements of the Agreement.

12.2 Requirements

The Supplier must provide all additional, related, incidental and/or ancillary Deliverables and Services specified in clause 7.1 in accordance with all applicable requirements and timeframes under the Agreement.

13. Exports

- (a) The parties acknowledge and agree that:
 - (i) certain Export Laws may apply to the supply of the New Software and associated Deliverables and Materials under this Module; and
 - (ii) these Export Laws may include Export Laws in Australia as well as the Export Laws in operation in the jurisdiction from which the New Software, Deliverables and Materials are shipped or supplied as specified in the Order Form.
- (b) The parties will take all necessary steps within their control to ensure that no New Software, Deliverables or Materials resulting from the Agreement will be:
 - (i) exported, directly or indirectly, in breach of any applicable Export Laws; or
 - (ii) used for any purpose prohibited by such Export Laws, including nuclear, chemical or biological weapons proliferation or development of missile technology.

14. Records

- (a) The Supplier must keep and maintain full and accurate records of all Deliverables and Services provided under this Module in accordance with the Agreement and this clause 14.
- (b) Unless otherwise specified in the Order Documents, the records must include the following details:
 - (i) any issues in relation to the Deliverables and Services that have arisen or been reported by the Customer;

- (ii) a record of all Deliverables provided, including:
 - A. date provided;
 - B. quantity provided; and
 - C. name and (where applicable) serial number of the Deliverables;
 - (iii) any repairs, replacements or other remedial action taken by the Supplier or its Personnel in relation to any Deliverables (or parts or components);
 - (iv) any Delays associated with the provision of the Deliverables and Services and the reason for those Delays;
 - (v) any actions that the parties need to take, or decisions that need to be made, to ensure the provision of the Deliverables and Services in accordance with the requirements of the Agreement;
 - (vi) the progress of the Deliverables and Services against any Project Plan; and
 - (vii) such other records in relation to the Deliverables and Services that are specified in the Order Form.
- (c) The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 14 to the Customer's Representative in accordance with the times set out in the Order Documents or as otherwise reasonably required by the Customer.

15. Exceptions

- (a) The Supplier is not liable for any failure of the New Software or Software Support Services to comply with the Agreement to the extent arising as a result of:
 - (i) any Critical CSI not operating in accordance with the Agreement;
 - (ii) any misuse of the New Software or the Software Support Services by the Customer;
 - (iii) the Customer's combination, operation or use of the New Software with any other product, equipment, software or document of the Customer or a third party except where:
 - A. such combination, operation or use is authorised under the Agreement;
 - B. the Supplier supplied the New Software on the basis that the New Software can be combined, operated or used with the Customer's or relevant third party products; or
 - C. such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the New Software;
 - (iv) damage caused by the operation of the New Software other than in accordance with any recommended and reasonable operating procedures specified in the Order Form and User Documentation; or

- (v) any Virus, Denial of Service Attack or other malicious act that adversely affects the New Software, Software Support Services or associated Services and Deliverables (or any software installed on the Deliverables or connected to them), except to the extent that the Virus, Denial of Service Attack or other malicious act was:
 - A. introduced or carried out by the Supplier or its Personnel;
 - B. caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or
 - C. due to the Supplier or its Personnel breaching the Agreement, including any failure to comply with the security obligations under the Agreement.

- (b) The Customer may, at its sole discretion, request the Supplier to provide Services in respect of correcting or resolving any of the issues set out in clause 9(a) and, if so, the Supplier must provide such Services on a time and materials basis, based on the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing. However, any issue that results from one or more of the circumstances specified in clauses 15(a)(iii)A to 15(a)(iii)C or clauses 15(a)(v)A to 15(a)(v)C must be rectified at the Supplier's sole cost and in accordance with the Agreement.

Annexure A: Definitions and interpretation

1. Definitions and interpretation

1.1 Definitions

Terms used in this Module have the meaning set out in Schedule 1 (Definitions and interpretation) of the Agreement, unless otherwise defined below:

Agreement has the meaning given to it in the ICT Agreement entered into under the NSW Government's Digital.NSW ICT Purchasing Framework, of which this Module forms a part.

Audit Procedure has the meaning given to this term in clause 8.2(c)(ii).

Customer Provided Data means the Customer Data provided by the Customer to the Supplier (or extracted by the Supplier as part of providing the Supplier's Activities) and in respect of which the Supplier is to provide the Data Services. Customer Provided Data includes any data derived or generated from the Customer Provided Data as a result of the provision of the Supplier's Activities.

Data Services means any data Services specified in the Order Form to be provided by the Supplier in respect of the Customer Provided Data.

Export Laws means all applicable export and re-export control laws and regulations in Australia and any other jurisdictions nominated in the Order Form.

Extended Period means any period(s) specified in the Order Form.

Licence Period means the initial licence period specified in the Order Form and any Extended Period exercised by the Customer pursuant to clause 3.1(b).

Module means this document (including Annexure A), which is the Software Module (Non-Cloud) under the Agreement.

Non-ICT Services means Services that form part of the Supplier's Activities, but which do not comprise ICT Services or Deliverables.

Permitted Purpose means the use and purposes specified in clause 3.3 and any other purposes specified in the Order Form.

Permitted Users means:

- (a) Customer Users; and
- (b) such other persons specified in the Order Form or who the Supplier has permitted to access and use the On-Premise Software in accordance with the Agreement.

Security Correction has the meaning given to this term in clause 4.2(e).

Software Audit has the meaning given to this term in clause 8.2(a).

Software Support Services means the support and maintenance Services to be provided by the Supplier in respect of the On-Premise Software and as specified in the Order Form.

Support Period means the period during which the Supplier will provide the specific category of Software Support Services as specified in the Order Form or as otherwise agreed between the parties in writing.

Third Party Components means software applications, components, plug-ins, products and programs (excluding Open Source Software) that are owned by third parties and are stated in the Order Form or which are otherwise used in the provision of the Deliverables and Services.

Training Reports has the meaning given to this term in clause 6.2(a).

User Licensing Model means where the New Software is licensed to the Customer on a per-user basis.

1.2 Interpretation

Unless as otherwise expressly specified, in this Module:

- (a) the rules of interpretation set out in Schedule 1 (Definitions and interpretation) of the Agreement will apply to this Module; and
- (b) a reference to a clause or Part is a reference to a clause or Part in this Module.