



Digital.NSW ICT Purchasing Framework

ICT Agreement (ICTA)



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ICT Agreement (ICTA)

Parties

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

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

Background

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

PART A: PRELIMINARIES

1. Definitions and Agreement documents

1.1 Defined terms and interpretation

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

1.2 Agreement documents

This Agreement comprises the following documents:

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

1.3 Order of precedence

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

1.4 Role of the Master ICT Agreement

Not used.

*Note: This Agreement is not formed under a Master ICT Agreement (**MICTA**). All references to MICTA and Contract Authority have been deleted from this Agreement.*

1.5 Supplier's Documents

- (a) The parties acknowledge that the intent of incorporating any Supplier's Documents into this Agreement, where so agreed, is to supplement and elaborate the detail and specifications of particular Services and Deliverables and not to amend or contradict the terms set out in any of the documents listed in clauses 1.2(a) to 1.2(f).
- (b) The Supplier represents that the Supplier's Documents:
 - (i) set out specific details regarding how the Customer may access, use and interact with particular Services or Deliverables; and
 - (ii) may describe other elements of the Services or Deliverables which the Supplier offers to provide to the Customer, such as technical and functional specifications, service characteristics and performance standards.
- (c) No Supplier's Documents will be incorporated into this Agreement except to the extent expressly specified in, and attached to, Annexure A of the Order Form.
- (d) Notwithstanding the incorporation of Supplier's Documents under clause 1.5(c), those Supplier's Documents do not apply to the extent that they:
 - (i) deal with the same or similar subject matter as a provision of the Core Terms, Module Terms or any Additional Conditions (for example, provisions in the Supplier's Documents that deal with limitations of liability will not apply, in whole, as the Core Terms also deal with this subject matter);
 - (ii) are inconsistent, or in conflict, with the Core Terms, Module Terms or any Additional Conditions;
 - (iii) alter, or seek to alter, the legal obligations of, or relationship between, the Customer and the Supplier, as set out in the Core Terms, Module Terms or any Additional Conditions;
 - (iv) impose additional obligations or requirements on the Customer, beyond those set out in the Core Terms, Module Terms or any Additional Conditions; or
 - (v) limit any rights or remedies of the Customer or relieve the Supplier from any of its obligations or responsibilities under the Core Terms, Module Terms or any Additional Conditions.
- (e) Where any of the Supplier's Documents purport to override or otherwise vary the Core Terms, Module Terms or any Additional Conditions those terms will have no legal effect.
- (f) Except to the extent expressly set out in the Module Terms, no subsequent changes, amendments or updates to the Supplier's Documents will have any effect other than where made pursuant to a written variation under clause 39.6.

2. Supplier's acknowledgments

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

3. Purchasing Services and/or Deliverables by Order

3.1 Order Form

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

3.2 Electronic execution

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

3.3 Additional Orders

- (a) This clause applies where it is specified in Item 10 of the Order Form that the Customer may place Additional Orders for Services and/or Deliverables within the scope of this Agreement.
- (b) If, at any time during the Term, the Customer wishes to increase the volume or quantum of Services and/or Deliverables, the Customer may, in its sole discretion, do so by submitting a written notice to the Supplier for those increased Services and/or Deliverables. The written

notice will be in the form required by the Customer and will include information relating to the Additional Order, including the number of additional Services and/or Deliverables required.

- (c) Except to the extent agreed by the parties in writing, any increased Deliverables and/or Services will be supplied for the same rates and charges specified in the Payment Particulars.
- (d) The parties agree that each time the Customer submits an Additional Order to the Supplier:
 - (i) that Additional Order forms part of this Agreement, and will not constitute a separate contractual relationship between the parties; and
 - (ii) the Supplier must increase the supply of the Deliverables and/or Services in accordance with that Additional Order, subject to any reasonable qualifications specified in Item 10 of the Order Form.

3.4 No exclusivity or minimum commitment

The Supplier acknowledges and agrees that:

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

3.5 Additional Conditions

The parties agree to comply with any Additional Conditions.

3.6 Reseller arrangements

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

4. Relationship and governance

4.1 General

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

4.2 Nature of relationship

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

4.3 Governance

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

the time specified in the Order Form or such other time as reasonably required by the Customer's Representative.

5. Term

5.1 Initial Term

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

5.2 Renewal Period

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

PART B: SUPPLIER'S ACTIVITIES

6. Performance of the Supplier's Activities

6.1 General

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

6.2 Customer Supplied Items

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

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

6.3 ICT Accessibility

- (a) The Supplier acknowledges that the Customer is committed to:
 - (i) meeting Accessibility Standard AS EN 301 549 (**Accessibility Standard**); and
 - (ii) ensuring that the Services and Deliverables support access to information and communications technology for all Customer Users, regardless of disability.
- (b) Without limiting any other obligation under this Agreement, the Supplier must ensure that, to the extent reasonably practicable, all Services and Deliverables:

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

6.4 Co-operation with the Customer and Other Suppliers

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

6.5 Project management

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

6.6 Staged implementation

- (a) Where the Order Documents specify that the Supplier's Activities will be carried out in different Stages, the Supplier must:
 - (i) carry out each Stage in accordance with the requirements and staging so specified in the Order Documents; and
 - (ii) not commence work on a Stage until it receives written notice from the Customer to proceed with the work in that Stage. Unless otherwise agreed by the parties in writing, the execution of this Agreement by the Supplier and the Customer is deemed to be sufficient notice to proceed with work on any first Stage described in the Order Documents.
- (b) Without limiting the Customer's rights under clause 6.6(c), at any time during the Term, the parties may:
 - (i) change the order of any Stages; or
 - (ii) vary the Supplier's Activities by removing one or more Stages from the scope of the Supplier's Activities,

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

6.7 Delays

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

6.8 Extension of time

- (a) If a Delay occurs and that Delay was beyond the reasonable control of the Supplier, the Supplier may request an extension of time on the terms of this clause 6.8.

- (b) To request an extension of time under clause 6.8(a), the Supplier must within five Business Days of the commencement of the occurrence of the Delay, give the Customer's Representative written notice of the:
 - (i) particulars of the Delay and the occurrence causing the Delay; and
 - (ii) extension of time claimed in days, together with the basis for calculating that period.
- (c) The Customer will reasonably consider any Supplier request to extend a Date for Delivery or Key Milestone where the applicable Delay was beyond the reasonable control of the Supplier, could not have been reasonably mitigated or worked around, and the Supplier has given notice as required by clause 6.8(b). The Customer may reduce any extension of time to the extent that the Supplier or its Personnel contributed to the Delay or the Supplier failed to take steps necessary both to preclude the cause of the Delay and to avoid or minimise the consequences of the Delay. In all other circumstances, the Customer may grant, decline or impose conditions on the granting of such request in its sole discretion.
- (d) Where the Supplier requests an extension of time under clause 6.8(b) and that Delay has arisen because of:
 - (i) the Customer's breach of this Agreement;
 - (ii) a failure to provide any Critical CSI; or
 - (iii) the acts or omissions of an Other Supplier,

the Customer must grant an extension of time, of a duration reasonably determined by the Customer having regard to the extent to which the Delay was attributable to the relevant breach, failure, acts or omissions.
- (e) Whether or not the Supplier has made, or is entitled to make, a Claim for an extension of time under clause 6.8(a), the Customer may, in its sole discretion, at any time by written notice to the Supplier, unilaterally extend a Date for Delivery or Key Milestone by written notice to the Supplier. For clarity, no extension of time granted by the Customer will result in an increase or decrease to the Price, unless separately agreed pursuant to an agreed Change Request.
- (f) Notwithstanding clause 35.1, where:
 - (i) any dispute or difference arises between the parties in relation to this clause 6.8 or its subject matter; and
 - (ii) a project management committee or other governance forum, which meets at least monthly, is provided for in the Order Documents,

then the party claiming the dispute or difference has arisen must not issue a Dispute Notice pursuant to clause 35.1(b) in relation to that dispute or difference unless it has first raised and sought to resolve that dispute or difference in the next occurring meeting of that committee or forum, without resolution at such meeting.

6.9 Delay costs

- (a) To the extent a Delay arises which is attributable to the Customer's breach of this Agreement, a failure to provide any Critical CSI or the acts or omissions of an Other Supplier, the Supplier:
 - (i) may advise the Customer of any proposed changes to the Price, the quantum of which must not exceed any additional, incremental cost and expense (calculated on a cost-only basis) directly attributable to:

- A. undertaking and implementing any workarounds or remedial measures which are within the Supplier's control to implement or adopt, and which would minimise or lessen the impact of that Delay; and
- B. any increase in the Supplier's Activities, or in the cost of the Supplier's Activities, as a result of that Delay,

(Additional Activities);

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

6.10 Site

- (a) Where specified in Item 16 of the Order Form, the Supplier must carry out the Supplier's Activities at the locations or sites specified in that Item (**Site**).
- (b) Where physical delivery of any Deliverables to a Site is required, the Supplier must, at no additional cost to the Customer, deliver any Deliverables:
 - (i) to the delivery area at the Site specified in the Order Form; and
 - (ii) on the Date for Delivery and between the hours stated in the Order Form,
 or as otherwise agreed in writing between the parties.
- (c) The Supplier warrants, represents and undertakes that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced supplier in assessing the risks which it is assuming under this Agreement in relation to carrying out the Supplier's Activities at the Site, including visiting and inspecting the Site and its surroundings and making its own assessment of the risks associated with the conditions at the Site and its surroundings.
- (d) Any failure of the Supplier to do any of the matters mentioned in clause 6.10(c) will not relieve the Supplier of its obligations to carry out the Supplier's Activities in accordance with this Agreement.
- (e) The Customer:
 - (i) is not obliged to:
 - A. provide the Supplier with sole access to the Site; or
 - B. carry out any work or provide any facilities or Materials to the Supplier (other than CSI or such other items specified in the Order Form) which

may be necessary to enable the Supplier to obtain adequate access to carry out the Supplier's Activities; and

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

7. Transition-In

7.1 Application

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

7.2 Transition-In Plan

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

7.3 Transition-In Services

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

8. Document Deliverables

8.1 General

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

8.2 Review

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

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

8.3 No obligation

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

8.4 User Documentation

- (a) The Supplier must, at its sole cost, provide the User Documentation to the Customer's Representative except where otherwise specified in the Order Form.
- (b) The User Documentation must be supplied in an electronic format and by the time specified in the Order Documents or, where no timeframe is specified, where reasonably required by the Customer.
- (c) Where it is specified in the Order Form that the Customer also requires any User Documentation in a hard copy format (or where otherwise requested by the Customer), the Supplier must provide the Customer's Representative with at least one copy of the User Documentation at no additional charge to the Customer.
- (d) The Supplier must ensure that any User Documentation that is supplied to the Customer's Representative:

- (i) provides adequate instructions on how to enable the Customer and Customer Users to utilise the Services and Deliverables (as applicable) without reference to the Supplier; and
 - (ii) complies with the same requirements as specified in clause 8.1(d) in relation to Document Deliverables.
- (e) The Supplier must update the User Documentation as is needed for the Customer and Customer Users to be able to use the Services and Deliverables (as applicable) in an efficient and effective manner.

9. Defects

- (a) If, prior to the expiry of the Warranty Period, the Customer discovers or is informed that there is a Defect, the Customer may give the Supplier an instruction (with which the Supplier will comply) specifying the Defect and doing one or more of the following:
 - (i) requiring the Supplier to correct the Defect, or any part of it;
 - (ii) advising the Supplier that the Customer will accept the Deliverable or Service, or any part thereof, despite the Defect; or
 - (iii) advising the Supplier that the Customer will accept the Deliverable or Service, or any part thereof, despite the Defect, in exchange for a reasonable reduction in, or adjustment to, the cost of the Deliverables or Services which were impacted by the Defect,and pursuing any other remedy it may have at Law or under this Agreement subject to compliance with the dispute resolution procedure in clause 35.
- (b) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect, the Supplier must notify the Customer in writing within one Business Day of identifying the Defect.
- (c) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect or an instruction is given under clause 9(a)(i), the Supplier must, at no cost to the Customer, correct the Defect
 - (i) in accordance with all applicable Service Levels, or if no applicable Service Levels apply, within 15 Business Days after the date on which the non-compliance was notified to, or identified by, the Supplier (or such other timeframe as agreed between the parties in writing); andin a manner which will cause as little inconvenience to the Customer and Customer Users as is reasonably possible.
- (d) The parties acknowledge that where the Defect relates to any Services, the Customer may request that the Supplier, and the Supplier must, supply the affected Services again.
- (e) If multiple Defects are identified, the Customer may request the Supplier to prioritise the rectification of such Defects, and the Supplier must comply with any such request. However, for clarity, any prioritisation must remain consistent with any applicable Service Levels.
- (f) Unless otherwise agreed between the parties in writing, the Warranty Period will be increased by a period of time equivalent to the time that the relevant Services and Deliverables were unavailable or their functionality materially decreased due to a Defect.
- (g) The Customer's rights under this Agreement and at Law will not be affected or limited by:
 - (i) the rights conferred upon the Customer by this clause;

- (ii) the failure by the Customer or the Customer's Representative to exercise any such rights; or
- (iii) any instruction of the Customer under this Agreement.
- (h) For clarity, the Warranty Period will not be deemed to exclude or restrict any guarantee that is provided at Law with respect to any Deliverable or Service.

10. Change Control Procedure

10.1 Change Requests

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

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

10.2 Process for submitting and agreeing to Change Requests

- (a) Each Change Request must be submitted in a form substantially similar to the Change Request Form included at Schedule 5 (or such other form approved by the Customer) and containing the details specified in that Change Request Form or such other details as may be reasonably required by the Customer.
- (b) Where rates and charges for any Change Requests, and/or a pricing methodology, have been specified in the Payment Particulars, then the Prices in the relevant Change Request must not exceed those rates and charges and must be based on any applicable pricing methodology specified in the Payment Particulars. Where no rates, charges or methodology are specified, prices must be based on those costs and expenses reasonably and necessarily incurred by the Supplier to implement the relevant Change Request.
- (c) The party receiving the draft Change Request Form must notify the other party in writing as to whether it:
 - (i) approves or rejects the Change Request; or
 - (ii) requires further information in relation to any aspect of the Change Request.
- (d) The parties must respond to Change Requests and requests for information regarding Change Requests within seven Business Days of receiving the request or such other timeframe as

reasonably agreed between the parties having regard to the nature and substance of the work required by the relevant request.

- (e) Each party will act reasonably in preparing, submitting, reviewing, considering and assessing Change Requests.
- (f) If a Change Request is approved, the:
 - (i) parties must promptly execute the relevant Change Request Form; and
 - (ii) Supplier must perform the Supplier's Activities in accordance with the executed Change Request Form.
- (g) No Change Request is binding on either party or to be carried out by the Supplier until the relevant Change Request Form is executed by both parties in accordance with this clause 10.

10.3 Electronic transactions

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

10.4 Acknowledgements

The parties acknowledge and agree that:

- (a) the Change Control Procedure does not apply to changes to the Core Terms, the Module Terms or any Additional Conditions, which must be effected in accordance with the variation procedure specified in clause 39.6;
- (b) the Customer does not need to follow the Change Control Procedure with respect to:
 - (i) Additional Orders submitted in accordance with clause 3.3; or
 - (ii) the Customer's exercise of its unilateral right to:
 - A. remove from the scope of this Agreement any future Stages pursuant to clause 6.6(c); or
 - B. reduce the scope of this Agreement pursuant to clause 29;
- (c) the Customer is not obliged to pay the Supplier for implementing any Change Request unless the parties have complied with this clause 10;
- (d) the Customer is under no obligation to place Change Requests;
- (e) if any Change Request made pursuant to the Change Control Procedure omits or removes any part of the Supplier's Activities, the Customer may thereafter either provide those Supplier's Activities itself or employ or engage third parties to do so;
- (f) the Customer may, in its sole discretion, agree or reject a Change Request;
- (g) no Change Request will invalidate, or amount to a repudiation of, this Agreement; and
- (h) each party must bear its own costs in preparing, submitting and negotiating any Change Request.

11. Personnel

11.1 Nominated Personnel

- (a) The Supplier must ensure that:
 - (i) each of its Nominated Personnel is made available to perform their role/responsibilities as set out in Item 18 of the Order Form; and
 - (ii) it immediately notifies the Customer's Representative if the Supplier becomes unable or unwilling to comply with this clause 11.1 or otherwise breaches this clause 11.1.
- (b) The Supplier must not remove or replace any of the Nominated Personnel unless the:
 - (i) Customer requests that the Nominated Personnel are replaced pursuant to clause 11.3(d); 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(d), 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 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.; On the Customer's request or as part of any audit conducted pursuant to clause 37.2, the Supplier must promptly provide the Customer or its nominee with evidence that the obligations under this clause 11.3 have been complied with (including with respect to the training of the Supplier's Personnel). 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).

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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(d).
- (h) The Supplier must properly manage its Personnel resourcing (including any planned absences) to maintain a sufficient level of Personnel engaged or employed in the provision of the Supplier's Activities (both in terms of quality and quantity of such Personnel) to ensure that all relevant roles are, and continue to be, adequately resourced and that the Supplier's Activities are provided in accordance with this Agreement.

11.4 Deed of Confidentiality and Privacy

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

11.5 Subcontracting

- (a) The Supplier must not subcontract any of its obligations under this Agreement unless specified in Item 20 of the Order Form (or otherwise pre-approved by the Customer in writing). Such approval may also be given in respect of classes or categories of subcontractor or types of subcontracted activities and made subject to any applicable conditions. The use of permitted subcontractors may be withheld or given on such conditions as specified in the Order Form or otherwise notified by the Customer to the Supplier in writing.
- (b) If the Customer consents to the engagement of any subcontractor on a conditional basis, then the Supplier must comply with those conditions when it engages that subcontractor.
- (c) A permitted subcontractor may not further subcontract the relevant obligations to another person without the Customer's prior written consent.
- (d) The Customer may, by written notice to the Supplier, revoke its consent to any permitted subcontractor if the Customer, acting reasonably, has concerns about that permitted subcontractor's or its personnel's:
 - (i) performance of the Supplier's Activities; or
 - (ii) compliance with (or ability to comply with) the terms of this Agreement.
- (e) Where practicable to do so, the Customer must engage in reasonable advance consultation with the Supplier in relation to its concerns regarding a permitted subcontractor's (or its personnel's) performance or compliance, including whether those concerns may be otherwise addressed or remediated, before the Customer gives a notice of revocation under clause 11.5(d).
- (f) The Supplier is solely responsible for managing its supply chains and any risks in its supply chains, including ensuring any permitted subcontractor's compliance with clause 13.
- (g) Any subcontracting by the Supplier does not relieve the Supplier of any of its obligations under this Agreement.
- (h) The Supplier must ensure that each of its subcontractors comply with all of the terms of this Agreement to the extent that they are relevant to the subcontractor.
- (i) The Supplier is responsible for its subcontractors, and liable for their acts and omissions, as though they were the acts and omissions of the Supplier.
- (j) If specified in the Order Form or if required by the Customer as a condition of granting consent to the Supplier's use of any subcontractor, the Supplier must arrange for its subcontractors to enter into a subcontractor deed on terms consistent with, and no less onerous than, the parts of this Agreement applicable to the subcontractor's activities.
- (k) The Order Form may specify additional procurement policy requirements which the parties have agreed will apply to, or be prioritised in, any subcontracting arrangement by the Supplier, including the Policies, Codes and Standards. The parties agree to comply with any such requirements.

11.6 Background checks

- (a) The Supplier must:
 - (i) prior to involving any of its Personnel in carrying out the Supplier's Activities, undertake all necessary background checks of those Personnel to ensure that they are fit and proper to provide the Supplier's Activities; and
 - (ii) monitor and assess its Personnel throughout their involvement in the Supplier's Activities to ensure that they remain fit and proper to provide the Supplier's Activities.

- (b) Without limiting the generality of clause 11.6(a), if specified in Item 22 of the Order Form or where not so specified in that Item but reasonably required by the Customer, the Supplier must:
 - (i) carry out any specific background checks of its Personnel as specified in Item 22 of the Order Form or as requested by the Customer, including criminal record and "Working with Children" checks; and
 - (ii) provide the results of those checks to the Customer's Representative within the timeframe specified in Item 22 of the Order Form, or if no time is specified, within five Business Days of receipt (or within such other time as reasonably required by the Customer).
- (c) Where the outcome of a background check reveals that any of the Supplier's Personnel are not fit and proper to be involved in the provision of the Supplier's Activities, the Supplier must not use those Personnel with respect to such activities.
- (d) The Supplier acknowledges and agrees that:
 - (i) all background checks will be undertaken at the Supplier's sole cost, unless otherwise agreed by the Customer in writing;
 - (ii) the Customer may provide the results of any background checks to any other Government Agency; and
 - (iii) the Supplier is solely responsible for obtaining all necessary consents, in accordance with the Privacy Laws, in connection with the conduct of any background checks and the sharing and use of those background checks as contemplated under this clause 11.6.

11.7 Compliance with employment Laws

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

11.8 Non-solicitation

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

12. Compliance

12.1 Compliance with Laws and directions

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

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

12.2 Policies, Codes and Standards

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

12.3 Policy Changes

- (a) If there is:
 - (i) any change to any of the Policies, Codes and Standards specified in this Agreement (including with respect to any security requirements); or
 - (ii) the introduction of any new Policies, Code and Standards in addition to those specified in this Agreement,

with which the Customer requires the Supplier to comply (**Policy Change**), then (without limiting any other express rights of the Customer or obligations of the Supplier under this Agreement) where:

- (iii) the Supplier's compliance with that Policy Change can, with the Supplier's best efforts, be achieved without the incurrence of material additional cost and expense to the Supplier; or
- (iv) irrespective of the cost of complying with the Policy Change, the Supplier's compliance with its obligations under clause 12.1 would involve the Supplier complying with that Policy Change in any event,

then the Supplier must comply with the Policy Change at no additional cost to the Customer.

- (b) If neither clauses 12.3(a)(iii) nor 12.3(a)(iv) apply and the Supplier cannot comply with a Policy Change without incurring material additional cost and expense, then:
- (i) the Supplier must promptly notify the Customer in writing of the additional, incremental cost and expense (calculated on a cost-only and zero-margin basis) that would be directly attributable to its compliance with the Policy Change, accompanied with evidence to substantiate the additional, incremental costs and expenses (including information as to how those costs and expenses have been calculated); and
 - (ii) following receipt of such notification, the Customer may:
 - A. approve the incurrence of the costs and expenses notified to it under clause 12.3(b)(i), in which case the Supplier must comply with the relevant Policy Change and, subject to so complying, will be entitled to invoice the Customer for such costs and expenses;
 - B. reject the incurrence of the costs and expenses notified to it under clause 12.3(b)(i), in which case, the Supplier will not be required to incur those costs or to comply with the Policy Change; or
 - C. require the Supplier to, in which case the Supplier must, participate in reasonable good faith discussions with the Customer in relation to an alternative approach to managing the Policy Change.

12.4 Work health and safety

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

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

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

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

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

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

12.6 The environment

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

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

12.7 Conflicts of Interest

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

13. Modern Slavery

13.1 Compliance

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

13.2 Information

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

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

13.3 Modern Slavery due diligence

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

13.4 Subcontractors

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

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

13.5 Response to Modern Slavery Incident

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

13.6 Termination

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

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

14. Acceptance Testing

14.1 General

- (a) Unless otherwise specified in the Order Form, this clause 14 will apply in relation to the supply of any Deliverables that are not Documents.
- (b) Where the parties have agreed further details as to the form or the conduct of Acceptance Tests in the Order Documents, those details apply in addition to this clause 14, except to the extent expressly stated in the Order Form.

14.2 Testing by Supplier

- (a) Before delivery by the Supplier to the Customer of any Deliverable (or any component thereof) that is subject to Acceptance Testing, the Supplier must:
 - (i) carry out the tests in accordance with any Test Plan and to ensure that the Deliverable meets the Acceptance Criteria for the Deliverable;
 - (ii) following testing, supply the Customer with the test results in accordance with the requirements and timeframes in the Test Plan and Order Documents, or where no requirements or timeframes are specified in those documents, promptly on completion of each test;
 - (iii) if the Supplier determines that a Deliverable (or component thereof) does not meet any Acceptance Criteria, promptly remedy that non-compliance; and

- (iv) when appropriate, notify the Customer that the relevant Deliverable (or applicable component thereof) is ready for Acceptance Testing by the Customer.
- (b) Where directed by the Customer, the Supplier must:
 - (i) permit the Customer or its nominee to witness any tests conducted pursuant to this clause 14.2; and
 - (ii) provide the Customer with evidence as reasonably required by the Customer, to demonstrate that the tests have been successfully completed in accordance with clause 14.2.

14.3 Testing by the Customer

- (a) The Customer may carry out Acceptance Tests in respect of each Deliverable to which Acceptance Testing applies and the Supplier must provide all reasonable assistance required by the Customer in connection with the Customer's Acceptance Testing.
- (b) If the Customer carries out Acceptance Tests, the Customer must conclude the Acceptance Tests in accordance with any timeframes specified in the Order Documents or, where no timeframes are specified, within a time reasonably determined by the Customer.
- (c) Following completion of the Customer's Acceptance Testing in respect of a Deliverable, the Customer must either:
 - (i) provide to the Supplier an Acceptance Certificate in respect of that Deliverable; or
 - (ii) notify the Supplier that the Acceptance Criteria in respect of that Deliverable have not been met.
- (d) Neither the full or partial Acceptance of any Deliverable nor any exercise by the Customer of any option or other right under this clause 14 will:
 - (i) operate as a sole or exclusive remedy; or
 - (ii) limit or prejudice any rights or remedies of the Customer under this Agreement or at Law.
- (e) Where the Deliverable meets the Acceptance Criteria, the Customer must issue the Acceptance Certificate no later than 10 Business Days from completion of the Acceptance Testing, or within such other timeframe specified in the Order Documents.
- (f) Where the period referred to in clause 14.3(e) elapses without the Customer either providing an Acceptance Certificate to the Supplier in respect of that Deliverable or notifying the Supplier that the Acceptance Criteria have not been met, the Supplier must submit to the Customer's Representative a written reminder notice identifying the Deliverable in respect of which it requires a decision by the Customer. If the Customer does not take one of the actions referred to in clause 14.3(c) or otherwise communicate with the Supplier in relation to that reminder notice within 15 Business Days of its receipt, then the relevant Deliverable will be deemed to have been Accepted by the Customer.

14.4 Effect of failure to meet Acceptance Criteria

- (a) If the Acceptance Criteria in respect of a Deliverable have not been met, the Customer may, at its option, do any of the following:
 - (i) issue a notice to the Supplier that requires the Supplier to comply with clause 14.4(b), accompanied with a description of the areas in which the relevant Deliverable has failed to meet the Customer's Acceptance Testing;

- (ii) Accept the Deliverable subject to a reasonable reduction in the Price as reasonably agreed between the parties or, in the absence of agreement, as reasonably determined by the Customer to reflect the greater of the:
 - A. cost to the Customer of correcting the Defects in the Deliverable; or
 - B. reduced features, functionality or quality of operation as a result of those Defects; or
- (iii) if the Deliverable contains a Material Defect that, in the Customer's reasonable opinion, is incapable of remedy or the Supplier has failed to remedy that Material Defect within 20 Business Days after delivery of the Deliverable (or such other time as specified in the Order Form or agreed between the parties in writing), immediately terminate this Agreement or reduce its scope pursuant to clause 29.1(d).
- (b) If the Supplier receives a notice under clauses 14.4(a)(i) or 14.4(c)(i), the Supplier must, at its cost, within 20 Business Days (or such other time as specified in the Order Form or agreed between the parties in writing) after the date of the notice:
 - (i) supply such additional services to rectify any Defect in the Deliverable as may be necessary to enable the Deliverable to meet the Acceptance Criteria, including, if necessary, replacing the Deliverable;
 - (ii) co-operate with the Customer with respect to any repeat Acceptance Testing; and
 - (iii) provide all assistance required by the Customer in relation to the repeated Acceptance Tests.
- (c) If the Acceptance Criteria in respect of a Deliverable have not been met following repeat Acceptance Testing, the Customer may, at its option, do any of the following:
 - (i) require the Supplier to again comply with clause 14.4(b);
 - (ii) Accept the Deliverable subject to a reduction in the Price as reasonably agreed between the parties or, in the absence of agreement, as reasonably determined by the Customer in accordance with the same principles as described in clause 14.4(a)(ii); or
 - (iii) immediately terminate or reduce the scope of this Agreement pursuant to clause 29.1(d).
- (d) The Customer reserves the right to remedy any Defects or to appoint third parties to do so if the Supplier fails to correct any Defect that has been notified by the Customer to the Supplier and which the Supplier has not corrected within the timeframe required by this clause 14.4. At the Customer's request, the Supplier must reimburse the Customer for the costs incurred by the Customer in relation to the remediation of the relevant Defects, based on commercially reasonable rates and charges.

14.5 Effect of Acceptance Certificate

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

15. Performance

15.1 Performance obligations

The Supplier must:

- (a) carry out the Supplier's Activities:
 - (i) in accordance with this Agreement, including the Order Documents;
 - (ii) with all due skill, care and diligence and in a proper, regular and timely manner;
 - (iii) in a manner that encourages the most efficient use of resources and promotes the achievement of any Customer objectives specified in the Order Documents;
 - (iv) to a high standard and in accordance with Best Industry Practice for work of a similar nature to the Supplier's Activities;
 - (v) in a manner that is safe to both people and the environment;
 - (vi) in a manner that minimises any disruption, interference or inconvenience to the Customer or its operations, Personnel or Other Suppliers;
 - (vii) to enable all Deliverables to operate in accordance with this Agreement, and to meet the Acceptance Criteria applicable to them;
 - (viii) to ensure that all timeframes under this Agreement are met, including all Key Milestones and Dates for Delivery;
 - (ix) in accordance with any relevant Statement of Work;
 - (x) in accordance with the Specifications; and
 - (xi) otherwise in accordance with the other requirements of this Agreement; and
- (b) provide Deliverables to the Customer which:
 - (i) are of high quality and are fit for the purpose for which they are required as detailed in, or reasonably ascertainable from, the Order Documents;
 - (ii) achieve Acceptance;
 - (iii) where applicable, will (on delivery, or at the time of performance of the relevant Supplier's Activities in relation to the applicable Deliverable(s)):
 - A. have been tested and verified, in accordance with Best Industry Practice, to be free from any Viruses; and
 - B. be compatible and interoperable with those features or characteristics of the Customer Environment described in the Order Documents and will not detrimentally affect the operation or performance of the Customer Environment or any part thereof.

15.2 Service standards and Service Levels

- (a) The Supplier must carry out the Supplier's Activities in a manner that meets or exceeds any Service Levels or, if none are specified in the Order Documents, in a timely and efficient manner taking into account the Supplier's obligations under this Agreement.
- (b) Unless otherwise specified in the Order Documents, the Supplier agrees to:
 - (i) measure its performance under this Agreement against any Service Levels;
 - (ii) provide the Customer with the results of all performance reviews;

- (iii) use appropriate measurement and monitoring tools and procedures to measure performance accurately; and
 - (iv) provide the Customer with sufficient information in relation to the Supplier's assessment and monitoring of its performance pursuant to this clause 15.
- (c) The Supplier's liability under clause 15.2(a) is reduced to the extent that the failure to meet or exceed a Service Level was caused or contributed to by the:
- (i) breach or negligence of the Customer;
 - (ii) unavailability or failure of any Critical CSI; or
 - (iii) acts or omissions of an Other Supplier.

15.3 Consequences for failing to meet a Service Level

- (a) If the Supplier fails to meet any applicable Service Levels, it will:
- (i) notify the Customer of the Service Level failure in accordance with clause 15.6;
 - (ii) provide timely updates to the Customer's Representative, in accordance with the incident notification requirements in the Service Levels or on request by the Customer, in relation to the progress being made in rectifying the failure;
 - (iii) promptly take whatever action that is commercially reasonable to minimise the impact of the failure;
 - (iv) correct the failure as soon as practicable;
 - (v) promptly take all necessary actions to prevent the recurrence of the failure and any other failure resulting from the same facts, circumstances or root cause(s); and
 - (vi) where requested by the Customer or specified in the Order Documents, promptly investigate the facts, circumstances or root cause(s) of the failure and promptly following conclusion of the investigation, deliver to the Customer a written report identifying such facts, circumstances or root cause(s) in the form requested by the Customer.
- (b) Without limiting any right or remedy available to the Customer under this Agreement or at Law, if the Supplier does not meet a Service Level, then the consequences for failing to meet a Service Level will be as set out in the Order Documents (such as service credits, service rebates or termination rights).
- (c) The parties acknowledge and agree that any service credits or service rebates calculated in accordance with the Order Documents:
- (i) reflect the provision of a lower level of service than is required under this Agreement; and
 - (ii) are reasonable and represent a genuine pre-estimate of the diminution in value the Customer will suffer, as represented by an adjustment to the Price, as a result of the delivery by the Supplier of a lower level of service than that required by the applicable Service Level, but are not an exclusive remedy with respect to other categories of Loss.

15.4 Performance reports

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

- (a) a monthly (unless a different frequency is specified in the Order Form) report on the performance and availability of the Services and/or Deliverables in respect of the immediately preceding month, including detail relating to:
 - (i) the quantity of Services and/or Deliverables supplied to the Customer (including, where applicable, the rates of utilisation);
 - (ii) the total Price paid by the Customer in respect of that reporting period and cumulatively over the Term to date, tracked over time and usage, including any applicable discounts, credits, rebates and other benefits; and
 - (iii) any other matters specified in the Order Form;
- (b) a monthly report of the Supplier's performance against any Service Levels, including any accrued service credits or service rebates;
- (c) the additional reports specified in the Module Terms and Order Form for the time period specified in those documents (which may include, where so specified, access to real-time or near-real time reporting capability); and
- (d) any other reports as reasonably requested by the Customer from time to time, including as may be required by the Customer to enable the Customer to meet its internal or New South Wales Government compliance, regulatory and operational reporting obligations.

15.5 Performance reviews

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

15.6 Notice

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

15.7 Meetings

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

16. Liquidated Damages

- (a) This clause 16 applies if Item 29 of the Order Form provides for Liquidated Damages to be payable in relation to a failure by the Supplier to meet a Key Milestone.
- (b) If the Supplier fails to meet a Key Milestone, the Supplier must pay the Customer the amount of Liquidated Damages set out in, or otherwise calculated in accordance with, Item 29 of the Order Form in relation to the period between the relevant Key Milestone and the date on which the:

- (i) Supplier achieves the relevant Key Milestone; or
- (ii) Customer terminates the relevant Order (or this Agreement),

but subject always to the maximum number of days (if any) for which Liquidated Damages are payable, or maximum percentage of the value of applicable Prices, as may be specified in Item 29 of the Order Form.

- (c) The Supplier acknowledges that the Liquidated Damages payable under this clause 16 are a reasonable and genuine pre-estimate of the Loss likely to be suffered by the Customer in respect of a failure by the Supplier to meet the relevant Key Milestone. However, they do not limit the rights or remedies of the Customer to claim Loss from the Supplier in the event that the amount of Loss actually incurred by the Customer exceeds such genuine pre-estimate, in the amount of the difference between such Loss actually incurred and the Liquidated Damages payable under this clause 16.
- (d) The Supplier will not be liable to pay Liquidated Damages to the extent that the Supplier's failure to achieve a Key Milestone was caused or contributed to by the:
 - (i) breach or negligence of the Customer;
 - (ii) unavailability or failure of any Critical CSI; or
 - (iii) acts or omissions of an Other Supplier.

17. Intellectual Property

17.1 Ownership of Existing Materials

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

17.2 Licence to use Existing Materials

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

- (ii) clause 17.4(b) applies in respect of those New Materials,

then the licence granted in clause 17.2(a) will also include, in respect of the Supplier's Existing Materials, an equivalent right and licence to that described in clause 17.4(b), to the extent required to support the exploitation and commercialisation of the Intellectual Property Rights in the relevant New Materials under that clause (but excluding commercial exploitation of the Supplier's Existing Materials independently of the New Materials in which they are incorporated).

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

17.3 Ownership of New Materials

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

17.4 Customer licence to use Supplier owned New Materials

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

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

17.5 Licence term

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

17.6 Supplier Licence to use Customer owned New Materials

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

17.7 Third party Intellectual Property Rights

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

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

17.8 Open Source Software

- (a) The Supplier must not, without the prior written consent of the Customer:

- (i) develop or enhance any Deliverable using Open Source Software; or
 - (ii) incorporate any Open Source Software into any Deliverable.
- (b) In requesting any consent from the Customer under clause 17.8(a), the Supplier must provide the Customer with:
 - (i) complete and accurate copies of any licence agreement, the terms and conditions of which would apply to the proposed use or incorporation of the Open Source Software into a relevant Deliverable; and
 - (ii) a description of how such use or incorporation may affect the provision of the Supplier's Activities, the Customer's licence rights under this Agreement and the Customer's and Customer Users' uses or other dealings with the relevant Deliverable,for the Customer's review and consideration.
- (c) Where the Customer provides its consent in relation to the use or incorporation of any Open Source Software under clause 17.8(a) the:
 - (i) Customer must comply with the terms and conditions notified to it in clause 17.8(b)(i) in relation to the use of that Open Source Software: and
 - (ii) Supplier must ensure that the use of that Open Source Software will not:
 - A. result in an obligation to disclose, licence or otherwise make available any part of the Customer Environment, software of the Customer, Customer Data or Confidential Information to any third party; or
 - B. diminish the Supplier's obligations or the Customer's rights under this Agreement.

17.9 Consents and Moral Rights

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

17.10 Prohibited activities

The licences granted to the Customer under clauses 17.2 and 17.4 do not permit the Customer to disassemble, decompile or reverse engineer any software-based elements of the materials licensed under

those clauses, provided that this restriction shall not apply to the extent it would not be permissible under the *Copyright Act 1968* (Cth) in relation to particular acts conducted for certain purposes, as specified in that legislation.

17.11 Additional obligations

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

17.12 Warranties and acknowledgements

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

17.13 Replacement of Deliverables

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

- (a) procure for the Customer the right to continue to use the Services and/or Deliverables on terms no less favourable than those set out in this Agreement;
- (b) promptly replace or modify the Services and/or Deliverables so that the alleged infringement ceases and the replaced or modified Services and/or Deliverables provides the Customer with no less functionality and performance as that required by this Agreement; or
- (c) only where the options in paragraphs (a) and (b) are not reasonably possible and subject to prior consultation with and receipt of approval from the Customer, accept return of the affected Deliverable or cease to provide the affected Service (as applicable) and, within 30 days, refund the Customer any fees paid for the relevant Service and/or Deliverable, subject to any reasonable deduction for any in-production use already made by the Customer of the relevant Service and/or Deliverable.

18. Escrow

- (a) If specified in Item 38 of the Order Form (or if otherwise agreed between the parties in writing) that any Escrow Materials are to be held in escrow, the Supplier must arrange for:

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

PART C: DATA AND SECURITY

19. Customer Data

19.1 Obligations in relation to Customer Data

- (a) This clause 19 applies where the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Customer Data in connection with this Agreement.
- (b) The Supplier acknowledges and agrees that it obtains no right, title or interest with respect to any Customer Data, other than a right to use Customer Data for the sole purpose of, and only to the extent required for, the carrying out of the Supplier's Activities in accordance with this Agreement.
- (c) As between the Supplier and Customer, all rights in and in relation to Customer Data remain with the Customer at all times and the Supplier assigns all rights, title and interest in the Customer Data to the Customer on creation. The Supplier agrees to do all things necessary to assign or vest ownership of all rights in Customer Data to the Customer on creation.
- (d) The Supplier must:
 - (i) not use any Customer Data for any purpose other than for the sole purpose of, and only to the extent required for, carrying out the Supplier's Activities in accordance with this Agreement;
 - (ii) not sell, assign, lease or commercially transfer or exploit any Customer Data;
 - (iii) not perform any data analytics on Customer Data, except to the sole extent permitted by this Agreement;
 - (iv) ensure that all of its Personnel who access, or have the ability to access, Customer Data are appropriate to do so, including passing any background or security checks as required by this Agreement;
 - (v) apply to the Customer Data the level of security and (if applicable) encryption that is required under this Agreement;
 - (vi) apply technical and organisational controls which are appropriate to ensure that all Customer Data is at all times protected from any unauthorised access, modification or disclosure and only handled and processed in accordance with the terms of this

Agreement and any other security requirements reasonably specified by the Customer; and

- (vii) ensure that Customer Data is at all times managed in accordance with the *State Records Act 1998* (NSW) (to the extent applicable); and
- (viii) ensure that its Personnel (including subcontractors) comply with this clause 19.1(d) and manage and safeguard Customer Data in accordance with all other requirements of this Agreement.

19.2 Security of Customer Data

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

19.3 Location of Customer Data

- (a) The Supplier must not:
 - (i) transfer, store, process, access, disclose or view Customer Data; or
 - (ii) perform any of its obligations under this Agreement which could involve Customer Data being stored, processed, accessed, disclosed or viewed,
 outside of New South Wales, Australia, except in accordance with clause 19.3(b).
- (b) Notwithstanding clause 19.3(a), the Supplier may transfer, store, process, access, disclose or view Customer Data outside of New South Wales:
 - (i) if permitted under the Order Form or any relevant Module Terms;
 - (ii) at the locations specified in the Order Documents (or as otherwise agreed to in writing in advance by the Customer); and
 - (iii) subject to the Supplier's and its Personnel's compliance with the Data Location Conditions.

19.4 Backup of Customer Data

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

19.5 Restoration of lost Customer Data

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

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

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

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

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

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

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

- (a) If specified in the Order Form, the Supplier must:
 - (i) establish, keep and maintain complete, accurate and up-to-date records of all Customer Data accessed, collected or changed by it; and
 - (ii) make copies of the records referred to in clause 19.7(a)(i) available to the Customer immediately upon request.
- (b) On the date that any Customer Data is no longer needed for the purposes of the Supplier carrying out the Supplier's Activities (or should the Customer notify the Supplier that the Customer Data is no longer needed), the Supplier must at its sole cost:
 - (i) immediately stop using the relevant Customer Data (except as permitted under this Agreement); and
 - (ii) at the Customer's direction (subject to clause 19.7(c)):
 - A. securely and permanently destroy all records and backups of the Customer Data in accordance with the timeframes under this Agreement

and supply the Customer's Representative with a certificate of destruction that confirms that this has occurred; or

- B. securely return all records of Customer Data to the Customer in accordance with the timeframes under this Agreement.
- (c) The Supplier will be entitled to retain copies of records of Customer Data to the extent, and only for the period, that such retention is mandated by any Laws to which the Supplier is subject.
- (d) The Supplier acknowledges and agrees that:
 - (i) where the Order Documents specify additional requirements for the capture and retention of audit log data, including categories of data and periods of retention, the Supplier must comply with those requirements; and
 - (ii) notwithstanding anything to the contrary in this Agreement, no Customer Data should be destroyed until the Supplier has met the data retrieval requirements under clause 32.1.

19.8 General

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

20. Privacy

20.1 Protection and use of Personal Information

- (a) If the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Personal Information in connection with this Agreement (regardless of whether or not that Personal Information forms part of the Customer Data), the Supplier must (and must ensure that its Personnel):
 - (i) comply with all Privacy Laws, as though it were a person subject to those Privacy Laws;
 - (ii) only use that Personal Information for the sole purpose of carrying out the Supplier's Activities;
 - (iii) not disclose the Personal Information to any other person without the Customer's prior written consent, which may be given in respect of classes or categories of subcontractors or types of subcontracted activities and made subject to any applicable conditions;
 - (iv) not transfer the Personal Information outside New South Wales, Australia or access it, or allow it to be accessed, from outside New South Wales, Australia unless permitted in the Order Form or relevant Module Terms and subject to the Supplier's and its Personnel's compliance with the Data Location Conditions;
 - (v) protect the Personal Information from unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Agreement;

- (vi) if it becomes aware that there has been an actual, alleged or suspected Security Incident involving Personal Information:
 - A. comply with clause 21.3(d);
 - B. comply with any reasonable direction (including as to timeframes) from the Customer with respect to that breach (which may include, for example, notifying any affected individuals of the breach of privacy); and
 - C. take all reasonable steps to prevent such breach from recurring; and
- (vii) notify the Customer as soon as reasonably possible if the Supplier is approached by any privacy commissioner or other Authority concerning any Personal Information.
- (b) Where the Supplier is required by Law to produce or disclose any information or to develop or provide any response or explanation to an Authority in relation to any incident (including any privacy breach) concerning the handling, management, safekeeping or protection of any Personal Information in connection with this Agreement, it must (to the extent such action is permitted by Law), provide notice to the Customer as soon as reasonably possible of the nature and content of the information to be produced or disclosed and, prior to providing a response to the Authority or disclosing any Personal Information, engage in reasonable consultation with the Customer regarding its proposed response or explanation.

20.2 Data Management and Protection Plan

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

20.3 No limitation of obligations

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

21. Security

21.1 Scope of the Supplier's security obligations

- (a) Without limiting any other security obligation under this Agreement, the Supplier's security obligations under this clause apply to:
 - (i) the Supplier's Activities; and
 - (ii) Customer Data and Personal Information, where and to the extent that the Supplier or its Personnel is in the possession of, controls, or is able to control, such data and information.
- (b) For the purposes of this clause 21, "**control**" includes controlling, managing, processing, generating, capturing, collecting, transferring, transmitting, deleting and destroying.

21.2 Supplier's security obligations

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

(**Security Program**), provided that, where clause 21 and the standards or requirements specified in the Order Form both address standards in respect of the same subject matter, the Security Program must reflect the higher standard.
- (b) The Security Program must be designed to:
 - (i) monitor, audit, detect, identify, report and protect against Security Incidents, Viruses, and any other threats or hazards to the security or integrity of the Customer's operations or the Services and Deliverables in carrying out the Supplier's Activities;
 - (ii) ensure the security (including the confidentiality, availability and integrity) of the Services and Deliverables in accordance with the requirements of this Agreement;
 - (iii) ensure the continuity of the Customer's access to, and use of, the Services and Deliverables and in a manner that achieves any applicable Service Levels. This includes continuity of access and use during any business continuity event, Disaster recovery event, scheduled or unscheduled maintenance and similar events;
 - (iv) manage any potential security risks in the Supplier's supply chains that bear upon the Supplier's Activities;
 - (v) monitor, detect, identify and protect against fraud and corruption by the Supplier's organisation and the Supplier's Personnel; and
 - (vi) ensure that the Security Program is comprehensive in covering all components of the Supplier's Activities and protects data in accordance with this Agreement.

- (c) Without limiting its obligations under clause 21.2(a), the Supplier must ensure its Security Program complies, and is consistent, with the Policies, Codes and Standards (to the extent applicable to security).
- (d) The Supplier must regularly review and continuously improve the Security Program to ensure it remains current and up-to-date and continues to satisfy the requirements of this clause 21.2 and is in accordance with Best Industry Practice.
- (e) If specified in Item 40 of the Order Form, the Supplier must have, obtain and maintain from the Commencement Date and for the duration of the Supplier's Activities the security certifications specified or referenced in Item 40 of the Order Form from an accredited, independent, third party register or accredited, independent third party certification body. Unless otherwise specified in Item 40 of the Order Form, the certifications must be updated at least annually and must comply with any specific certification requirements set out in the Order Form.
- (f) Without limiting this clause 21.2, the Supplier must comply with any additional security obligations or standards specified in the Order Form.

21.3 Audits and compliance

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

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

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

22. Security Incidents

22.1 Notification of Security Incidents

If the Supplier becomes aware that there has been a Security Incident, the Supplier must immediately:

- (a) notify the Customer and, for Security Incidents that are classified by the Customer as having a major or potentially major impact or where otherwise directed by 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 (but in any case within the time specified in Item 42 of the Order Form):

- (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 (**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;
- (ii) promptly on the Customer's request, provide copies of the results of the Supplier's analysis and the Remediation Plan to the Customer;
- (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;
- (iv) promptly update the Remediation Plan to address any concerns reasonably raised by the Customer, following which the Supplier must implement the Remediation Plan in accordance with the timeframes agreed by the Customer;
- (v) following implementation of the Remediation Plan, provide evidence to the Customer verifying that the remediation activities in the Remediation Plan have successfully resolved the underlying cause of the Security Incident (for example, by sharing the results of relevant penetration tests or vulnerability scans); and
- (vi) 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 21.3(d):
 - (i) requires the Supplier to provide the Customer with specific details that relate to the Supplier's other customers or would breach any applicable Laws; and
 - (ii) limits the Supplier's obligations at Law with respect to the notification and resolution of Security Incidents.

23. Confidentiality

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

remedy (unless it would be in violation of a court order or other legal requirement);

D. in the case of the Customer, to:

- 1) not used; or
- 2) any Government Agency or Eligible Customer or responsible Minister for a Government Agency or an Eligible Customer; or

E. to its Personnel and directors, officers, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the party's exercise of its rights or performance of its obligations under this Agreement.

- (b) The Supplier must not issue any press release or make any other public statement regarding this Agreement or the Supplier's Activities without the prior written consent of the Customer, except as required by Law.
- (c) This clause 23 does not preclude the Customer from disclosing any information (including Confidential Information) of the Supplier to the extent that this Agreement otherwise permits the disclosure of such information.

PART D: FEES AND PAYMENT

24. Payment and invoicing

24.1 Price

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

24.2 Benchmarking

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

Activities. Those terms of reference must, unless otherwise agreed by the parties, be based on the following principles:

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

24.3 Outcome of benchmarking

- (a) The benchmarker will be required to deliver a benchmarking report (**Benchmarking Report**) to the parties within 60 days of the Benchmarker's appointment, or within such other period as agreed by the parties in writing.
- (b) If the Benchmarking Report concludes that the rates and prices (or certain rates and prices) under this Agreement exceed the rates and prices offered by the current Australian market for comparable goods, services and activities, then the parties must use all reasonable endeavours to agree on an adjustment to the Payment Particulars to reduce the relevant rates and/or prices to align with the conclusions of the Benchmarking Report.
- (c) If the parties are unable to agree on adjustments to the rates and prices in the Payment Particulars in accordance with clause 24.3(b) within 20 Business Days of the issue of the Benchmarking Report, then, subject to the Supplier's rights under clause 24.3(g), the Customer may, acting reasonably, determine the adjustments required to reduce the rates and prices in the Payment Particulars to reflect the conclusions contained in the Benchmarking Report.
- (d) If the Customer determines that an adjustment to the rates and prices in the Payment Particulars is required in accordance with clause 24.3(c), the Customer may issue a notice to the Supplier notifying it of the adjustment (**Adjustment Notice**).

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

24.4 Invoicing

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

24.5 Payment

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

have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount.

24.6 Payment disputes

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

24.7 Set off

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

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

24.8 Taxes

- (a) Subject to clause 24.8(b), the Price is inclusive of, and the Supplier is responsible for paying, all Taxes levied or imposed in connection with the provision of the Supplier's Activities under this Agreement.
- (b) Unless otherwise specified, all amounts specified in this Agreement are exclusive of GST.
- (c) The Customer must, subject to receipt from the Supplier of a Correctly Rendered Invoice, pay any GST that is payable in respect of any taxable supply made under this Agreement in addition to the amount payable (exclusive of GST) for the taxable supply. GST is payable at the same time as the amount payable for the taxable supply to which it relates.
- (d) Where the Customer is required by any applicable Law to withhold any amounts from the payments made by it to the Supplier under this Agreement, the Customer:
 - (i) may withhold such amounts and will not be required to gross-up its payments to the Supplier for any amounts withheld; however
 - (ii) will provide the Supplier with a certificate of withholding or such other reasonable evidence of such withholding, to facilitate the Supplier's claims or deductions with the relevant taxing authority.

PART E: RISK ALLOCATION AND MANAGEMENT

25. Business contingency and Disaster recovery

25.1 Business contingency

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

25.2 Business Contingency Plan

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

25.3 Disasters

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

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

26. Step-in

26.1 Step-In Rights

- (a) This clause 26 applies where specified in Item 48 of the Order Form that the Customer may exercise Step-In Rights.
- (b) Without limiting any other right or remedy under this Agreement or at Law, if the Customer reasonably forms the opinion that:

- (i) the Supplier is unable or unwilling to provide any of the Supplier's Activities in accordance with this Agreement;
- (ii) a Disaster or emergency has occurred, which the Supplier is unable to prevent or overcome and which will or does materially affect the operations of the Customer;
- (iii) a Security Incident has occurred and the Supplier has failed to take, or delayed in taking, the actions required in relation to the Security Incident under clause 22.2; or
- (iv) the Supplier has materially breached its obligations under this Agreement or there is a real and reasonable prospect of the Supplier materially breaching its obligations under this Agreement,

the Customer may give written notice to the Supplier that it intends to exercise its rights under this clause 26 (**Step-In Rights**).

- (c) To the extent reasonably practicable, before exercising Step-In Rights the Customer agrees to consult with the Supplier in relation to measures to mitigate or manage the impact of events and circumstances giving rise to the Step-In Rights.
- (d) For the purpose of exercising Step-In Rights, the Customer:
 - (i) will be entitled to act as the Supplier's agent under all contracts entered into by the Supplier that relate to the Supplier's Activities and are necessary for the Customer to exercise the Step-In Rights; and
 - (ii) may:
 - A. give reasonable instructions to any employee of the Supplier (and the Supplier must ensure that such requests are complied with); and
 - B. contract with any of the subcontractors engaged by the Supplier,as is reasonably required by the Customer to exercise the Step-In Rights.
- (e) Upon receiving notice from the Customer stating that the Customer is exercising the Step-In Rights, the Supplier must:
 - (i) at the Customer's request, allow the Customer or a third party engaged by the Customer to provide part or all of the Supplier's Activities; and
 - (ii) maintain all third party agreements, consents and approvals necessary to enable the Customer to exercise its rights under this clause 26.
- (f) If the Customer exercises its Step-In Rights under this clause 26:
 - (i) the Customer will be relieved from paying any component of the Price that relates to those Supplier's Activities in respect of which it has exercised Step-In Rights, for the period of such exercise, however will continue to pay those components of the Price which relate to Supplier's Activities unaffected by the Step-In Rights; and
 - (ii) the Supplier must pay to the Customer on demand an amount equal to:
 - A. any costs incurred by the Customer in connection with the exercise of its Step-In Rights (including any costs relating to the Customer or its Personnel providing any part or all of the Supplier's Activities) under clause 26.1(e)(i)); and

- B. the quantum of any increase in the fees or costs paid by the Customer to any third party (including any substitute supplier) in respect of the period of the exercise of the Step-In Rights.
- (g) The Customer will use its reasonable efforts to minimise the quantum of any increase under clause 26.1(f)(ii)B.
- (h) The Supplier will not be responsible for any default or delay in the delivery of the Supplier's Activities to the extent that it was caused by the Customer or any third party providing part or all of the Supplier's Activities as contemplated in clause 26.1(e)(i), except to the extent contributed to by the Supplier or any of its Personnel.
- (i) If the Customer exercises its Step-In Rights for 60 days or more (or such other period as specified in Item 48 of the Order Form), then the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 29.1(d).

26.2 Conclusion of Step-In

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

26.3 No prejudice

The parties acknowledge and agree that:

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

27. Insurance

- (a) Unless otherwise specified in Item 49 of the Order Form, the Supplier must hold and maintain each of the following types of insurances, for the periods and in the amounts specified below:
 - (i) public liability insurance with a limit of cover of at least \$20 million in respect of each occurrence, to be held for the duration of the Supplier's Activities;
 - (ii) product liability insurance with a limit of cover of at least \$20 million in respect of each occurrence and in the aggregate, to be held for the duration of the Supplier's Activities and for at least seven years thereafter;
 - (iii) workers' compensation insurance as required by Law;
 - (iv) professional indemnity insurance with a limit of cover of at least \$20 million in respect of each occurrence and in the aggregate, to be held for the duration of the Supplier's Activities and for at least seven years thereafter; and
 - (v) such other insurances as specified in Item 49 of the Order Form.

- (b) Without limiting clause 27(a), where specified in the Order Form, the Supplier must hold and maintain:
 - (i) cyber security insurance with a limit of cover of at least \$20 million in respect of each claim (or such other amount specified in Item 49 of the Order Form), to be held for the duration of the Supplier's Activities; and
 - (ii) insurance that covers Losses that may be suffered as a result of a data security breach or the wrongful disclosure and use of Personal Information by the Supplier or its Personnel.
- (c) Within 10 Business Days following a request from the Customer, the Supplier must provide the Customer with:
 - (i) a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all insurance policies required by this Agreement are current and that the insurance has the required limits of cover; and
 - (ii) any information reasonably requested by the Customer regarding the policies for each of the insurances required to be held and maintained by the Supplier under clauses 27(a) and 27(b) (which may include reasonably redacted policy provisions or summarised policy terms where disclosure of the full policy terms is restricted by confidentiality obligations owed by the Supplier to third parties).

28. Performance Guarantee and Financial Security

28.1 Performance Guarantee

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

28.2 Financial Security

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

- (iii) the date the Customer notifies the issuer of the Financial Security in writing that the Financial Security is no longer required.

28.3 Costs

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

29. Termination

29.1 Termination for cause by the Customer

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

- (a) if the Supplier breaches a term of this Agreement which is:
 - (i) not capable of remedy; or
 - (ii) capable of remedy, but the Supplier fails to remedy it within 30 days of receiving a notice to do so;
- (b) if an Insolvency Event occurs in respect of the Supplier, to the extent there is no prohibition at Law in respect of such termination;
- (c) if the Supplier or any parent company of the Supplier involved in the performance of the Supplier's Activities undergoes a Change in Control or Other Changes, without the Customer's prior written consent; or
- (d) in any of those circumstances specified in clauses 12.7(b), 13.6, 14.4(a)(iii), 14.4(c)(iii), 26.1(i) and 36.4 or as otherwise set out in this Agreement, including the Additional Conditions,

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

29.2 Termination for convenience by the Customer

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

- 2) third party costs and disbursements duly incurred, with the authorisation of the Customer, but only to the extent referable to the period prior to the effective time of termination,

which would have been payable if this Agreement had not been terminated or reduced in scope and the Supplier submitted an Invoice for the work carried out prior to this date; and

- B. such other specific costs itemised in Item 52 of the Order Form (if any),

but in no case will the total amount payable to the Supplier be more than the total Price that would have been payable by the Customer had this Agreement not been terminated.

- (c) The amount to which the Supplier is entitled under this clause 29.2 will be a limitation on the Customer's liability to the Supplier arising out of, or in connection with, the termination or reduction in scope of this Agreement and the Supplier may not make any Claim against the Customer with respect to this, other than for the amount payable under this clause 29.2.

29.3 Consequences of reduction of scope

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

29.4 Termination for cause by the Supplier

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

and the Customer does not cease the relevant conduct within 60 days of receiving a written notice from the Supplier requesting it to do so.

- (b) This clause 29.4 exhaustively sets out the Supplier's rights to terminate this Agreement.

29.5 Dispute resolution

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

29.6 Survival of rights on termination or reduction in scope

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

30. Suspension

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

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

31. Transition-Out Services

31.1 Application of this clause

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

31.2 Transition-Out Plan

- (a) If the Order Form specifies that a Transition-Out Plan must be prepared by the Supplier with respect to the Supplier's Activities, by any date specified in the Order Form or otherwise promptly on request, the Supplier must prepare, and submit to the Customer's Representative for the Customer's approval in accordance with clause 8, a plan setting out how the Supplier will effect:

- (i) the orderly disablement of the Supplier's Activities; or
 - (ii) where applicable, the transfer of the performance of the Supplier's Activities under this Agreement to the Customer or a third party, including complying with the obligations set out in this clause 31.
- (b) The Supplier must ensure that the Transition-Out Plan sets out:
 - (i) the timeframes within which the Supplier will perform its obligations under the Transition-Out Plan;
 - (ii) any specific transition-out or disengagement obligations specified in the Order Documents; and
 - (iii) any charges, or the basis or methodology for the calculation of charges, which the Customer will pay the Supplier to perform the Services described in the Transition-Out Plan (if not otherwise specified in the Order Documents).
- (c) The Supplier must:
 - (i) review and update the Transition-Out Plan periodically throughout its engagement under this Agreement or at the Customer's reasonable request; and
 - (ii) make any updates to the Transition-Out Plan that are reasonably requested by the Customer.
- (d) For clarity, the Transition-Out Plan is a Document Deliverable. Clause 8 therefore applies to the Transition-Out Plan, including any updates to it.

31.3 General

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

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

32. Consequences of expiry or termination

32.1 Extracting or retrieving Customer Data

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

32.2 Confidential Information and intellectual property

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

(a) return; or

(b) destroy,

the Customer's:

(c) Confidential Information; and

(d) Existing Materials, New Materials and other Materials that comprise the Customer's Intellectual Property Rights.

33. Warranties

33.1 Mutual warranties

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

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

33.2 General Supplier warranties

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

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

33.3 Warranties in relation to Supplier's Activities

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

- (a) the Supplier's Activities will be carried out with due skill, care and diligence;

- (b) the Supplier's Activities (including Deliverables repaired or replaced or Services re-performed under this Agreement) will meet the Specifications and other requirements of this Agreement;
- (c) the Supplier's Activities will only be carried out by Supplier's Personnel who meet the Personnel requirements under this Agreement; and
- (d) it will perform the Supplier's Activities in accordance with all applicable Laws.

33.4 Implied warranties

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

34. Indemnities and liability

34.1 Indemnities

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

- (a) personal injury or death to any person or damage to, or loss of any real or tangible property to the extent caused or contributed to by an act or omission of the Supplier or any of the Supplier's Personnel;
- (b) breach of the Supplier's or its Personnel's obligations under clauses 19.1 (Obligations in relation to Customer Data), 19.2 (Security of Customer Data), 20 (Privacy), 21 (Security), 21.3(d) (Security Incident notification) or 23 (Confidentiality);
- (c) Claim brought by a third party arising out of, or in connection with, any actual or alleged infringement of Intellectual Property Rights or Moral Rights in the Deliverables or Services or associated with the Supplier's Activities, or any breach by the Supplier of the warranties in clause 17.12; or
- (d) of the Supplier's or its Personnel's fraud, recklessness or Wilful Misconduct.

34.2 Third Party IP Claims

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

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

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

34.3 Indemnities not affected by insurance

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

34.4 Status of indemnities

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

34.5 Liability cap

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

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

Total Fees Paid or Payable*	Default Amount
Under \$1,000,000 (including GST)	\$2,000,000
\$1,000,000 and above (including GST)	Two times the total fees paid or payable by the Customer under this Agreement.
* "Paid or payable" includes amounts that at the relevant time have not been paid but which would have become payable if the parties performed all of their obligations under this Agreement. It is not limited to amounts that at the relevant time have become due and payable.	

- (c) The Supplier's liability under this Agreement is uncapped, and the limitation of liability set out in clause 34.5(a) does not apply in relation to each of the following:
- (i) liability arising:
 - A. under any of the indemnities in clause 34.1; or
 - B. in respect of any of the matters referenced in that clause,

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

34.6 Exclusions of liability

- (a) In no event will either party's liability to the other party, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for special, indirect, incidental or consequential loss or damage.
- (b) Nothing in clause 34.6(a) will preclude a party from recovering:
- (i) Loss which may fairly and reasonably be considered to arise naturally, in the usual course of things, from the breach or other act or omission giving rise to the relevant liability; and
 - (ii) any kinds of Loss which the parties expressly agree, in Item 53 of the Order Form, will be treated as Loss of the kind referred to in clause 34.6(b)(i),
- and where the Customer is the recovering party:
- (iii) any Loss against which the Supplier is required to indemnify the Indemnified Entities under clause 34.1, to the extent such Loss relates to monies, amounts or liabilities owed, due, paid or payable, or obligations owed, to a third party; and
 - (iv) subject to applicable common law tests in respect of the recovery of Loss, any costs and expenses relating to any of the following activities (which, for clarity, will be treated as loss of the kind referred to in clause 34.6(b)(i)):
 - A. repairing or replacing the relevant Deliverable or Licensed Software or re-supplying any Services, including the cost of procuring replacement deliverables or services of equivalent functionality and performance internally or from a third party;
 - B. implementing any reasonably necessary temporary workaround in relation to the Licensed Software, Services or Deliverables;
 - C. engaging labour resources to reload any lost or corrupt data to the extent caused or contributed by the Supplier, from the last backup made of such data (regardless of whether the Supplier is responsible for backup of that data as part of the Supplier's Activities); and

- D. activities undertaken by, or on behalf of, the Customer in connection with the mitigation of Loss.

34.7 Application and contribution

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

34.8 Mitigation

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

35. Dispute resolution

35.1 General

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

35.2 Escalation

- (a) Within 10 Business Days of a party receiving a Dispute Notice, the Customer's Representative and the Supplier's Representative must meet and try to resolve the dispute in good faith.
- (b) If the parties have not:
 - (i) resolved the dispute; or
 - (ii) met,
 within the period specified in clause 35.2(a), a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other period as may be agreed by the parties in writing.

35.3 Alternative dispute resolution

- (a) Unless otherwise specified in the Order Form, if the dispute remains unresolved after 20 Business Days of the date of the Dispute Notice (or such longer period as may be agreed by the parties in writing), then either party may issue a notice in writing to the other party requiring the dispute to be determined by mediation in accordance with, and subject to, the Resolution Institute Mediation Rules or any equivalent and replacement rules.
- (b) If the dispute still remains unresolved 20 Business Days after a party becomes entitled to issue a notice in writing under clause 35.3(a) requiring the dispute to be determined by mediation, and by that time:

- (i) *neither party has referred the dispute to mediation*: then either party may commence any other form of dispute resolution, including court proceedings, to determine the dispute; or
- (ii) *the dispute has been referred to mediation*: then neither party may commence any other form of dispute resolution to determine the dispute, until a further 10 Business Days has elapsed following the commencement of mediation.

35.4 Acknowledgment

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

35.5 Costs

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

35.6 Continue to perform

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

36. Force Majeure

36.1 Force Majeure Event

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

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

36.2 Notification and diligence

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

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

- (d) notify the other party when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur; and
- (e) notify the other party when resumption of performance will occur.

36.3 Liability not relieved

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

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

36.4 Prolonged Force Majeure Event

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

37. Reports and audits

37.1 Records and reports

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

- B. Supplier's compliance with the Aboriginal Participation Plan; and
- C. amounts paid to any Aboriginal owned businesses under this Agreement.

37.2 Audits and inspections

- (a) The Customer or its nominee (which may be an advisor, consultant or other third party engaged by the Customer) may conduct audits and inspections of the Supplier's and its Personnel's performance of its obligations under this Agreement, including the:
 - (i) Supplier's and any of the Supplier's subcontractors' operational practices and procedures as they relate to this Agreement;
 - (ii) accuracy of the Supplier's Invoices and reports submitted under this Agreement; and
 - (iii) Supplier's and its Personnel's compliance with its other obligations under this Agreement.
- (b) For the purpose of conducting an audit or inspection under clause 37, or for the purposes of an inspection, examination or audit undertaken by or on behalf of the Auditor-General in accordance with its powers to assess the expenditure of public money related to this Agreement, the Customer, Auditor-General or their nominees may, on giving reasonable advance notice to the Supplier (at reasonable times and during Business Hours where practicable):
 - (i) access the premises and facilities of the Supplier to the extent reasonably required to carry out the audit or inspection;
 - (ii) to the extent relating to the Supplier's Activities, access, inspect and copy documents, resources and books and records, however stored, in the possession or control of the Supplier or its Personnel; and
 - (iii) require assistance in respect of any inquiry into or concerning the Supplier's Activities, including any parliamentary or statutory review or inquiry.
- (c) If an audit will involve the Supplier being required to produce documents, resources or books and records, the Customer will accompany its notice under clause 37.2(b) with a general description of the scope and purpose of the audit.
- (d) To the extent an audit involves physical access to the premises or facilities of the Supplier the:
 - (i) Customer will limit the exercise of its audit or inspection rights to no more than once per calendar year, unless the audit arises from the Supplier's breach of this Agreement or the Customer forming, on a reasonable basis, a view that such breach may have occurred; and
 - (ii) Customer or its nominee must comply with the Supplier's reasonable security requirements during such physical access.
- (e) The Supplier must provide all reasonable access, assistance and co-operation required by the Customer or its nominee in carrying out an audit under this clause 37.2.
- (f) Without limiting any rights or remedies of the Customer, if an audit shows that the Supplier or its Personnel has:
 - (i) breached, or is in breach of, this Agreement, the Supplier must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Customer; or
 - (ii) overcharged the Customer in any Invoice, the Supplier must promptly refund any amounts that the Supplier has overcharged the Customer, and adjust all of the

current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount. Where the overcharging discrepancy identified exceeds 10% of the amount that should have been correctly invoiced, the Supplier must also promptly reimburse the Customer for the reasonable costs (including internal costs) of conducting the audit.

- (g) Subject to clause 37.2(f)(ii), each party must bear its own costs of executing its rights under, or complying with, this clause 37.

37.3 Conduct of audits and inspections

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

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

37.4 Survival

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

38. Proportionate liability

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

PART F: GENERAL PROVISIONS

39. General

39.1 Government information

- (a) The Supplier acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Agreement on its nominated website established for GIPA Act disclosures. The Supplier irrevocably consents to the Customer acting in accordance with this clause 39.
- (b) To the extent that section 121 of the GIPA Act applies, the Supplier must, upon receipt of a written request by the Customer, provide the Customer with immediate access to the following information contained in records held by the Supplier:
 - (i) information that relates directly to the performance of the Supplier's Activities;
 - (ii) information collected by the Supplier from members of the public to whom it provides, or offers to provide, any aspect of the Supplier's Activities; and

- (iii) information received by the Supplier from the Customer to enable it to carry out the Supplier's Activities.
- (c) For the purposes of clause 39.1(b), information does not include information that:
 - (i) discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) the Supplier is prohibited from disclosing to the Customer by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (iii) if disclosed to the Customer, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Customer whether at present or in the future.
- (d) The Supplier must provide copies of any of the information referred to in clause 39.1(b), as requested by the Customer, at the Supplier's own expense and in such medium as the Customer may reasonably require.
- (e) Without limiting any other provision of this clause 39.1, the Supplier:
 - (i) authorises the Customer to make information concerning the Supplier available to other Government Agencies or Eligible Customers (including to the relevant head of any Government Agency or Eligible Customer and any responsible Minister of a Government Agency) for any purpose in connection with facilitating the Customer's exercise of its rights under this Agreement or the carrying out, or exercise, of the functions or powers of the Customer, any Government Agency, Eligible Customer or the Crown. Such information may include any information provided by the Supplier to the Customer and any information relating to the Supplier's performance under this Agreement (including any reports provided under clause 15.4);
 - (ii) acknowledges that information about the Supplier from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any officers or associates of the Supplier or a Related Body Corporate may be taken into account by Government Agencies and Eligible Customers considering whether to offer the Supplier future opportunities for working with those entities, for assessing the terms of their own contracts (or proposed contracts) with the Supplier or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;
 - (iii) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (iv) releases and indemnifies the Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

39.2 Personal Property Securities Act

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

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

39.3 No use of the Customer's name or logo

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

39.4 Prior work

Except as otherwise agreed between the parties in writing:

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

39.5 Entire agreement

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

39.6 Variation

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

39.7 Survival and merger

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

39.8 Severability

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

39.9 Waiver

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

39.10 Cumulative rights

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

39.11 Further assurances

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

39.12 Assignment, novation and other dealings

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

39.13 Notices

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

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

39.14 Construction

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

39.15 Expenses

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

39.16 English language

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

39.17 Governing Law

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

Executed as an agreement:

Signed for and on behalf of **Transport for NSW, ABN 18 804 239 602** by its authorised representative, but not so as to incur personal liability, in the presence of:



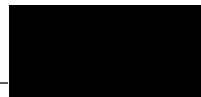
Signature of authorised representative

Simone Roberts

Name of authorised representative in full

Date 16/8/2022

Executed by ESRI Australia Pty Ltd ABN 16 008 852 775 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Secretary/other Director

Kaylee Holdsworth

Name of Secretary/other Director in full

Date 11 August 2022 | 9:10 AM AEST



Secretary Sole Director and

Brett Bundock

Name of Director or Sole Director and Secretary in full

Date 10 August 2022 | 3:32 AM PDT

Schedule 1 - Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Best Industry Practice means a standard of service or deliverable, in terms of quality, productivity, performance, cost and timeliness of delivery, that, when considered collectively, is equal to or better than the commonly accepted best practice being provided at the relevant time by a supplier of like or similar services, deliverables and activities to the Supplier's Activities throughout the world.

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

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

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

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

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

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

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

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

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

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

Confidential Information means information that:

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

but excludes information:

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

Conflict of Interest means the Supplier or its Personnel:

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

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

Core Terms means clauses 1 to 39 of this Agreement.

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

Correctly Rendered Invoice means an Invoice which:

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

Critical CSI means any:

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

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

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

Customer Data means all data (including metadata) and information relating to the Customer or any Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any Government Agency, including Personal Information, in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed or produced as part of carrying out the Supplier's Activities, but excluding any Performance Data.

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

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

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

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

Data Location Conditions means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the incidence of which is not (or would not be reasonably expected to be) generally known to the Affected Party as at the Commencement Date and which the Affected Party is not reasonably able to prevent or

overcome, or the effects of which the Affected Party is not reasonably able to predict and take measures to avoid, by the exercise of reasonable diligence and prudence.

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

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

Government Agency means any of the following:

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

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

ICT means information and communication technologies.

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

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

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

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

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

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

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver, or receiver and manager, be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under Law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (k) a writ of execution is levied against it or a material part of its property;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above clauses of this definition.

Intellectual Property Rights means all intellectual property rights, including:

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

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

Invoice means a tax invoice issued under the GST Law.

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

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

Laws means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.

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

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

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

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

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

Materials means all property, materials, documents, information and items in whatever form, and includes equipment, hardware, computer software (including development tools and object libraries), concepts,

approaches, tools, methodologies, processes, know-how, data, Documentation, manuals and anything else which is the subject matter of Intellectual Property Rights.

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

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

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

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

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

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

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

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

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

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

Open Source Software means software available under a licence which:

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

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

Order Documents means:

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

Order Form means:

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

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

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

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

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

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

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

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

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

Personal Information means:

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

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

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

Plans means any:

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

Policies, Codes and Standards means:

- (a) all applicable SME Policies and associated requirements;
- (b) the other policies, codes, standards and guidelines and associated requirements specified in this Agreement, including within:
 - (i) clauses 12.2(b) and 37.1(b); and
 - (ii) the Order Form; and
- (c) any Policy Changes with which the Supplier is or becomes required to comply with under clause 12.3.

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

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

Privacy Laws means:

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

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

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

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

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

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

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

Security Incident means 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) the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraphs (a) to (c) have occurred;
- (e) 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; or
- (f) any alleged or suspected occurrence of any of the above events or circumstances.

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

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

Services means:

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

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

SME Policies means:

- (a) the New South Wales Government's Small and Medium Enterprises and Regional Procurement Policy, published at <https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy> (or such other link as notified by the Customer);
- (b) the ICT/Digital Sovereign Procurement Commitments, published at <https://buy.nsw.gov.au/resources/ictdigital-sovereign-procurement-commitments> (or such other link as notified by the Customer);

- (c) the Small Business Shorter Payment Terms Policy, published at <https://buy.nsw.gov.au/policy-library/policies/small-business-shorter-payment-terms-policy> (or such other link as notified by the Customer); and
- (d) such other SME policies specified in the NSW Procurement Policy Framework, published at <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework> (or such other link as notified by the Customer).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

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

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

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

1.3 Discretion

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

Schedule 2 - Order Form

PART A: ICTA

Clause references below are references to clauses in this Agreement.

No	Item	Ref	Description or selection
KEY DETAILS			
1.	Customer	Generally Schedule 1	Transport for NSW ABN: 18 804 239 602 for and on behalf of the Crown in Right of the State of New South Wales
2.	Customer's Representative	Generally Schedule 1	Mike Collier Director Data Engineering and Architecture Email: Michael.Collier@transport.nsw.gov.au Pratah Sinnetamby Senior Manager Enterprise Geospatial Email: Pratah.Sinnetamby@transport.nsw.gov.au Sam Chung Senior Product Manager (Data Architecture and Analytics) Email: sam.chung@transport.nsw.gov.au
3.	MICTA	1.4 Generally Schedule 1	This Agreement is not entered into pursuant to a MICTA. Clause 1.4 does not apply.
4.	Supplier	Generally Schedule 1	ESRI Australia Pty Ltd ABN 16 008 852 775
5.	Supplier's Representative	Generally Schedule 1	Anton Delporte Business Development Manager Email: adelporte@esriaustralia.com.au
6.	Notices for the Customer	39.13(b)	Customer Address: 7 Harvest St, Macquarie Park, NSW, 2113 Customer's email: Pratah.Sinnetamby@transport.nsw.gov.au
	Notices for the Supplier	39.13(b)	Supplier Address: Level 3, 111 Elizabeth Street, Brisbane Qld 4000

No	Item	Ref	Description or selection
			Supplier's email: cfox@esriaustralia.com.au
TERM			
7.	Commencement Date	5.1 Schedule 1	The date on which the last party signs this Agreement.
8.	Initial Term	5.1 Schedule 1	Three years.
9.	Renewal Period	5.2 Schedule 1	Two Renewal Periods of 12 months each.
	Notice period for renewals	5.2	30 Business Days.
ORDERING AND PURCHASING			
10.	Orders including Additional Orders	3.3 Schedule 1	<p>In the case of Professional Services, the Customer may place Orders including Additional Orders through a Statement of Work (SoW) in accordance with the process set out in Annexure C to Order Form and issuing a purchase order.</p> <p>In the case of:</p> <ul style="list-style-type: none"> a. cloud services including updates and releases as part of Cloud based licences i.e. SaaS, and licenced software, including updates and releases, described in the Specifications ("Cloud Services and Licensed Software") and b. the support services with respect to the Cloud Services and Licensed Software ("Support Services"), <p>the Customer may place Orders including Additional Orders by issuing a purchase order.</p>
11.	Additional Conditions	3.5 Schedule 1	Annexure C to Order Form.
12.	Reseller arrangements	3.6	<p>The Supplier is an authorised reseller of Environmental Systems Research Institute Inc. (ESRI Inc) and must:</p> <ul style="list-style-type: none"> a. facilitate ESRI Inc to supply to the Customer with the Cloud Services and Licensed Software on the terms of the Master Agreement for Software signed by the Customer and ESRI Inc signed by the parties in February 2021 and amended by the parties on or about the same date as the Commencement Date (ESRI MA), a copy of the ESRI MA is under Annexure A;

No	Item	Ref	Description or selection
			<p>b. pay ESRI Inc the amount invoiced by ESRI Inc to the Supplier in respect of the Cloud Services and Licensed Software ordered by the Customer; and</p> <p>c. ensure any such subscriptions to the Cloud Services and Licensed Software are procured in the name of the Customer.</p>
13.	Schedules	Generally Schedule 1	<p><input checked="" type="checkbox"/> Schedule 1 - Definitions and interpretation</p> <p><input checked="" type="checkbox"/> Schedule 2 - Order Form</p> <p><input checked="" type="checkbox"/> Schedule 3 - Statement of Work Template (Note: If a Statement of Work is used, this should be included at Annexure B to Schedule 2 (Order Form). The template in Schedule 3 can be used for this purpose).</p> <p><input checked="" type="checkbox"/> Schedule 4 - Payment Schedule</p> <p><input checked="" type="checkbox"/> Schedule 5 - Change Request Form (Note: The Change Request Form should be included for all Orders. However, note that, if approved by the Customer, an alternate form to the default provisions in Schedule 5 may be used).</p> <p><input checked="" type="checkbox"/> Schedule 6 - Deed of Confidentiality and Privacy</p> <p><input type="checkbox"/> Schedule 7 - Escrow Deed</p> <p><input type="checkbox"/> Schedule 8 - Performance Guarantee</p> <p><input type="checkbox"/> Schedule 9 - Financial Security</p>
	Modules	1.2(c)	<p><input type="checkbox"/> Cloud Module</p> <p><input checked="" type="checkbox"/> Services Module</p> <p><input type="checkbox"/> Software Module (Non-Cloud)</p> <p><input type="checkbox"/> Hardware and Other ICT Deliverables Module</p>
SUPPLIER'S ACTIVITIES			
14.	Scope	Generally	<p>The Supplier will facilitate ESRI Inc to provide the Customer with subscriptions to Cloud Services and Licensed Software in accordance with Item 12, subject to the Customer complying with ESRI MA and paying any applicable licence fees charged by ESRI Inc.</p> <p>The Supplier will provide the Customer with Support Services and Professional Services on the terms of this Agreement.</p>
15.	Requirements - Accessibility requirements	6.3(b)(ii)	As set out in the SoW or as notified by the Customer from time to time.
	Requirements - Work health and safety	12.4(f)	As set out in the SoW or as notified by the Customer from time to time.

No	Item	Ref	Description or selection
16.	Site attendance	6.10 Schedule 1	Will the Supplier be required to attend the Site to carry out any aspect of the Supplier's Activities (including the supply of any Deliverables)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No unless otherwise set out in the SoW.
	Site location		Not applicable unless otherwise set out in the SoW.
	Physical delivery		Not applicable.
	Requirements for attendance at the Site		Not applicable unless otherwise set out in the SoW.
17.	Policies, Codes and Standards	12.2 Schedule 1	<p>The Supplier must comply with:</p> <ul style="list-style-type: none"> a. the NSW Procurement Policy Framework published at https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework in so far that it relates to the Supplier's Activities; b. the Supplier Code of Conduct published at https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct; c. the NSW Government Cyber Security Policy published at https://www.digital.nsw.gov.au/policy/cyber-security-policy in so far as it relates to the Supplier's Activities and the Supplier is directed by the Customer to assist the Customer's compliance with that policy; d. The Small and Medium Enterprise and Regional Procurement Policy published at: https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy (where requested by the Customer under SoW); e. the Aboriginal Procurement Policy published at https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy (where requested by the Customer under SoW); f. the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Products and Services have not been produced using the "worst forms of child labour" as defined; g. Transport COVIDSafe Measures Policy (where the Supplier is required to attend the Site), a copy of which will be provided by the Customer; and h. any other Policies, Codes and Standards specified in the Order or as notified by the Customer to the Supplier (acting reasonably) from time to time.

No	Item	Ref	Description or selection
	SME Policies	12.2 Schedule 1	The Supplier must comply with the SME and Local Participation Plan as provided in this Agreement
	Aboriginal Procurement Policy: Aboriginal participation	12.2(b)	The Supplier must comply with clause 12.2(b) and the Aboriginal Participation Plan as provided in this Agreement.
18.	Nominated Personnel	11.1 Schedule 1	As set out in the SoW.
19.	Deed of Confidentiality and Privacy	11.4(a) Schedule 1	If required by the Customer, the Supplier's Personnel must sign a deed in substantially the same form as Schedule 6Schedule 6.
20.	Permitted subcontractors	11.5(a)	Is the Supplier permitted to subcontract? No unless otherwise set out in the SoW.
21.	Subcontractor deed	11.5(j)	Not applicable.
	Additional subcontractor procurement policy requirements	11.5(k)	Not applicable unless otherwise set out in the SoW.
22.	Background checks	11.6(b)	The Supplier must: <ul style="list-style-type: none"> a. ensure that any of the Supplier's Personnel who travel to Australia hold a valid visa for the type of activities to be engaged in while in Australia; b. ensure that all the Supplier's Personnel are equipped and able to communicate with the Customer and Customer Users in an effective manner; and c. carry out background checks specified by the Customer of the Supplier's Personnel who will provide Professional Services, and provide the results of those checks to the Customer.
	Timeframes and time for background checks		The default position applies: 5 Business Days.
PERFORMANCE AND DELIVERY			
23.	Timeframes and requirements for performance	6.1	In the case of Professional Services, as set out in the SoW. In the case of Cloud Services, Licensed Software and Support Services, as set out in the relevant Module.
	Specifications	6.1 Schedule 1	The Specifications comprise the following documents (listed in the order of priority from highest to lowest if there is any inconsistency between these documents):

No	Item	Ref	Description or selection
			<p>a. the Additional Conditions;</p> <p>b. any Information Security Requirements and Data Location Conditions as set out in this Schedule 2 Order Form and the Core Terms;</p> <p>c. details in this Schedule 2 Order Form (excluding any Information Security Requirements and Data Location Conditions);</p> <p>d. any Order (if multiple additional Orders are agreed under this Agreement for the same subject matter, the SoW agreed most recent in time has priority over SoW agreed earlier);</p> <p>e. any schedule, attachment or annexure to this Agreement (excluding the Additional Conditions, Supplier's Documents and this Schedule 2 Order Form);</p> <p>f. any other document expressly incorporated into this Agreement as set out in the Order Form (excluding the Tender and Supplier's Documents); and</p> <p>g. any Supplier's Documents.</p>
24.	Service Levels	15.2 Schedule 1	<p>Service Levels for Professional Services will be set out in the SoW.</p> <p>Service Levels for the Cloud Services and Licensed Software and the Support Services are set out in the Specifications.</p>
25.	Performance reports	15.4(a)(iii)	The default position applies. Any additional requirements in relation to performance reports will be set out in the SoW.
	Additional performance reporting requirements	15.4(c)	The default position applies unless otherwise set out in the SoW.
	Performance reviews	15.5(a)	As set out in the SoW in the case of Professional Services.
26.	Meetings	15.7(a)	As agreed between the parties in writing.
27.	Project Plans	6.5(b)	The Supplier is not required to provide a Project Plan unless otherwise set out in the SoW.
	Other Plans	Schedule 1	Not applicable unless otherwise set out in the SoW.
28.	Stages	6.6(a) Schedule 1	Not applicable unless otherwise set out in the SoW.
	Project methodology	6.6(e)	Not applicable unless otherwise set out in the SoW.
	Costs of removing any Stage(s)	6.6(d)	Not applicable unless otherwise set out in the SoW.
29.	Liquidated Damages	16(a)	Not applicable unless otherwise set out in the SoW.

No	Item	Ref	Description or selection
		16(b) Schedule 1	
30.	Governance Framework	4.3	Any other Governance Framework details will be set out in the SoW or as otherwise agreed in writing between the parties from time to time.
31.	Customer Supplied Items	6.2 Schedule 1	Not applicable unless otherwise set out in the SoW.
	Date for provision of CSI		As set out in the SoW.
	CSI requirements		As set out in the SoW.
	Supplier's costs for CSI and time for payment		As set out in the SoW.
32.	Transition-In Plan	7.2 Schedule 1	Not applicable.
	Transition-In Services	7.3 Schedule 1	Not applicable.
33.	Transition-Out Services	31.1 Schedule 1	As set out in the SoW.
	Transition-Out Plan	31.2 Schedule 1	As set out in the SoW.
	Transition-Out Period	31.3 Schedule 1	As set out in the SoW.
34.	User Documentation	8.4(a)	The default position applies: any User Documentation is provided by the Supplier at its sole cost.
	Format for the User Documentation	8.4(c)	A hard copy format of the User Documentation is not required unless otherwise requested by the Customer.
35.	Acceptance Testing	14 Schedule 1	Acceptance Tests are not applicable unless otherwise set out in the SoW.

No	Item	Ref	Description or selection
		14.1	Alternative or altered Acceptance Testing procedures do not apply unless otherwise set out in the SoW.
		14.2, 14.3, 14.4	Any applicable Acceptance Criteria will be set out in the SoW.
		Schedule 1	
36.	Warranty Period	9	In the case of Professional Services, 30 days unless otherwise set out in the SoW.
		Schedule 1	In the case of Cloud Services and Licensed Software including updates and releases, as set out in ESRI MA.
			There is no Warranty Period applicable for Support Services. (Please see sub-item directly below.)
	Defects		In relation to the Supplier's provision of Support Services, the Supplier will rectify any Defect in accordance with clause 9 during the Support Period. For clarity, all references to "Warranty Period" or "prior to the expiry of the Warranty Period" are not applicable, and subclause 9(f) will not apply.
INTELLECTUAL PROPERTY			
37.	Ownership of Existing Materials	17.1	The default position applies.
	Licence to use Existing Materials	17.2	The default position applies.
		17.5	
	Ownership of New Materials	17.3	In the case of Professional Services, the Customer will own the Intellectual Property in any New Materials unless as otherwise agreed by the parties in the SoW.
	Licence to use New Materials	17.4	The default position set out under clause 17.4 applies unless otherwise set out in the SoW.
		17.5	For the purpose of clause 17.4(c), the parties agree that the Customer is only allowed to sublicense the New Materials owned by the Supplier under clause 17.4 to a member of the Transport Cluster.
	Third party Intellectual Property Rights	17.7	The default position applies: the Supplier must not include third party Intellectual Property Rights in Deliverables, unless approved in writing by the Customer.
38.	Escrow	18	Not applicable
	Escrow Materials	18	Not applicable
		Schedule 1	
DATA AND SECURITY			

No	Item	Ref	Description or selection
39.	Location of Personal Information	20.1(a)(iv) Schedule 1	<p>The Supplier may transfer Personal Information from New South Wales to other states and territories within Australia without the Customer's prior consent.</p> <p>Any transfer, disclosure or access of Personal Information outside Australia must be with the Customer's Representative's prior written consent.</p>
	Data Location Conditions	19.3(b) Schedule 1	<p>The Supplier may transfer Customer Data from New South Wales to other states and territories within Australia without the Customer's prior consent.</p> <p>The Supplier may transfer, disclose or give access to Customer Data outside Australia as part of the Support Services, e.g. to apply a patch or escalate to ESRI Inc., but only with the Customer's Representative's prior written consent.</p>
40.	Security obligations, standards and Information Security Requirements	19.2 21.2	<p>The Supplier must comply with the following security standards and policies, as applicable to the Supplier's Activities:</p> <ul style="list-style-type: none"> a. Transport for NSW Information Security Policy and Standard; b. Transport for NSW Data and Information Asset Management Policy available at https://www.transport.nsw.gov.au/system/files/media/documents/2019/data-and-information-asset-management-policy.pdf. <p>A copy of the above policies will be provided by the Customer.</p>
	Security certifications	21.2(e)	Not applicable
	Security audits	21.3 Schedule 1	As set out in any SOW or Order
41.	Backup of Customer Data	19.4	<p>Clause 19.4(a) applies to Customer Data uploaded to the Cloud Services unless otherwise set out in the Order.</p> <p>Any additional requirement on backup of Customer Data will be set out in the Order.</p>
	Retention of Customer Data	19.7	<p>Clause 19.4(a) applies to Customer Data uploaded to the Cloud Services unless otherwise set out in the Order</p> <p>Any additional requirement on retention of Customer Data will be set out in the Order.</p>
42.	Security Incident	22.2(a) Schedule 1	Default position applies.

No	Item	Ref	Description or selection
FEES AND PAYMENT			
43.	Payment Particulars	24.1(a)	As set out in Schedule 4 (Payment Schedule) or the Order.
	Price model (exception)	24.1(b)	The default position applies generally but for any price increase by the current Licensor, Esri Inc.
44.	Benchmarking	24.2	Not applicable.
45.	Invoicing timeframes	24.4(a)	The default position applies unless otherwise set out in Schedule 4 or the Order.
46.	Payment requirements and invoicing	24.5(a)	<p>a. The Supplier must satisfy the preconditions for payment, as set out in the Order, prior to being entitled to payment by the Customer.</p> <p>b. The Supplier must, wherever possible, submit invoices via the Customer's Ariba system.</p> <p>c. Alternatively, invoices must be sent to tss.invoice@transport.nsw.gov.au. The Supplier is advised that this email address is used for the auto-collection of new invoices only.</p> <p>d. Without limitation, invoices must satisfy the criteria below to ensure that they are paid in a timely manner:</p> <ul style="list-style-type: none"> i. all invoices must be sent as PDF attachments; ii. only one 'PDF' file, containing only one invoice, should be attached; iii. any supporting documents must be contained within the same attached 'PDF' file as the invoice, with the invoice being the first page and all supporting documents to follow; and iv. a valid contract number and purchase order number must be quoted on all invoices. <p>Any queries or requests for assistance in relation to invoices should be directed to the TSS Procurement Service Desk on 1300 132 136 or tss.procurement@transport.nsw.gov.au.</p>
	Time for payment	24.5(a) Schedule 1	The default position applies: 30 days following the Customer's receipt of the Correctly Rendered Invoice.
	Purchase order number and Agreement reference number for Correctly Rendered Invoices	Generally	The Customer will notify the Supplier of the purchase order number and the Agreement reference number (if applicable), and the Supplier shall specify those numbers on Correctly Rendered invoices
	Supplier's nominated bank account	24.5(a)(i)	As set out in the Supplier's relevant Correctly Rendered Invoice(s).

No	Item	Ref	Description or selection
RISK ALLOCATION AND MANAGEMENT			
47.	Business Contingency Plan	25.2(a) 25.2(b)(iii) 25.2(d)	<p>a. The Supplier is required to prepare a Business Contingency Plan for the Customer's approval before the commencement of an Order.</p> <p>b. For the purposes of clause 25.2(b)(iii), the Business Contingency Plan must also:</p> <ul style="list-style-type: none"> i. provide for the integration and co-ordination with the Supplier's business continuity arrangements with the Customer and other relevant suppliers; ii. be consistent with Best Industry Practice with respect to business continuity; and iii. address any other requirements specified in the Order or reasonably required by the Customer. <p>c. The Supplier must review and test the Business Contingency Plan at least annually and in any event upon the reasonable request of the Customer.</p>
48.	Step-In Rights	26	Not applicable.
49.	Insurance	27(a)	<p>The default position applies: 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"> a. 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; b. 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; c. workers' compensation insurance as required by Law; and d. 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.
	Cyber security and other insurances	27(a) 27(b)	<p>The default position applies, the Supplier must hold and maintain:</p> <ul style="list-style-type: none"> a. cyber security insurance with a limit of cover of at least \$10 million in respect of each claim and in the aggregate, to be held for the duration of the Supplier's Activities; and

No	Item	Ref	Description or selection
			b. 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.
50.	Performance Guarantee	28.1	Not applicable
51.	Financial Security	28.2	Not applicable.
52.	Termination for convenience	29.2(b)(ii)B	Not applicable.
53.	Limitation Amount	34.5(b)	<p>The Limitation Amount for each party's liability under this Agreement arising out of or in relation to:</p> <ul style="list-style-type: none"> a. the Supplier's provision of the Professional Services under a SoW, is two times the fees paid or payable under the SoW where such Professional Services are agreed; b. the Supplier's provision of the Support Services, is two times of the fees paid or payable under all order or orders for the Support Services that are effective at the time of the party's liability arises; and c. the Supplier's reseller obligation to facilitate ESRI Inc's provision of the Cloud Services and Licensed Software under an order, is two times the fees paid or payable under the order for such Cloud Services and Licensed Software.
	Alternate approach to uncapped liability	34.5(c)	Not applicable.
	Non-excluded Losses	34.6(b)(ii)	<p>Where the Customer is the recovering party, the following additional types of Loss will also be treated as Loss of the kind referred to in clause 34.6(b)(i) (that is, recoverable):</p> <ul style="list-style-type: none"> a. consultant's fees; b. costs arising from the loss of or corruption to data (in whatever format), including the cost and expense of rectifying and reloading the relevant data; c. out-of-pocket costs and expenses.
54.	Alternative dispute resolution	35	The default position applies.
55.	Prolonged Force Majeure Event	36.4	The default position applies.

PART B: Cloud Module - Not applicable.

PART C: Services Module

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

No	Item	Mod ref	Description or selection
SCOPE			
56.	Services	1.1	As set out in the SoW.
57.	Non-ICT Services	Generally	As set out in the SoW.
58.	Services Period	1.3 Annexure A	As set out in the SoW.
SUPPORT SERVICES			
59.	Support Services	2.1 2.3	As set out in the Supplier's standard Software Maintenance Policy under Annexure A. Any Support Services that are additional to or different from that set out in the Software Maintenance Policy will be set out in the SoW or Order.
	Support Period	2.2 Annexure A	As set out in the SoW or Order.
60.	Help desk	2.4	As set out in the SoW or Order.
61.	Software Support Services	3.1 3.2(b) Annexure A	As set out in the Supplier's standard Software Maintenance Policy under Annexure A. Any Support Services that are additional to or different from that set out in the Software Maintenance Policy will be set out in the SoW or Order.
	Updates	3.2	The default position applies except that any notification of Updates and New Releases will be published on the Supplier's customer support portal.
	New Releases	3.2	Same as above.
	Acceptance of Updates and New Releases	3.2(e)	The Customer must accept any Updates and New Releases. Prior versions of the Licensed Software will not be supported.
	Security Corrections	3.2(f)	The default position applies.
62.	Period to maintain the Software after provision of Updates and New Releases	3.2(g)	Not applicable as the Customer must accept any Updates and New Releases. Prior versions of the Licensed Software will not be supported.

No	Item	Mod ref	Description or selection
63.	Support Services for Hardware and Other ICT Deliverables	4.1 4.2 Annexure A	As set out in the SoW or Order.
64.	Preventative Maintenance	4.3 Annexure A	As set out in the SoW.
65.	Engineering changes	4.4	Not applicable.
66.	Remedial Maintenance	4.5 Annexure A	As set out in the SoW.
DEVELOPMENT SERVICES			
67.	Development Services	5.1 Annexure A	As set out in the SoW.
68.	Software Solution	5.2 Annexure A	As set out in the SoW.
69.	Design Specification	5.3(a) 5.3(b)	As set out in the SoW.
70.	Service Levels or criteria that apply to the Development Services	5.4(d)	As set out in the SoW.
71.	Alternative project delivery methodology	5.5	As set out in the SoW.
SYSTEM INTEGRATION SERVICES			
72.	Systems Integration Services	6.1 Annexure A	As set out in the SoW.
	Scope of Systems Integration Services	6.2	As set out in the SoW.
	SI Plan and SI Specifications	6.3	Not applicable.
DATA SERVICES			
73.	Data Services	7.1 7.2(a)	As set out in the SoW.

No	Item	Mod ref	Description or selection
		Annexure A	
74.	Backup	7.4	As set out in the SoW.
75.	Data cleansing	7.5	As set out in the SoW.
76.	Data analysis	7.6	As set out in the SoW.
77.	Data migration	7.7	As set out in the SoW.
78.	Data Migration Plan	7.7	As set out in the SoW.
OTHER PROFESSIONAL SERVICES			
79.	Professional Services	8.1 Annexure A	As set out in the SoW.
	Specifications and standards	8.2	
80.	Dates for Delivery and timeframes	8.2 8.3	As set out in the SoW.
MANAGED SERVICES			
81.	Managed Services	9.1 9.2 Annexure A	As set out in the SoW.
82.	Transition-In Services	9.3	
83.	Procedures Manual	9.4	As set out in the SoW.
84.	Managed Third Party Contracts	9.5 Annexure A	As set out in the SoW.
85.	Assets	9.6 Annexure A	As set out in the SoW.
86.	Transition-Out Services	9.7	As set out in the SoW.
TRAINING SERVICES			
87.	Training Services	10.1	As set out in the SoW.
	Training Reports	10.2	As set out in the SoW.
GENERAL			

No	Item	Mod ref	Description or selection
88.	Additional/ancillary Deliverables and Services	11.1 11.2	As set out in the SoW.
89.	Records	12	The default position applies.
90.	Operating procedures	13(a)(v)	Not applicable.

PART D: Software Module (Non-Cloud) – Not applicable.

PART E: Hardware and Other ICT Deliverables Module – Not applicable.

Annexure A to Order Form – Agreement documents including Supplier's Documents

Request for Proposal

WS3388516100 ESRI Licenses, Support and Professional Services

DETAILS TABLE	
Enforceable Procurement Provisions	<p>This procurement</p> <p><input checked="" type="checkbox"/> is covered by the Enforceable Procurement Provisions</p> <p><input type="checkbox"/> is not covered by the Enforceable Procurement Provisions</p>
Invited Date	Tuesday 31 May 2021
RFP Reference Number	WS3388516100
Closing Date and Time	9am Tuesday 7 June 2022 (unless otherwise agreed by TfNSW)
Lodgement Method	Email to : Cherie.knowles2@transport.nsw.gov.au
Briefing	<input checked="" type="checkbox"/> A briefing was be provided on 27 May 2022
Proposal Validity Period	60 days
RFP Manager	<p>Name: Cherie Knowles</p> <p>Email: Cherie.knowles2@transport.nsw.gov.au</p> <p>Phone: 0435 524 781</p>
External Probity Adviser	Nil
Enforceable Procurement Provisions Complaints Manager	<p>[Proponents may submit complaints regarding TfNSW compliance with the Procurement (Enforceable Procurement Provisions) Direction 2019 to tfnsw.procurement@transport.nsw.gov.au.</p> <p>For all other queries, issues or complaints, please contact the RFP Manager.</p>
External Consultants	Nil

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Part A: Terms of Participation

1 Definitions

In this Request for Proposal (RFP), terms defined on the cover of this RFP have the meaning given there and, except where the context otherwise requires, the following apply:

Aboriginal Participation Plan means a demonstrating how the Proponent will meet requirements and targets for Aboriginal participation.

Aboriginal Procurement Policy means the NSW Government's Aboriginal Procurement Policy.

Agency or **Agencies** mean the operating agencies of Transport for NSW including Sydney Trains, NSW Trains, and State Transit Authority as the context requires.

Best and Final Offer or BAFO means best and final offer in relation to all or certain aspects of a Proposal.

Closing Date and Time means the closing date and time set out on the cover page of this RFP.

Conditions for participation means the minimum requirements specified in **Attachment 1** (if any) that suppliers must demonstrate compliance with to participate in a procurement process.

Conflict of Interest refers to any interest, relationship or other situation which might affect (or be perceived to affect) the impartial assessment of a Proposal by TfNSW. This will include (without limitation) any relationships or friendships of the Proponent or its staff with TfNSW staff.

Contractor means the Proponent that is selected by TfNSW to perform the Services as a consequence of this RFP.

Deliverables means the Goods or Services described in the Scope of Works.

Details Table means the Details Table at the beginning of this RFP.

Disability Participation Plan means a plan demonstrating how the Proponent will support participation by people with disabilities.

Diversity & Inclusion Plan means a plan demonstrating how the Proponent will foster diversity and inclusion in its workplace.

Enforceable Procurement Provisions or **EPPs** means the [Procurement \(Enforceable Procurement Provisions\) Direction 2019](#) under the Public Works and Procurement Act 1912.

Fees means the charges and rates that are set out in Returnable Schedule 7.

Goods means any goods described in the Scope of Works.

Intellectual Property Rights means any industrial and intellectual property rights throughout the world, including any copyright, invention, patent, design, trade mark, service mark, domain name, trade secret, know-how, confidential information, circuit layouts, database or anything copied or derived from them.

Procurement Policy Framework means the Goods and Services [Procurement Policy Framework](#) for NSW Government Agencies issued by the NSW Procurement Board.

Proponent means the entity that submits a Proposal in response to this Request for Proposal and, if TfNSW agrees to a request by the Proponent that the contract be executed by another entity, then it also includes that other entity too.

Proposal means a submission in response to this RFP submitted by a Proponent.

Proposed Contract means the proposed contract set out in Part C of this RFP.

Request for Proposal or **RFP** means this request for proposal.

Returnable Schedule means a returnable schedule set out in Part D of this RFP.

RFP Enquiry Cut-off means the date and time by which any enquiries and clarifications may be made to TfNSW as specified in section 0 Part A of this RFP.

Scope of Works means the scope of services or scope of works set out in Part B of this RFP.

Services means any services described in the Scope of Works.

SME means small and medium enterprises as defined in the [NSW Government Small and Medium Enterprises and Regional Procurement Policy](#).

SME and Regional Policy means the NSW Government Small and Medium Enterprise and Regional Procurement Policy. See NSW Government Small and Medium Enterprise and Regional Procurement Policy.

SME Participation Plan means a plan demonstrating that the Proponent is an SME and/or how the Proponent promotes the inclusion of SMEs in its supply chain.

Statement of Business Ethics means [Transport's statement of business ethics](#).

TfNSW means Transport for NSW ABN 18 804 239 602, a statutory body corporate constituted under section 3C of the *Transport Administration Act 1988* of 231 Elizabeth Street, Sydney NSW 2000.

TfNSW Confidential Information means any information which the Proponent, its employees, contractors, agents or advisors obtains from TfNSW in connection with this RFP (whether or not recorded in any form), other than information that is or becomes public knowledge (unless through a breach of confidentiality). It also includes all information relating to our business policies, plans, strategies, financial details, proposals, systems, ideas, methods, know-how and intellectual property. It also includes information directly or indirectly derived from that information.

T&M means time and materials based payment structures.

2 Introduction

- Transport for NSW invites the submission of a Proposal for the supply of ESRI software, support and professional services for a period of up to five years including up to two extensions of one year each i.e. 3+1+1. Transport for NSW intends that any resultant agreement will be a Standing Offer Agreement for the supply of ESRI software, support and professional services on an “as and when required” basis.
- Further details are set out in Part B – Scope of Works.
- For background information on TfNSW, see <https://www.transport.nsw.gov.au/about-us>

3 Procurement (Enforceable Procurement Provisions) Direction 2019

The Details Table states whether or not the EPPs apply to this RFP. If the EPPs are stated to apply then this procurement is referred to as a “covered procurement”.

This RFP comprises four parts.

Part A: Terms of participation	Part A contains the terms of participating in this RFP.
Part B: Scope of Works	Part B sets out the Scope of Works.
Part C: Proposed Contract	Part C contains the agreement under which TfNSW wishes to engage the Contractor to provide the Deliverables.
Part D: Returnable Schedules	Part D contains the Returnable Schedules that must be completed by Proponents and returned in their Proposals.

4 RFP timetable

Except for the Closing Date and Time, the following timetable below is provided as a guide only. TfNSW reserves the right to vary the timetable and the nature and number of activities in its sole discretion without notice to Proponents.

Activity	Date
RFP issued	Tuesday 31 May 2021
Briefing	The address, date and time shown on the cover page of this RFP.
Closing Date	Date and time shown on the cover page of this RFP
Request for Best and Final Offer closes	10 June 2022
Contract executed	27 June 2022
Contractor commences performing Services	1 July 2022

5 Communications during the RFP process

5.1 Proponent contact person

The Proponent must nominate a contact person who will be the only person authorised to contact (and be contacted by) the RFP Manager. The Proponent must not otherwise initiate contact with TfNSW or any of its staff or advisers in relation to the Proposal.

5.2 RFP Manager

All communications relating to this RFP must be in writing and submitted by email to the RFP Manager.

5.3 Requests for clarification or further information

If a Proponent finds any discrepancy, error or omission in this RFP or other information issued by TfNSW in respect of the RFP, the Proponent should notify the RFP Manager immediately.

TfNSW is not bound to answer any enquiry. Any answers in response to enquiries will be provided to all Proponents. TfNSW will not reveal the identity of the Proponent that initiated the enquiry in any such communications.

5.4 Briefing

The Briefings was the opportunity for TfNSW to provide additional information which is not able to be provided in this document (for example presentations and verbal explanations) and to answer questions. The Details Table indicates whether a Briefing was provided by TfNSW.

6 RFP

6.1 No legal relationship

This RFP does not create any legal relationship and is not a recommendation, offer or invitation to enter into a legal relationship, contract, agreement or other arrangement in respect of the goods or services the subject of this RFP.

Nothing in this RFP or in the consideration of the Proponent's Proposal obliges TfNSW to enter into any agreement with the Proponent, creates a 'process contract' or other implied contract, obliges TfNSW to consider or accept any Proposal, stops TfNSW from considering a non-conforming Proposal, or prevents TfNSW from changing the way it manages this RFP or evaluates Proposals.

Without limiting the foregoing, the Statement of Business Ethics and the Procurement Policy Framework are statements of policy only and do not give rise to any legally enforceable obligations on the part of TfNSW.

6.2 Costs of participation

Participation in any stage of this RFP process, or in relation to any matter concerning the Proposal, will be at the Proponent's sole risk. All losses, liabilities, damages, costs, charges and expenses incurred by the Proponent (or its employees, agents, contractors or advisors) in any way associated with this RFP will be borne entirely by the Proponent and TfNSW will not under any circumstances compensate the Proponent for them.

6.3 Changes to the RFP process

The processes and procedures set out in this RFP represent the manner in which TfNSW currently intends to conduct this RFP. TfNSW may change the procedures set out in this RFP from time to time in its sole discretion. TfNSW will notify all Proponents of any changes that may affect Proponents within a reasonable time to allow Proponents to modify and re-lodge submissions (if required) in the same manner as the original information was provided.

Without limiting the previous paragraph, TfNSW reserves the right, in its absolute discretion, to do all or any of the following at any stage of the RFP process:

- (a) change the format, structure or timing of the RFP process
- (b) change the scope or requirements of the Deliverables
- (c) vary, amend, suspend or terminate the RFP process or Proponent participation in it
- (d) evaluate any alternative or non-conforming or partially conforming Proposal.

TfNSW will notify all Proponents of any such changes in the same manner as the original information was provided within a reasonable timeframe to allow Proponents to modify and re-lodge submissions (if required).

6.4 Alternative Proposals

TfNSW may, in its discretion consider Proposals offering alternative solutions or processes to those requested in this RFP on the condition that the Proponent proposing the alternative solution:

- (a) demonstrates that the alternative solution may be more beneficial to TfNSW than the requirements specified in this RFP and will deliver the outcomes sought by TfNSW
- (b) justifies, with supporting data, the proposed alternative solution including the advantages, disadvantages, limitations and capabilities of the alternative solution

6.5 Addenda

TfNSW reserves the right to vary this RFP (including the variation of any dates or timeframes referred to in this RFP) by issuing an addendum to the Proponent that is participating at the time the information is amended. Each addendum will form part of this RFP, and all addenda must be addressed and incorporated into the Proposal. It is the responsibility of Proponent to verify if any addendum has been issued. Where an addendum has been issued after the Proponent has lodged its Proposal, the Proponent should update its Proposal and resubmit the updated Proposal in accordance with TfNSW's reasonable instructions.

7 Proposals

7.1 Proposal content

The Proponent must ensure that:

- (a) its Proposal is presented in the required format as set out in Part D – Proponent's Response
- (b) all the information fields in Part D - Proponent's Response are completed and contain the information requested.

The Proposal must be in English, be clear, concise and relevant, and be free of irrelevant marketing material or any other superfluous or irrelevant material.

All times must refer to local time Sydney Australia. Pricing must be in Australian dollars (AUD) excluding GST, and pricing terms must comply with Delivered Duty Paid (DDP) (Incoterms 2010), unless otherwise set out in this RFP.

In completing the Proposal, the Proponent must not change any pre-existing text in the Returnable Schedules other than to insert the required information.

The Proponent should fully inform itself in relation to all matters arising from this RFP, and must clearly identify and detail all assumptions, qualifications and dependencies upon which their Proposal is based in the relevant section of the Returnable Schedules, or where no such section exists, in Returnable Schedule 1. The Proponent

must also inform TfNSW how such assumptions, qualifications and dependencies are proposed to be eliminated. If no assumptions, qualifications and dependencies are identified, the Proposal will be deemed to have none.

7.2 Lodgement

The Proposal must be submitted no later than the Closing Date and Time, unless otherwise agreed by the RFP Contact Officer.

The Proposal must be submitted in accordance with the Lodgement Method specified in the Details Table above.

The Proposal will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Proposals lodged by other means.

Electronically submitted Proposals may be made corrupt or incomplete, for example by computer viruses. TfNSW may decline to consider for acceptance a Proposal that cannot be effectively evaluated because it is incomplete or corrupt. Proponents must note that:

- (a) to reduce the likelihood of viruses, Proponents must not include any macros, applets, or executable code or files in a Proposal
- (b) Proponents should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission
- (c) TfNSW will not be responsible in any way for any loss, damage or corruption of electronically submitted Proposals.

7.3 Labelling

The Proponent must label its Proposal with the RFP Reference Number and Proponent's name.

7.4 Late Proposals

The Proponent is solely responsible for ensuring that its Proposal is submitted in accordance with this RFP before the Closing Date and Time. Proposals received after the Closing Date and Time may be considered to be late Proposals.

In accordance with the Procurement Policy Framework, late Proposals will not be accepted, except where TfNSW determines (but without any obligation to do so), in its absolute discretion, that the late Proposal was beyond the reasonable control of the Proponent or due to any acts or omissions of TfNSW and where the integrity and competitiveness of the RFP process will not be compromised by accepting a late Proposal.

7.5 Extensions

TfNSW may extend the Closing Date and Time in its sole discretion. The Proponent may request an extension in writing to the RFP Manager. However, TfNSW is under no obligation to grant such extension.

7.6 Proposal validity

A Proposal will be deemed to remain valid and open to acceptance by TfNSW for at least the Proposal Validity Period.

The Proposal Validity Period may be extended by TfNSW in its sole discretion acting reasonably provided it notifies Proponents of such extension before the expiration of the Closing Date and Time. TfNSW will notify all Proponents of any such changes in the same manner as the original information was provided.

After the Closing Date and Time the Proposal Validity Period may only be extended with the consent of the relevant Proponent.

7.7 Errors in Proposal

If TfNSW considers that there are unintentional errors of form in a Proponent's Proposal, TfNSW may, but is not required to, request the Proponent to correct or clarify the error.

If, after a Proponent's Proposal has been lodged, the Proponent becomes aware of an error in the Proposal (excluding clerical errors which would have no bearing on the evaluation of the Proposal) the Proponent must promptly notify TfNSW of such error. TfNSW may in its absolute discretion allow a Proponent to correct an error.

8.1 Evaluation process

- (a) Following the Closing Date and Time, TfNSW intends to evaluate the Proposal received. TfNSW may decide, in its absolute discretion, to consider or refuse to consider, any non-conforming Proposal. A non-conforming Proposal includes a Proposal that:

- (i) do not comply with the requirements of this RFP;
- (ii) are incomplete, ambiguous or illegible; or
- (iii) contains insufficient information to enable proper evaluation.

Whether or not the EPP applies to this RFP, TfNSW may also exclude a Proposal where TfNSW is permitted under the terms of the EPP to exclude a supplier.

- (b) In evaluating the proposal TfNSW may have regard to information from any source (including reports on a proponent's performance under other contracts).
- (c) As part of the evaluation, TfNSW may also at any time undertake a probity and/or risk assessment of the Proposal which may include:
- (i) an assessment of the level of conformity of a Proposal with the risk profile of the Proposed Contract;
 - (ii) a probity assessment of the Proponent and its personnel to ascertain whether there are or have been any unethical, unfair, illegal or corrupt practices or conduct or whether there are any other matters which may adversely reflect on TfNSW doing business with the Proponent; and
 - (iii) an assessment of responses from reference sites and/or referees.

TfNSW reserves the right at any time to not proceed further with the consideration of any proposal from a Proponent whose proposal it does not consider to be acceptable having regard to the probity or risk assessment.

- (d) We may at any time enter into negotiations with the Proponent. Our discretion to enter into negotiations is not limited only to where no Proponent has been assessed as offering best value for money.

8.2 Conditions for participation

Attachment 1 states whether or not there are any Conditions for Participation.

8.3 Evaluation criteria

The Evaluation Criteria is set out in **Attachment 1**.

8.4 Clarifications, presentations and interviews

TfNSW may request the Proponent to submit additional information or clarify the Proposal during the RFP process and seek a revised offer, in the form of BAFO or otherwise, from the Proponent at any time after the Closing Date and Time.

In evaluating the Proposal TfNSW may, in its sole discretion, take into account information that it obtains in addition to any information contained in a Proposal in relation to a Proponent.

In addition to clarification of Proposal and requesting BAFO or otherwise, TfNSW may request the Proponent in writing to:

- (a) conduct presentations or briefings; and/or
- (b) make selected human resources nominated by Proponents available for interviews.

8.5 External Probity Adviser and Probity Complaints

Paragraph (a) applies if TfNSW appoints an Independent Probity Adviser. Otherwise paragraph (b) applies.

- (a) If TfNSW has appointed an External Probity Adviser for this RFP then his/her role in the evaluation process includes:

- i. ensuring that the procedures adopted in the receipt and evaluation of a Proposal are fair and equitable and that the probity of the process is independently validated
- ii. monitoring and reporting to TfNSW that the evaluation process and procedures in this RFP have been followed and that the outcome is capable of being independently validated
- iii. providing confidence to all Proponents that appropriate processes were fully adhered to and that no Proponent was given an unfair advantage or was unfairly discriminated against
- iv. providing guidance to TfNSW as to how unforeseen probity issues could be resolved
- v. attending evaluation committee and TfNSW meetings where relevant
- vi. attending any meetings or presentations with Proponents
- vii. monitoring communication during the period between submission of Proposals and final decisions
- viii. preparing a report outlining the work performed, any issues that arose during the RFP process and confirming that the evaluation process and procedures have been followed.

The External Probity Adviser is not a part of the evaluation team but an independent observer of the process and will not be involved in the actual evaluation of any Proposal.

If Proponents have any concerns about the conduct or probity of the evaluation process, the Respondent should promptly bring its concerns to the External Probity Adviser's attention. The External Probity Adviser will investigate the matter and make an appropriate recommendation to TfNSW. Any action taken as a result of such process will be at TfNSW's discretion.

- (b) Where TfNSW has not appointed an External Probity Adviser and a Proponent has any concerns about the conduct or probity of the evaluation process, the Proponent should promptly contact TfNSW.Procurement@transport.nsw.gov.au.

8.6 Successful Proposals

Selection of a successful Proponent does not give rise to a contract (express or implied) between the successful Proponent and TfNSW for the supply of Goods and/or Services. No legal relationship will exist between TfNSW and a successful Proponent for the supply of Goods and Services until such time as a binding contract is executed by them.

The Successful Proponent will be required to enter into a contract based on the Proposed Contract subject to any amendments that TfNSW may approve.

TfNSW is under no obligation to appoint a successful Proponent or enter into a contract with a successful Proponent or any other person in relation to this RFP.

8.7 Advice to Proponents and debriefing

TfNSW does not intend commenting on or disclosing the progress of the evaluation of Proposals before giving formal final notice of the outcome of the RFP.

Unsuccessful Proponents may, within 30 days of the notification of the outcome of the RFP, by email to the RFP Manager, request a debriefing. A debriefing will be provided to the relevant Proponent providing information on why its Proposal was not successful.

TfNSW will not provide any information comparing a Proponent's Proposal against the successful Proposal nor will TfNSW release the names or scores of other Proponents or any other information about other Proposals other than the name of the successful Proponent(s).

8.8 Enforceable Procurement Provisions Complaints Manager

TfNSW has appointed a Complaints Manager for this RFP. The Complaint Manager's role is to identify and respond to any complaint made regarding alleged breaches of the [PBD 2019-05 Enforceable Procurement Provisions Direction](#).

The Complaints Manager will, in accordance with Transport's Procurement Policy and Procurement (Enforceable Procurement Provisions) Direction 2019 Complaints Management Procedure:

- a) suspend all processes involved in the procurement that would adversely affect the complainant's participation in the procurement, unless the agency head certifies that suspending the process is not in the public interest
- b) investigate the complaint
- c) take reasonable steps to resolve the complaint
- d) prepare a written report on the investigation.

If the Proponent has any concerns about TfNSW's compliance with the EPP Direction, the Proponent should promptly bring its concerns to the TfNSW Complaints Manager at TfNSW.procurement@transport.nsw.gov.au. Any action taken as a result of the process set out above will be at TfNSW's discretion.

9 General

9.1 Compliance with Procurement Policy and Statement of Business Ethics

Proponents must comply with:

- (a) all supplier obligations with the NSW Government [Procurement Policy Framework](#) that is current at the date two weeks prior to the close of this RFP.
- (b) [Transport Statement of Business Ethics](#)

Compliance with the Procurement Policy Framework and TfNSW Statement of Business Ethics are essential requirements of this RFP.

A Proponent's failure to comply with this section 9.1 during the RFP process will be taken into account by TfNSW during the Proposal evaluation process, and TfNSW may pass over the Proponent's Proposal without prejudice to any other rights of action or remedies available to TfNSW.

9.2 Intellectual Property Rights in this RFP

All Intellectual Property Rights in this RFP and any documents provided to the Proponent as part of the RFP process (Information Documents) are owned by and will remain the property of TfNSW and its licensors. TfNSW gives the Proponent no rights in this RFP or the Information Documents. The Proponent must not copy, use or otherwise deal with this RFP or the Information Documents, except as reasonably necessary for the Proponent to respond to this RFP, unless TfNSW gives prior written consent.

9.3 Intellectual property rights in Proposal document and licence to use

Upon submission in accordance with the requirements of this RFP, the Proposal (whether in paper or electronic form) will become TfNSW property.

The Proponent (or its licensors) will retain all Intellectual Property Rights contained in the Proposal. The Proponent grants to TfNSW a royalty-free, perpetual and irrevocable licence to use, copy, reproduce, adapt and modify their Proposal for any purpose related to the RFP, including for the purpose of evaluating the Proposals and the preparation of associated agreements. Where TfNSW is managing this RFP on behalf of an Agency then the licence referred to extends to that Agency.

TfNSW will retain copies of the Proposal, evaluation information and other materials as required by TfNSW or NSW Government policies and processes.

9.4 TfNSW Confidential Information & Media Releases

TfNSW may at any time require the Proponent to sign a Confidentiality Deed Poll in the form set out in **Attachment 2**.

The Proponent may disclose TfNSW Confidential Information to its employees, agents, contractors and advisors strictly on a need to know basis and solely for the purposes of evaluating the contents of this RFP, preparing a Proposal and negotiating any resulting contract **provided that**:

- before sharing TfNSW Confidential Information with its employees the Proponent must require such employees to sign a Confidentiality Undertaking in the form of **Attachment 3**; and
- before sharing TfNSW Confidential Information with its agents, contractors or advisers the Proponent must require them to sign the Confidentiality Deed Poll in the form set out in **Attachment 2** and, if required by TfNSW provide evidence of that to TfNSW.

The Proponent is also permitted to disclose TfNSW Confidential Information to the extent required by law. However, prior to any such disclosure the Proponent must notify TfNSW in writing and allow, to the extent legally possible, a reasonable period for TfNSW to consider whether they wish to require the Proponent to challenge the grounds for the disclosure or seek conditions to be placed on the disclosure.

The Proponent must not otherwise use or disclose TfNSW Confidential Information.

TfNSW may require the Proponent to return or destroy all copies of this RFP and any other confidential information TfNSW has provided to the Proponent. The Proponent must promptly comply with this request and provide a written certification of destruction (if so directed in writing).

The Proponents may not make any announcement or release any information regarding this RFP (including that it has been sent to the Proponent) without TfNSW's prior written consent. This does not preclude a Proponent which is public listed company from reporting to the ASX provided:

- TfNSW has formally notified it of acceptance of its Proposal (notification of shortlisting or of being the preferred Proponent is not sufficient); and
- Transport (acting reasonably) has approved the announcement.

9.5 Proponent's confidential information

The Proponent should clearly identify any confidential information they have provided as part of their Proposal, including information about the Proponent and its products, services and customers. Such information will not be confidential if TfNSW already knows the information, it is public knowledge, or TfNSW has already obtained the information on a non-confidential basis.

The Proponent must not mark the whole or substantially the whole of their Proposal as confidential. The Proponent must not claim confidentiality for any part of Proposal that is not genuinely confidential.

TfNSW shall in good faith appropriately secure and safeguard all the Proponent's provided documentation and shall keep all declared confidential information confidential. The Proponent agree that TfNSW may disclose any information in its Proposal (including Proponent confidential information) to TfNSW employees, agents, contractors or advisors on a need to know basis and for the purpose of evaluating or clarifying a Proposal or negotiating any resulting contract.

If there is any conflict or inconsistency between TfNSW's obligations of confidentiality to the Proponent and TfNSW's obligations of disclosure, as referred to in section 9.610 below, TfNSW's obligations of disclosure shall prevail to the extent of the conflict or inconsistency.

9.6 Disclosure of details of TfNSW Contracts

Notwithstanding any provision of this Part A, TfNSW may disclose any information in a Proposal and any resulting contract to the extent that TfNSW is required to do so by law, including under the *Government Information (Public Access) Act 2009* (NSW) or by a valid requirement of a government agency. TfNSW disclosure obligations may change over time, but Proponents should be aware that TfNSW may be required to disclose the following types of information:

- (a) the name and business address of the Contractor and details of any related bodies corporate that will be involved in carrying out the obligations of the Contractor under any contract resulting from this RFP
- (b) in relation to this RFP, the method of submitting Proposals and a summary of the criteria against which the various Proposals were assessed by TfNSW
- (c) details of any resulting contract from the RFP process (including a description of the goods/services to be provided, commencement date of the resulting contract, the term of the resulting contract, and a description of any provisions in the resulting contract which that may be subject to variation or renegotiation)
- (d) the price payable by us under the resulting contract and the basis for future changes in this price.

Detailed information about the disclosure obligations of NSW Government agencies is set out in the guidelines published by the Information and Privacy Commission. These guidelines can be accessed at <https://www.ipc.nsw.gov.au/fact-sheet-open-access-information-agencies>

9.7 No collusion

In preparing a Proposal, the Proponent must not communicate (verbally or otherwise), have any arrangement or arrive at any understanding with any other Proponent concerning the RFP. The Proponent must not engage in practices that might be regarded as collusive or anticompetitive.

9.8 Disclaimer

This RFP contains statements based on information or data that TfNSW believes to be reliable as at the date of publication. TfNSW makes no representation or warranty, express or implied, as to the accuracy or completeness of any information or data or statement given or made in this RFP. The Proponent is responsible for forming their own independent judgements, interpretations, conclusions, and deductions about any information or data in this RFP, and the Proponent should examine all information relevant to the risks, contingencies and other circumstances that could affect their Proposal. TfNSW will not be liable to the Proponent if the Proponent rely on any information or data in this RFP.

9.9 Reliance on statements

TfNSW may rely on any statements made by the Proponent (including their employees, contractors, advisors and agents). The statements TfNSW may rely on include those contained in the Proposal, those made in any written or verbal communications and in any negotiations with TfNSW. If TfNSW believes any Proponent has made any false or misleading statements, TfNSW may in its absolute discretion exclude the relevant Proposal from the evaluation process at any time.

9.10 Unlawful acts and improper assistance

The Proponent (and its employees, contractors, advisers and agents) must not offer any form of inducements to TfNSW or exhibit undue pressure (including any duress) on TfNSW, our employees or advisors in connection with this RFP process. TfNSW may exclude a Proposal from consideration where TfNSW believes it has been compiled using information improperly or unlawfully obtained from TfNSW or with the improper assistance of any person currently or previously associated with TfNSW.

9.11 Prime contractor, subcontractors and suppliers

Where the involvement of another party or parties will provide a more substantial and complete solution for TfNSW, the Proponent may involve that other party or parties in proposing that solution. The Proponent should disclose the nature of the relationship with the other party or parties to TfNSW and the Proposal must include the details specified in Part D Proponents Response to this RFP.

If a Proposal is successful, TfNSW will require the Proponent to contract as prime contractor to provide all of the Goods and Services the subject of this RFP (or, if this RFP expressly allows the Proponent to submit a proposal for part of the Goods and Services, then the part that Proposal covers). If there are other parties involved that the Proponent has disclosed to TfNSW in a Proposal, then the Proponents may be required to subcontract with them and will be responsible for the performance of those parties.

9.12 Piggybacking

If a government sector agency (as defined in the *Government Sector Employment Act 2013*) requests the successful Proponent to provide goods or services to it similar to the goods or services the subject of this RFP, then the successful Proponent agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms in its Proposal having regard to any necessary changes (including scope and service levels).

9.13 Precedence of documents

If there is any inconsistency between this Part A of the RFP and any of the other sections or attachments, then the terms of this Part A will prevail to the extent of that inconsistency.

9.14 Governing Law & Jurisdiction

This RFP is governed by the law in force in New South Wales. The Proponent submits to the exclusive jurisdiction of the courts of New South Wales.

9.15 Interpretation

Time & Day Calculations: A reference to time of day is a reference to Sydney time on the date in question. A reference to a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later. A reference to a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day.

Singular / Plural: words importing the singular include the plural and vice versa;

Person: an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;

Statutes: a reference to any statute, regulation or law includes a variation, consolidation or replacement and a reference to any statute or law includes all regulations, ordinances, proclamations and by-laws issued under that statute or law;

Heirs and Successors: a reference to a party includes their successors and permitted assigns;

Business Day: where the day on which something is to be done is not a Business Day, that thing must be done on the next Business Day;

Meaning not limited: the words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;

1. Introduction

This RFP relates to the procurement of ESRI licences (on-prem and “as a service”/cloud), support and professional services. TfNSW is seeking a consolidated Cluster Standing Offer Agreement with ESRI allowing a streamlined mechanism across the cluster for purchasing Support services as well as new Licences and Professional Services.

2. Objectives

Transport for NSW (TfNSW) seeks to arrange a Cluster-wide Standing Offer Agreement for up to 5 years [3+1+1] for support of existing and future ESRI licenses, and purchase of new ESRI software licenses (on-prem and cloud), and provisions of ESRI professional services, to allow simplified purchasing of required goods and services on an “as and when required” basis.

The Standing Offer agreement seeks to ensure:

- Ease of Engagement for ESRI goods and services through:
 - Simple annual purchase orders for Support (annual Pro rata for support of new licenses)
 - Simple ad-hoc purchase orders for new licenses
 - Scopes of works (SOW) and purchase orders for Professional Services
- Allow pooling licenses to get greater utilisation with the ability to use licenses across the TfNSW cluster.

3. Background/context

This procurement relates to the supply of ESRI support, licences (on-prem and “as a service”/cloud), and professional services. Previously, these have been provided to Transport under multiple contracts and on an ad-hoc basis. Going forward TfNSW wishes to have one Standing Offer agreement under which TfNSW can procure ESRI goods and services efficiently. The total Standing Offer Agreement value is estimated at up to \$9,000,000 (ex GST) over the 5 years [3+1+1]. However, there is no commitment to procure under the Standing Offer Agreement. Orders will be placed on an “as needs” basis by eligible customers.

4. Scope

4.1 Operating Model

The Standing Offer Agreement covers both RDS and CST Requirements, with potential for others in Transport business to use the agreement with the CST Contract Manager’s approval.

The Contract will be managed by CST as one account.

TfNSW seeks at least two sub-accounts allowing CST, RDS and others, as required, to manage their payments, license and Professional Services requirements independently.

Licenses and support are to be under the one TfNSW umbrella entity to allow pooling of licenses to get greater utilisation with the ability to use licenses across the Transport cluster.

4.2 Support of existing and future licences

- Support for current and future licenses – on-prem and “as a service”/cloud.
- Annual quote and payment for each of the sub-accounts via a purchase order under the standing offer agreement
- Pro-rata’ing of support for new licences so all licenses have an aligned end date.
- Purchase via a purchase order under the standing offer agreement.

4.3 New licences - on-prem and “as a service”/cloud- current and future license types.

- Supply of new licenses on an “as and when required” basis
- Quotation for new licences aligned to agreed pricing.
- Purchasing via a purchase order under the standing offer agreement

4.4 Professional Services

- Supply of professional services on an “as and when required basis
- Quotation against scopes of work utilising the agreement Schedule of Rates as the maximum rates to apply.
- Purchasing via a purchase order under the standing offer agreement

5. Deliverables

- Support for existing and future licences;
- Supply of new licenses - on-prem and “as a service”/cloud; and
- Supply of professional services

7. Service levels

To be determined following proposal review.

.

Part C: Proposed Contract

The following is the Proposed Contract (an ICTA Standing Offer agreement) that we intend to use for the procurement and delivery of the Scope of Works.

If the Proponent wishes to request changes to the Proposed Contract then Part D: Proponent's Response contains a section for Proponents to state their position. If the Proponent does not state a position it will be deemed to have accepted the terms and conditions in the Proposed Contract in full.

TfNSW has a strong preference that the Proposed Contract not be amended and when evaluating a Proposal may take into account any changes requested by a Proponent.



TfNSW ESRI ICTA
Draft 31.05.2022.docx

Part D: Proponent's Response

The Proponent must complete the cover page of the Proposal and the Returnable Schedules in this Part D in full and submit it in accordance with Part A – Terms of Participation.

Cover Page for Proposal
Proposal in response to
Request for Proposal for the provision of ESRI
licenses, support and professional services

RFP Reference Number: WS3388516100

Part D
Returnable Schedules

Section 1 – Proponent’s details

Name of Proponent	
--------------------------	--

Section 2 – Proposal details

Name of Proposal	
Date of Proposal	

Section 3 – Required attachments

Please confirm the following documents and Returnable Schedules are attached as required under the RFP.

(Please check)	Document/Returnable Schedule
<input type="checkbox"/>	Cover page for Proposal (this page)
<input type="checkbox"/>	Returnable Schedule 1 – Form of Proposal
<input type="checkbox"/>	Returnable Schedule 2 – Organisational details
<input type="checkbox"/>	Returnable Schedule 3 – The Services
<input type="checkbox"/>	Returnable Schedule 4 - Price
<input type="checkbox"/>	Returnable Schedule 5 - Proponent financials
<input type="checkbox"/>	Returnable Schedule 6 - Acceptance of Proposed Contract
<input type="checkbox"/>	Returnable Schedule 7 - Other parties
<input type="checkbox"/>	Returnable Schedule 10 – Proposed approach to support NSW Government SME and Regional, and sustainability policies

Returnable Schedule 1

Form of Proposal

1.1 Introduction

This Returnable Schedule 1 and all of the other Returnable Schedules in this RFP must be completed by the Proponent; together with any further information provided by the Proponent, this will constitute its Proposal to this RFP.

1.2 Proponent's details

Please complete the following details in respect of the Proponent.

Response	
Proponent's full legal name	
ACN / ABN	
Registered office address	
Is the business operated under a Trust ? * Note to Proponents: If the business operates as a Trust then before the Contract is awarded the Proponent will be required to provide (at its cost) a Declaration from the Trustee and a Certification from a lawyer concerning the Trust Deed. TfNSW will provide the template Declaration and Certification forms.	<input type="checkbox"/> Yes <input type="checkbox"/> No Trust Name: _____ Trust ABN: _____ Note to Proponents: Where your business operates as a trust the Trustee of the Trust should be named as the Proponent. The ACN of the Trustee Proponent will be different from the ACN of the Trust business.
Details of Proponent's representative who is authorised to represent and legally bind the entity: <ul style="list-style-type: none">• Name• Title• Current telephone number• Email address	
Details of Proponent's representative who is authorised to act as point of contact in respect of any routine inquiries generated by TfNSW: <ul style="list-style-type: none">• Name• Title• Current telephone number• Email address	

1.3 Disclosure of Conflicts of Interest

(a) Please indicate whether as at the date of submission of this Proposal the Proponent (including its representatives and/or staff) has any actual or potential Conflict of Interest in relation to the Proponent's participation in the RFP process.

Response
<input type="checkbox"/> No [To be selected if no actual or potential Conflict of Interest exists as at the date of submission of this Proposal.]
<input type="checkbox"/> Yes [To be selected if an actual or potential Conflict of Interest exists as at the date of submission of this Proposal.]

(b) If the response to the question in section 1.3 is 'yes', please provide full details of the Conflict of Interest below.

Response

1.4 Material qualifications or assumptions not included in any other Returnable Schedule

Please set out any qualifications or assumptions that are material to the Proposal for which no opportunity to respond has been provided elsewhere in the Returnable Schedules.

Response

Execution of Proposal and Undertaking

Please complete the following form as a Proponent responding as a single entity, or as the prime contractor if the Proponent is part of a consortium.

I certify that:

- (a) except as specified in the Proponent's response to Paragraph 1.3(b) above no actual or potential Conflict of Interest exists in relation to the Proponent's participation in the RFP Process;
- (b) the Proponent and its related bodies corporate have not and will not engage in conduct which is collusive, anti-competitive, corrupt and/or unethical in connection with the RFP process;
- (c) the Proponent agrees to be bound by the provisions of the RFP; and
- (d) the Proponent represents, warrants and undertakes that:
 - (i) the information in this Proposal is true, accurate and complete and not misleading; and
 - (ii) the Proponent is aware of, and will comply with, the requirements of the Goods and Services Procurement Policy Framework for NSW Government Agencies.

SIGNED for and on behalf of the Proponent by its Authorised Representative, who warrants by his/her execution that he/she has all necessary authority to sign this document for and on behalf of the Proponent, in the presence of:	<hr/> Signature of Authorised Representative
<hr/> Signature of Witness	<hr/> Name
<hr/> Name of Witness	<hr/> Position / Title
	<hr/> Date

Returnable Schedule 2

Organisational details

2.1 Organisational strategic capability	
2.1.1 Information requested	<p>Please provide an overview of your organisation, including:</p> <ol style="list-style-type: none"> 1. Ownership 2. Key staff 3. Governance 4. Management structures and any subsidiaries 5. Paid up capital 6. Total revenue in Australia and globally 7. Number of permanent employees in Australia and globally 8. Number of individual contractors in Australia and globally who are currently performing services on behalf of the Proponent 9. Where your organisation has an ultimate holding company, whether the ultimate holding company will guarantee the performance of your organisation's obligations to TfNSW under a contract for the Services. <p>Please also provide the information in points 1-9 above for any subcontracted organisations on which you intend to rely to perform a material part of the Services.</p>
2.1.1 Response	
2.1.2 Information requested	<p>Please provide details of any current or historical legal disputes that may impact your ability to perform the Services.</p>
2.1.2 Response	
2.1.3 Information requested	<p>Please provide details of the Relationship between ESRI Australia and ESRI inc and the Goods and Services being provided by each.</p>
2.1.3 Response	
2.1.4 Information requested	<p>Please describe any assurance that ESRI Australia can provide in relation to the Goods and Services being provided by ESRI inc</p>
2.1.4 Response	

2.2 Insurances

2.2.1 Information requested This table sets out Transport for NSW insurance requirements (aligned to the ICTS). The Proponent needs to specify the current insurance and to confirm that they will increase insurance to meet Transport for NSW requirements if awarded a Contract in TfNSW's sole discretion.

	Type of insurance	TfNSW minimum cover requirement	Name of Proponent's current insurer	Proponent's current \$ cover (Specify if it is per claim or in the aggregate.)	Proponent agrees to meet TfNSW requirements
2.2.1 Proponent Response	Product Liability	\$20m 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.			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Public Liability	\$20m in respect of each occurrence, to be held for the duration of the Supplier's Activities.			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Professional Indemnity	\$20m 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.			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Workers Compensation	As required by Law			
	Cyber Security insurance and insurance that covers Losses that may be suffered as a result of a data security breach or the wrongful disclosure or use of Personal Information	\$20m in respect of each occurrence, to be held for the duration of the Supplier's Activities.			<input type="checkbox"/> Yes <input type="checkbox"/> No

2.3 Material qualifications or assumptions

2.3.1 Information requested	Please set out any qualifications or assumptions that are material to this Returnable Schedule.
2.3.1 Response	

Returnable Schedule 3

The Services

3.1 Compliance with the Scope of Works

Please confirm that you comply with the Scope of Works. Use the template table below by entering one of the following options:

Yes – means your response fully conforms to the requirement.

Partial – means your response partially conforms to the requirement but also imposes different, modified or additional terms with respect to that requirement or involves a different solution or solutions to the requirement.

No – means an inability or refusal to meet a requirement on any terms.

Where you state Partial you should provide full details of the extent of the compliance, the additional or different terms imposed, and any alternatives offered.

In all cases, you should provide information as to how you propose to meet each requirement described in Part B in sufficient detail to enable TfNSW to assess your understanding of, and ability, to meet its requirements.

Please note specific questions are following in this Schedule 3 and is acceptable to reference the later question where appropriate so as not to duplicate your response.

Part B section	Compliance (Yes, No, Partial)	How requirement is satisfied and extent of non-compliance
1. Introduction		
2. Objectives		
3. Background/context		
4. Scope		
4.1 Operating Model		
4.2 Support of existing and future licences		
4.3 New licences - on-prem and “as a service”/cloud - current and future license types.		
4.4 Professional Services		
5. Deliverables		
7. Service levels		

3.2 Operating Model	
3.2.1 Information requested	Please discuss how you will provide the required operating model – One TfNSW account with at least 2 (and potentially more) sub accounts for CST and RDS.
3.2.1 Response	
3.3 New license pricing	
3.3.1 Information requested	Please discuss how the Standing Offer agreement might make provision for current and future license pricing. Eg. Government list less a discount, commonly used license schedule of product pricing.
3.3.1 Response	
3.4 Support offering	
3.4.1 Information requested	Please provide details of support offering and KPIs including helpdesk contacts, hours and availability.
3.4.1 Response	
3.5 Co- terming support	
3.5.1 Information requested	Please describe how you intend to achieve support co-termining of new licence?
3.5.1 Response	
3.6 Support following Updates and Releases	
3.6.1 Information requested	Please describe your upgrade/new release Policy and Support Model?. E.g 3 years of support from last upgrade?
3.6.1 Response	
3.7 Online Services Terms of Use	
3.7.1 Information requested	Please provide details of applicable Online Services Terms of Use.

3.7.1 Response	
3.8 Value-adds	
3.8.1 Information requested	Please describe any value-adds offered to TfNSW
3.8.1 Response	

3.8.2 Information requested	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule.
3.8.2 Response	

Returnable Schedule 4

Price

Annual Support

4.1 Schedule of Rates and Total Price for Support.

Please provide detailed schedule of rates plus total annual pricing for annual support of known current licenses for the period 1 June 2022-2023. These should be provided as 2 separate price lists – one for CST and one for RDS.

New Licenses

4.2 Schedule of Rates / Pricing Details for new licenses

Please provide detailed schedule of rates / and or proposed pricing for inclusion in the Standing Offer agreement for new licenses (current and future) throughout the duration of the agreement.

Professional Services

The Proponent is required to complete the following rate card, which will be the maximum rate applicable to professional services and serve as the basis for quotations against any scopes of work for the duration of the Standing Offer agreement. Rates should be all inclusive and MUST include any provisions for travel and accommodation, office disbursements such as local/STD telephone calls, printing, binding, scanning and in-house photocopying of fewer than 100 pages as TfNSW will NOT treat these as pass-through expenses. Rates are to be the maximum payable in a 24 hour period.

4.3 Schedule of Rates for Professional Services

Project Role	Organisation	Position Grade/ Classification	Daily rate (AUD ex GST)	Hourly rate (AUD ex GST)
[Proponent to complete based on resource plans provided in Returnable Schedule 4]				

4.4 Index by which rates will rise during option periods

4.4.1 Information requested	Please advise on what basis rates will rise, if at all, for the two option periods.
4.4.1 Response	

4.5 Discounts and rebates

4.5.1 Information requested	Please provide details of any discounts or rebates that have already been applied to the pricing, and any additional discounts or rebates that will apply to the pricing and the circumstances under which they apply.
4.5.1 Response	

4.5.2 Information requested	Please provide any assumptions that have been made by the Proponent in relation to any information provided in response to this Returnable Schedule.
4.5.2 Response	

Returnable Schedule 5

Proponent Financials

5.1 Financial Information	
5.1 Information requested	Please provide audited financial statements for the past three years
5.1 Response	
5.2 Information requested	If you propose to subcontract any of the Services then please provide audited financial statements for the past 3 years for those other entities
5.2 Response	
5.3 Information Requested	<p>Please provide the most recent copies of the following or their equivalent together with a letter from the Proponent's accountant or auditor addressed to TfNSW verifying the Proponent's financial position is accurately reflected in the above documents:</p> <ul style="list-style-type: none"> • balance sheet • income statement • statement of cash flows.
5.3 Response	
5.4 Independent Financial Assessment	
5.4 Information requested	TfNSW may engage an independent financial assessor to confidentially assess and report to TfNSW on the Proponent. The Proponent must reasonably cooperate in that exercise
5.4 Response	

Returnable Schedule 6

Response to Proposed Contract

The Proposed Contract is set out in Part C of the RFP.

TfNSW will use information provided in Proposals to populate the relevant form of Proposed Contract.

TfNSW have a strong preference that the terms of the Proposed Contract are not amended the Proponent is reminded that this RFP is issued under a Scheme the Scheme rules may prohibit all or certain amendments to the Proposed Contract.

Please note: if easier, please mark up and comment directly on the ICTA draft contract provided at Part C.

6.1 Proposed changes					
Information Required:		Proponents shall provide details of any proposed changes to the Proposed Contract. TfNSW reserves the right to accept, reject or negotiate any such proposed additional clauses in its sole discretion.			
Proponent Response					
No.	Ref	Topic	Proposed change	Reason	Category ¹
1	{e.g. Cl. 2.3}	{Insert short heading / description of issue.}	{Detail the change proposed to the contract, either by describing it or proposing specific drafting.}	{Explain the reason for the proposed change to the contract.}	{See note below.}

¹ Category column - please categorise each requested amendment as follows:

- Category 1 – amendments which, if they were not agreed by Transport for New South Wales, would result in the Proponents inability to execute the Customer Contract (“showstoppers”)
- Category 2 – amendments which are important, but do not fall into Category 1
- Category 3 – amendments which the Proponent considers to be desirable but do not fit into either Category 1 or 2
- Category 4 – amendments which are of a drafting nature only (eg typo correction).

Returnable Schedule 7

Other parties

If the Proponent's Proposal involves other parties, please provide the following information about them.

Response	
Name of legal entity	
ACN/ABN	
Registered office address	
Description of involvement of company in Proposal	
Description of Proponent's relationship with the company	
Details of the company's track record in performing the role envisaged in the Proposal	
Details of Proponent's representative who is authorised to represent and legally bind the entity: <ul style="list-style-type: none">• Name• Title• Current telephone number• Email address	

If no other parties are involved, please state so.

Returnable Schedule 8

Proposed approach to support NSW Government SME and Regional, and sustainability policies

Aboriginal, SME and Local Participation Plan

The Aboriginal Procurement Policy (2021) requires that suppliers submit an Aboriginal Participation Plan for all projects valued at \$7.5m or above with their tender documents.

The SME and Regional Procurement Policy (2021) requires that suppliers submit an SME & Local Participation Plan which references SME and NSW specific content for all goods and services contracts valued at \$3m or above.

Additionally the ICT/Digital SME procurement commitments requires that ICT contracts with NSW Government over \$3 million must have a minimum addressable spend target of 25% to be directed to SMEs via subcontracting or supply chain spend.

This plan is the supplier's commitment to APP, SME and Local content on the project. Plans will be finalised with the agency contract manager upon contract award and suppliers will be required to report progress against the plan quarterly.

For goods and services contracts over \$7.5 million an Aboriginal, SME and Local Participation Plan is required (the Aboriginal Procurement Policy and SME and Regional Procurement Policy (including ICT/Digital SME procurement commitments) applies.

Contracting agency	Transport for NSW
Project Name & ID	WS338516100 - Esri Software Licensing, Support and Professional Services
Project Location	Sydney, NSW
Project start date	July 2022 (est.)
Expected project end date	June 2027 (incl. all extension options)
Supplier name and contact details	
Supplier ABN	
Are you an Aboriginal business?	If no, please skip next question
Is your business recognised as an Aboriginal business by:	Please tick appropriate response: <input type="checkbox"/> Supply Nation <input type="checkbox"/> NSW Indigenous Chamber of Commerce <input type="checkbox"/> None of the above

For suppliers:

Commitments in red will be contractually binding should you be chosen as the supplier.

Plans will be finalised with the agency contact upon contract award and suppliers will be required to report progress against the plan quarterly.

1. SME Content Commitments

Supplier notes:

Please complete as many fields as possible, including if you are an SME supplier and where there are SME subcontracting opportunities.

Subcontracting opportunities with an SME may also be with an Aboriginal business that is an SME (please note where this occurs).

SME Content Commitments	
SME status	<p>Are you an SME (Australian or New Zealand based enterprises with fewer than 200 full-time equivalent employees)?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If you are an SME, you are not required to complete or report on the three fields below, however, you can complete as much as possible of the three fields below.</p>
SME Subcontracting (Subcontracting with an Australian or New Zealand based enterprises with fewer than 200 full-time equivalent employees)	<p>List of SME (Australian or New Zealand based enterprises with fewer than 200 full-time equivalent employees) subcontractors (indicating when this is an Aboriginal-owned supplier):</p> <ul style="list-style-type: none"> Description of good or service to be procured, name of SME subcontractor, ABN, value of good or service, percentage of contract value (<i>E.g. office furniture- desks and chairs, Office Supplies XYZ, 12 345 678 901, \$5000, 2% of contract value</i>) Description of good or service to be procured, name of SME subcontractor, ABN, value of good or service, percentage of contract value Description of good or service to be procured, name of SME subcontractor, ABN, value of good or service, percentage of contract value <p>Add or remove bullet points as necessary</p> <p>Number of SME subcontractors: ____</p>
Exclusions	<p>List the addressable spend exclusion items and approximate value of the exclusion that you will be seeking to negotiate with the contracting agency. For example:</p> <ul style="list-style-type: none"> Lease of land adjacent to project site: \$80,000 Hire of construction machinery: \$50,000
SME participation commitment	<p>Estimated value of products/goods procured from SMEs: \$____</p> <p><i>Non labour components of contract</i></p> <p>Estimated value of services/labour procured from SMEs: \$____</p>

	<i>All costs related to time spent by an employee or subcontractor in contract delivery</i>
SME participation percentage	Percentage of contract spend estimated to be with SMEs: __%

2. SUSTAINABILITY COMMITMENTS

a) Sustainability outcomes

Please fill out as many fields as possible, if there are opportunities for other sustainability commitments in the contract.

Sustainability Commitments	
Support of the government's economic, ethical, environment and social priorities	<p>Proponents may use the below bullet points as a guide.</p> <p>Proponents are to provide commitments against one or more of these bullet points for the life of the contract and also provide targets for each term. E.g. if addressing creation of jobs, an example of targets may be to create 12 jobs/apprenticeships by the end of the first term, 8 jobs by the end of the second term and 5 jobs by the end of the third term.</p> <p>Indication of how to meet the government's economic, ethical, environmental and social priorities. This may include:</p> <ul style="list-style-type: none"> • Creation of jobs in NSW (where possible) • Developing and sustaining NSW industry capabilities, including through supporting people to gain in-demand or relevant skills, providing relevant skills and training opportunities and employing trainees or apprentices in NSW • Supporting remote and regional communities, such as through employment opportunities, upskilling and training • Industry development, including sharing knowledge, skills and technology • Productivity benefits, including the creation of innovative practices, products and supply chains • Aboriginal participation (e.g. Aboriginal-owned businesses in the supply chain or FTE opportunities for Aboriginal people) • Supplier commitments to prevent or minimise the risk of modern slavery in their supply chain • Capital investment • Initiatives to increase resource efficiency and reduce waste • Participation of social enterprises or disability employment organisations in the supply chain • Lease real estate in a number of states and cities which are green star rated • Using goods and services from a business that provides services of persons with a disability

b) Local Participation

Please complete as many fields as possible, including if there are opportunities for local content in the contract.

Local Participation Commitments (where possible)	
Note: For the purpose of the SME and Local Participation Plan, local content is defined as: goods produced, services provided, and labour supplied by the NSW industry	
NSW jobs	Number of FTEs in NSW (where possible): ____
NSW content value	<p>Total estimated value of products/goods procured in NSW (where possible): \$</p> <p><i>Non labour components of contract (detailed above)</i></p> <p>Total estimated value of services/labour procured in NSW (where possible): \$</p> <p><i>All costs related to time spent by an employee in contract delivery</i></p> <p>List of goods and services opportunities for NSW businesses:</p> <ul style="list-style-type: none"> • Detail of good or service to be procured from a NSW business, value of good or service • Detail of good or service to be procured from a NSW business, value of good or service • Detail of good or service to be procured from a NSW business, value of good or service <p>Add or remove bullet points as necessary</p>
NSW Capital Expenditure	<p>Estimated value of capital expenditure in NSW (where possible): \$</p> <p><i>This figure is separate from your tender value. It is the total value of capital investment (spend by your business), for example building, leasing or procuring infrastructure that benefit NSW communities. Either purchased in NSW or to be retained in the state and to be used as part of the contract delivery. Previously purchased assets are to be calculated at a depreciated value.</i></p>

c) Aboriginal Participation Commitments

Aboriginal Participation requirements	
Estimated contract value	\$9,000,000
Exclusions	<p>List the exclusion items and approximate value of the exclusion that you will be seeking to negotiate with the contracting agency. For example:</p> <ul style="list-style-type: none"> • Lease of land adjacent to project site: \$80,000 • Hire of construction machinery: \$50,000
Project value	The project value is the contract value minus the proposed exclusions. For example: \$8,300,000 - \$130,000 = \$8,170,000 (project value).
Aboriginal participation percentage	This will be a minimum of 1.5% of the project value or project workforce. The contracting agency may require a higher percentage of participation.
Value of Aboriginal participation	1.5% of the project value (or higher per contracting agency requirements) – eg, \$8,170,000 x 1.5% = \$122,550
Plan to meet Aboriginal participation requirements (if you are an Aboriginal business, you do not have to proceed further on this form).	

<p>Aboriginal participation requirements may be met in the following ways:</p> <ul style="list-style-type: none"> • A minimum 1.5% of project value directed toward Aboriginal businesses through sub-contracting • A minimum 1.5% of the project workforce to be Aboriginal people across the life of the project • A minimum 1.5% of the project value directed toward capability and capacity building of Aboriginal people or businesses • Or, a combination of these options. 	
Subcontracting	<p>If you are sub-contracting all or part of the Aboriginal participation requirement, your plan should include the following:</p> <ul style="list-style-type: none"> • The portion of Aboriginal participation that will be directed to Aboriginal businesses through sub-contracting. • Clearly identify opportunities for Aboriginal businesses in your supply chain. • Methods for identifying Aboriginal businesses and clear communicating opportunities. • You could include identifying Aboriginal businesses that your organisation will sub-contract in the delivery of the project. • You could demonstrate an existing relationship with local stakeholder groups such as Local Aboriginal Land Councils or commit to develop a work relationship with specified stakeholders by a certain date if successful.
Employment	<p>Total estimated project workforce (FTE):</p> <p>Estimated Aboriginal FTE: eg, total workforce x 1.5% (or percentage agreed).</p> <p>Your plan should include:</p> <ul style="list-style-type: none"> • Clearly identified roles for Aboriginal employees and the skills required for these roles. Where possible, the majority of the roles should be central to the goods/services being delivered and located with local communities. <p>Identify ways to source suitable Aboriginal candidates, for example, through collaboration with employment service providers, consulting with Local Aboriginal Land Councils or local Aboriginal community controlled organisations, advertising through Aboriginal owned media outlets or hosting community information sessions.</p>
Education, training or capability building for Aboriginal staff or businesses	<p>If you are directing some or all of the Aboriginal participation requirement to education, training or capability building for Aboriginal staff or businesses, your plan should include:</p> <ul style="list-style-type: none"> • The portion of the Aboriginal participation requirement that will be directed in this manner. • Ways that you plan to retain and train Aboriginal employees for the role and ongoing development, for example, a mentoring or professional development program for Aboriginal employees, commitment to building cultural capability within the workplace which may include training of existing staff or working with Reconciliation Australia to agree a Reconciliation Action Plan. • Courses or costs you plan to support for Aboriginal employees. • Ways that you plan to build capability for Aboriginal businesses that are contributing directly to the project. For example, supplier diversity programs, business mentoring programs, assessing local Aboriginal business capability.
<p>Past Aboriginal participation compliance history</p>	
Please indicate whether your business is currently, or has	<p>If your business is currently or has previously been subject to Aboriginal participation requirements, please advise the project, contracting agency,</p>

<p>previously been, subject to Aboriginal participation requirements on a NSW Government project and if so, please indicate how it has performed against its commitments.</p>	<p>participation requirements and the businesses performance against the requirements (were the commitments met? If not, why not etc).</p> <p>If your business has no experience with Aboriginal participation requirements, evidence can be provided of your businesses commitment to Aboriginal employment or use of Aboriginal suppliers through:</p> <ul style="list-style-type: none"> • Previous track record of Aboriginal employment and use of Aboriginal suppliers, including by providing examples or case studies. • A Reconciliation Action Plan (RAP) or similar that provides a business commitment to Aboriginal employment and Aboriginal supplier targets.
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Attachment 1 – Evaluation Criteria

EVALUATION CRITERIA

Your Proposal will be evaluated by determining the value for money having regard to the price and non-price criteria summarised below.

The Returnable Schedules provide more detail of the information required by TfNSW to evaluate your Proposal.

(a)

Item	Evaluation criterion	Returnable Schedule No.
1	Proposal meets TfNSW Requirements including: <ul style="list-style-type: none"> scalable and flexible (standing offer structure) Data management (refer ICTA) Privacy (refer ICTA) IT security and compliance(refer ICTA) Business as usual'(refer scope of works) Terms and conditions (refer ICTA) 	3,6,7
2	Price	4
4	Organisational strategic and financial capability	2 & 5
6	Promoting NSW Government Social and Economic Priorities by demonstrating: <ol style="list-style-type: none"> Existing or proposed support for SME participation including local industry jobs, skills and capability development; Aboriginal participation; Participation by or support for employment in connection with the contract of people with a disability and/or the inclusion of Australian Disability Enterprises in the Proponent's supply chains; and Support for diversity and inclusion in the Proponent's workforce 	10

CONDITIONS FOR PARTICIPATION

Item	Condition for participation
1	Advance supplier of SCM 0020 – ICT Services Scheme

Attachment 2 – Confidentiality Deed Poll Template

Under **clause 10.4** TfNSW may at any time require the Proponent and its agents, contractors or advisers to sign a Confidentiality Deed Poll in this form. Editable versions can be obtained from TfNSW for Proponents and / or agents, contractors or advisers to complete.



Transport
for NSW

Confidentiality Deed Poll (One Way)

TfNSW (Owner of confidential information)	Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the <i>Transport Administration Act 1988</i> (NSW) (TfNSW) of 231 Elizabeth Street Sydney NSW 2001. Attention: [insert title/position of TfNSW officer]
Recipient of confidential information	Recipient Name: [insert full legal name] (Recipient) ACN & ABN: [insert if relevant] Address: Attention: [insert name]
Approved Purpose (see clause 2.1)	[NOTE: Insert the purposes for which the Recipient can use the Confidential Information eg “to prepare a tender for RFP # 123456”] [NOTE TO USER: This document is intended for the release of confidential business information not customer Personal Information. Personal Information cannot be released unless the release is authorised under the <i>Privacy & Personal Information Protection Act 1998</i> . For more information see https://www.transport.nsw.gov.au/about-us/transport-privacy or contact privacy@transport.nsw.gov.au DELETE THIS NOTE BEFORE ISSUING THIS DOCUMENT]
Date	Signed and Delivered as a Deed on the ____ day of _____ 20__

[Use if Recipient is a company]

SIGNED, SEALED and DELIVERED as a deed poll by the Recipient in accordance with section 127 of the Corporations Act

Signature of Director: _____

Name: _____

Signature of
2nd Director or
Company
Secretary:

Name: _____

[Use if Recipient is an individual]

Signed as a Deed by the Recipient in the presence of

Signature of
Recipient: _____

Name: _____

[Use the below if Recipient is a (non-NSW) Govt agency]

Signed As A Deed for and on behalf of the Recipient

Signature of Delegate
Or Authorised
Person: _____

Name: _____
Position /Title: _____

The signatory warrants (s)he is duly authorised to sign

You covenant as follows:

1 What is the Confidential Information?

- 1.1 The Confidential Information governed by this deed poll is information which you obtain from us in connection with the Approved Purpose (whether or not recorded in any form). It includes all information relating to our business, policies, plans, strategies, financial details, proposals, systems, ideas, methods, know-how and intellectual property. It also includes information directly or indirectly derived from that information.
- 1.2 It does not include information which:
 - (a) is or becomes part of the public domain (unless information is in or becomes part of the public domain because it has been disclosed without our consent);
 - (b) was already lawfully known to you on a non-confidential basis;
 - (c) is provided to you by another person who is in possession of it lawfully and can disclose it to you on a non-confidential basis; or
 - (d) is independently developed by you without access to the Confidential Information.
- 1.3 The Confidential Information always remains TfNSW's property. This deed poll does not give you any right, title or interest in it.

2 Your use of Confidential Information

- 2.1 You must use the Confidential Information solely for the Approved Purpose. You must not use it for any other purpose, or allow any other person to do so without our written consent.
- 2.2 You must not disclose the Confidential Information to any other person without our prior written consent or otherwise as expressly permitted by this deed poll.
- 2.3 You may disclose the Confidential Information to your employees and contractors on a strict need-to-know basis for the Approved Purpose provided you expressly inform them that it is TfNSW Confidential Information and you ensure that they owe you legally enforceable confidentiality obligations in respect of it.

- 2.4 You may disclose the Confidential Information as strictly required by law but you must inform us first and seek to limit the terms of that disclosure in any manner we reasonably request.
- 2.5 You must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised access.
- 2.6 You must inform us as soon as possible if you become aware or suspect that there has been any unauthorised disclosure or use.
- 2.7 You must return or destroy (at our option) the Confidential Information and all copies of it when you no longer require it for the Approved Purpose or on our earlier request.

3 General

- 3.1 This deed poll contains the entire agreement between both of us in relation to the Confidential Information and supersedes all other discussions, representations and statements about the Confidential Information.
- 3.2 This deed poll may be varied or waived only if we both agree in writing.
- 3.3 You must not assign your rights or obligations under this deed poll without our prior written consent.
- 3.4 If we do not exercise a right at any time in connection with a default under this deed poll, this does not mean that we have waived the right or cannot exercise it later.

4 Privacy

If you obtain any Personal Information from us or collect it on our behalf then you must:

- (a) take all necessary measures to ensure that Personal Information in your possession or control in connection with this deed poll is protected against loss and unauthorised access, use, modification and disclosure; and
- (b) comply with the *Privacy and Personal Information Protection Act 1988* (NSW) as though you were a "public sector agency" as defined in that Act.

5 Governing law

The laws of New South Wales, Australia, govern this deed poll and you submit to the exclusive jurisdiction of the courts of New South Wales.

6 Injunction

You agree that damages not be a sufficient remedy for TfNSW for any breach of this deed poll and TfNSW is entitled to seek and obtain specific performance or injunctive relief in addition to any other remedies available at law or in equity.

7 End of this deed poll

This deed poll ends when:

- (a) we notify you in writing it ends; or
- (b) it is replaced by a later deed poll which protects the Confidential Information to the same or similar degree; or
- (c) the Confidential Information is no longer confidential (but not through a breach by you or anyone you have disclosed it to).

8 Definitions

In this deed poll, unless the contrary intention appears:

Approved Purpose means the purpose described on the front page of this deed poll.

Confidential Information has the meaning as described in clause 1 of this deed poll.

Personal Information has the same meaning it has in the *Privacy and Personal Information Protection Act 1998* (NSW).

we and **us** and **our** means Transport for NSW.

you means the person named on page 1 as the recipient of Confidential Information.

Attachment 3 – Confidentiality Undertaking Template

Under **clause 10.4** TfNSW may at any time require the Proponent's employees to sign a Confidentiality Undertaking in this form

CONFIDENTIALITY UNDERTAKING TO TRANSPORT FOR NSW BY PROPONENT'S EMPLOYEES

TfNSW RFx NUMBER:	
PROPONENT (EMPLOYER) NAME:	
APPROVED PURPOSE:	To advise the Proponent on the RFx or to assist the Proponent in developing a response to the RFx
EMPLOYEE NAME:	
EMPLOYEE'S ROLE/POSITION:	
EMPLOYEE'S SIGNATURE:	
DATE OF SIGNING:	

BACKGROUND

- TfNSW has issued the above RFx and made TfNSW Confidential Information available to the Proponent and invited the Proponent to lodge a Proposal (tender).
- TfNSW Confidential Information** means any information which the Proponent, its employees, contractors, agents or advisors obtains from TfNSW in connection with the RFx (whether or not recorded in any form), other than information that is or becomes public knowledge (unless through a breach of confidentiality). It also includes all information relating to our business policies, plans, strategies, financial details, proposals, systems, ideas, methods, know-how and intellectual property. It also includes information directly or indirectly derived from that information.
- The Proponent wants to share TfNSW Confidential Information with the Employee.
- TfNSW requires the Employee to sign this Confidentiality Undertaking to ensure that the Employee maintains the confidentiality of the TfNSW Confidential Information.

PROMISES BY THE EMPLOYEE

The Employee promises as follows for the benefit of TfNSW:

- to keep the TfNSW Confidential Information confidential and only use it for the above Approved Purpose;
- unless required by law, not to disclose the TfNSW Confidential Information to anyone else.

NOTE TO EMPLOYER: only use this form when sharing TfNSW information with your own staff. If you need to share TfNSW information with agents, contractors or advisers then the relevant recipients must complete the Confidentiality Deed Poll in the form prescribed by Attachment 2 of the RFx

Part D: Proponent's Response

The Proponent must complete the cover page of the Proposal and the Returnable Schedules in this Part D in full and submit it in accordance with Part A – Terms of Participation.

**"RFP responses deleted as Commercial
in Confidence"**

Master Agreement for Software



Agreement No. 00292760.0

This Master Agreement ("**Agreement**") is between the entity shown below ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. This Agreement comprises this signature page, the terms and conditions that begin on the following page, and all referenced attachments. Except for Product or Service descriptions, quantities, pricing, and delivery instructions, or as agreed in an Ordering Document signed by both parties all terms included in any Ordering Document are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

Any terms and conditions agreed to between Customer and Esri Australia Pty. Ltd. (Esri's authorized distributor for Australia ("Distributor") under a separate contract (Core& One contract) for the provision of Esri Offerings, apply only between Customer and Distributor. The terms of this Agreement will not alter the commitments acquired between Customer and Distributor under the Core &One contract agreement and the terms of the Core& One Contract agreement between Customer and Distributor will not alter or modify Esri's commitments and obligations towards Customer under this Agreement.

The parties may sign this Agreement in counterparts or via electronic signatures; such execution is valid even if an original paper document bearing both parties' original signatures is not delivered. This Agreement is executed and effective as of the last date signed below.

The authorized representatives of each party accept and agree to the terms of this Agreement by signing below:

~~NSW TRANSPORT~~ Transport for NSW
(Customer)

Legal Address: _____

By: _____
Authorized Signature

Printed Name: Prashant Vaidya

Title: Director, ADS, Corporate IT

Date: 10/2/2021

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC. (Esri)

380 New York Street, Redlands, CA 92373-8100

By: _____
Authorized Signature

Printed Name: Alejandra Merino

Title: Manager, International Contracts

Date: February 4, 2021

Customer Contact Information

Contact: Jeremy Adams

Address: 7 Harvest Street

City, State, ZIP: Macquarie Park NSW 2113

Telephone: _____

Fax: _____

Email: jeremy.adams@transport.nsw.gov.au

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

- a. Provides Services as set forth in this Agreement;
- b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [Customer will insert the actual copyright date(s) from the source materials.] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

1.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.3 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

1.4 Customer Content. Esri does not acquire any rights in Customer Content under this Agreement other than as needed to provide Esri Offerings and Services to Customer.

2.0 SOFTWARE AND ONLINE SERVICES

2.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.
- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with ArcGIS Online, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. **"Commercial App Deployment License"** means a license to distribute Value-Added Applications to third parties for a fee.
- d. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- e. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
- f. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
- g. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.

- h. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
- i. **"Dual Use License"** means the right to install Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.
- j. **"Failover License"** means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- k. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- l. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
- m. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
- n. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
- o. **"Redistribution License"** means a license to reproduce and distribute Software provided that
 - 1. Customer reproduces and distributes the Software in its entirety;
 - 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
 - 3. Customer reproduces all copyright and trademark attributions and notices; and
 - 4. Customer does not charge a fee to others for the use of the Software.
- p. **"Server License"** means a license to install and use Software on a server computer. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
- q. **"Service Credit(s)"** means a unit of exchange for consumption of services that can be used with an Online Services Subscription.
- r. **"Sharing Tools"** means publishing capabilities included with Customer's authorized use of Online Services or ArcGIS Enterprise that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
- s. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- t. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

2.2 License and Subscription Types. Esri provides Software Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

2.3 Software Terms of Use.

- a. Customer may
 - 1. Install, access, or store Software and Data on electronic storage device(s);
 - 2. Make archival copies and routine computer backups;

3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use;
 4. Move Software in the licensed configuration to a replacement computer;
 5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
 6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.
 - c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
 - d. Esri publishes Product-specific Software terms of use at <https://www.esri.com/legal/scope-of-use>.

2.4 Online Services Terms of Use.

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <https://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in Attachment B.
- b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools. Customer's use of Sharing Tools is at Customer's sole risk.
- d. **Limits on Use of Online Services, Service Credits.** Each Online Services Subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service Credit consumption reaches approximately 75 percent of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer has consumed all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

2.5 Named User Licenses. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users.

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

b. **Value-Added Applications.**

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.
2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services or Content, that has been published for shared access by Anonymous Users through the use of Sharing Tools.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer Content that is not publicly shared through the use of Sharing Tools. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

- c. **Anonymous Users.** Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services or Content, that has been published for shared access through the use of Sharing Tools.

2.6 Limited-Use Programs.

- a. **Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
- b. **Educational Programs.** Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.
- c. **Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.
- d. **Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

3.0 DATA

3.1 Definitions.

The following definitions supplement the definitions provided in [Attachment A](#):

- a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.
- b. **"Esri Content Package(s)"** means a digital file containing ArcGIS Online basemap Data extracted from the ArcGIS Online basemap services.
- c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

3.2 Permitted Uses.

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Customer may include representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups) for use in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties subject to restrictions set forth in this Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
- d. Customer may make any internal use of geocoded results that are obtained and stored in compliance with this Agreement. Customer may not redistribute geocoded results except to (i) use and/or display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third-parties for the purposes of Customer's business, or (iii) deliver to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings.

3.3 Use Restrictions.

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
 - 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
 - 2. Synchronized multivehicle routing; or
 - 3. Synchronized route optimization.
- e. *Business Analyst Data.* Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses:* If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Michael Bauer Research International Boundaries Data ("MBR Data").* Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

3.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at www.esri.com/legal/third-party-data.

4.0 MAINTENANCE

4.1 US Customers. Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

4.2 Customers outside the United States. Customer may obtain maintenance services from their local Esri distributor under the distributor's own standard support policy.

ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means www.arcgis.com and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and Esri Managed Cloud Services.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources used in connection with Esri Offerings and Services.

"Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables and Training Materials. Esri Offerings exclude Services and Third-Party Content.

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"Online Services" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

"Perpetual License" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"Product(s)" means Software, Data, and Online Services.

"Professional Services" means any development or consulting services that Esri provides to Customer.

"Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.

"Service(s)" means Maintenance. If Esri provides Esri Managed Cloud Services, Training, or Professional Services directly to Customer, then Services also include Esri Managed Cloud Services, Training, and Professional Services.

"Software" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period ("**Term**").

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means (i) Product training or (ii) related training that Esri provides under this Agreement.

"Training Materials" means digital or printed Content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, assessments, and exams.

"Value-Added Application(s)" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

ARTICLE B.1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- c. Distribute Authorization Codes to third parties;
- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms (e.g. GPL) that require any part of the Esri Offering to be subject to additional terms, for example
 - 1. Disclosed in source code form to third parties;
 - 2. Licensed to third parties for the purpose of making derivative works; or
 - 3. Redistributable to third parties at no charge; or
- l. Generate revenue by providing access to Software or Online Services through a Value-Added Application.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

ARTICLE B.2—TERM AND TERMINATION

B.2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

B.2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

B.2.3 Upon any termination or expiration of a license or subscription, Customer will

- a. Stop accessing and using the terminated or expired Esri Offerings;
- b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and
- c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS

B.3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

B.3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and Beta Products are delivered "as is" and without warranty of any kind.

B.3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Customer Content caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

B.3.4 Disclaimers.

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including www.esri.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

B.3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

ARTICLE B.4—LIMITATION OF LIABILITY

B.4.1 Disclaimer of Liability. Neither Customer, nor Esri or third party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees, or current subscription fees, or Services fees paid or owed to Esri for the Esri Offerings or Services giving rise to the cause of action.

B.4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

B.4.3 Applicability of Disclaimers and Limitations. Esri has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

B.4.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE B.5—INDEMNIFICATIONS

B.5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Claim"** means any claim, action, or demand by a third party.
- b. **"Indemnitees"** means Customer and its directors, officers, and employees.
- c. **"Infringement Claim(s)"** means any Claim alleging that Customer's use of or access to any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.
- d. **"Loss(es)"** means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

B.5.2 Infringement Indemnity.

- a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

B.5.3 General Indemnity. Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

B.5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

B.5.5 This section sets forth the entire obligation of Esri, and its third party licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE B.6—INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with a minimum coverage of \$1,000,000.00 (US dollars) combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:
 1. Premises and operations;
 2. Blanket contractual liability;
 3. Broad form property damage;
 4. Independent contractors;
 5. Personal injury, with employee exclusion deleted; and
 6. Completed operations.
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

ARTICLE B.7—SECURITY AND COMPLIANCE

B.7.1 Security. Esri publishes its security capabilities at <https://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

B.7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

B.7.3 Export Compliance. Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any

necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

B.7.4 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/overview>.

ARTICLE B.8—CLOUD SERVICES

B.8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Creates or transmits spam, spoofings, or phishing email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

B.8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

B.8.3 Customer Content.

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either
 - 1. Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
 - 2. Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

B.8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

B.8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a

commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer Content as described above.

B.8.6 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE B.9—GENERAL PROVISIONS

B.9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the distributor's invoices in accordance with the distributor's payment terms.

B.9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

B.9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

B.9.4 Restrictions on Solicitation. Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

B.9.5 Taxes and Fees; Shipping Charges. Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

B.9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

B.9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

B.9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

B.9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's

Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

B.9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

B.9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected. ArcGIS Online has been granted FedRAMP tailored low authorization but does not meet higher security requirements including those found in DFARS 252.239-7010.

B.9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. **Nongovernment Entities.** US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

B.9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
- d. **Arbitration.** Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

B.9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

B.9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

B.9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn.: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com

Amendment No. 1
To
Master Agreement for Software (00292760.0)

This Amendment No. 1 ("Amendment") modifies the Master Agreement for Software ("MA"), by and between **Transport for NSW** ("Company") and **Environmental Systems Research Institute, Inc.** ("Esri") as set forth below.

WHEREAS, Company and Esri signed the MA, as last date of signature was February 4, 2021;

WHEREAS, Company and Esri will amend the terms of the MA to include additional entities of Company; and

NOW THEREFORE, for adequate consideration, the sufficiency of which is hereby acknowledged by the parties, Company and Esri agree that this Amendment, when signed by the parties, shall effect the following modifications to the MA:

1. Replace on signature block page (1) of the MA to define Transport for NSW as "Company" instead of "Customer"
2. New definition of "Customer" and "Transport Cluster" will be added to **Attachment A Glossary of Terms** as follows below:

"Customer" means Company and Transport Cluster located in Australia that are authorized to acquire and use Products under this Agreement. Company, Transport Cluster and consultants or contractors must not include persons or entities ineligible to receive or have access to Esri products or services by operation of law, including US export control laws, decrees, orders, rules, regulations, policies, riders, conditions, or provisos. "Customer" does not include companies in the business of offering geographic information system software or services ("GIS") to third parties unless such companies are specifically identified as GIS providers and Esri agrees to include them under this Agreement.

"Transport Cluster" means the network of government agencies and entities listed in Attachment C, which form part of the NSW Government's transport cluster portfolio who are authorized to acquire and use Esri Offerings under the terms of this MA.

3. Company will be responsible for Transport Cluster entities listed in Attachment C and their use of the Esri Offerings. The section **1.1 Grant of Rights** in the MA will be amended to include the new subset (d.) below.
 - d. Company will ensure that the Transport Cluster entities use the Esri Offerings and Services in accordance with the terms and conditions of the MA. Company will indemnify Esri, its officers, directors, and employees for any and all claims, liabilities, and expenses (including reasonable legal fees) arising out of or based on any uncured material breach by Transport Cluster entity of the terms and conditions of the MA.

ACCEPTED AND AGREED:

TRANSPORT FOR NSW

(Company)

By: 
Authorized Signature

Printed Name: Simone Roberts

Title: Executive Director, Advanced Analytics and Insights

Date: 9/8/22

**ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC. (Esri)**

By: 
Authorized Signature

Printed Name: Timothy Brazeal

Title: Manager, Commercial and Government Contracts

Date: Aug 4, 2022

Attachment C

#	Entity	Purpose	Legal Status
1.	Transport for NSW (TfNSW)	Building transport infrastructure, managing transport services and building and maintaining road infrastructure, managing the day-to-day compliance and safety for roads and waterways, and vehicle and driving license registrations in New South Wales	TfNSW is a NSW Government Agency constituted under Part 1A of the Transport Administration Act 1988 (NSW). Statutory authority.
2.	Sydney Trains (City Rail)	Sydney Trains is the operator of rail services across the metropolitan Sydney area, bounded by Berowra, Emu Plains, Macarthur and Waterfall. Sydney Trains also operate the Rail Operations Centre and are responsible for the maintenance of assets including tracks, trains, signals, overhead wiring, stations and facilities. Sydney Trains also maintains trains and a large proportion of the infrastructure used by NSW TrainLink.	Sydney Trains is a NSW Government Agency constituted under Part 3B of the Transport Administration Act 1988 (NSW). Statutory authority.
3.	Sydney Metro	Sydney Metro has accountability for the entire metro lifecycle, from planning, construction, delivery and operations of metro services to its integration with the city.	Sydney Metro ABN 12 354 063 515 is a NSW Government Agency constituted under Part 3D of the Transport Administration Act 1988 (NSW).
4.	NSW Trains (CountryLink)	NSW Trains manages the operation of NSW TrainLink, providing services between Sydney and the Hunter, Central Coast, Blue Mountains, Southern Highlands and Illawarra and South Coast regions Bringing together Intercity and Regional services into an independent business, focused on the specific needs of intercity and regional customers.	NSW Trains is a NSW Government Agency constituted under Part 3C of the Transport Administration Act 1988 (NSW).
5.	Sydney Ferries;	Is the public transport ferry network serving the city of Sydney, New South Wales. Services operate on Sydney Harbour and the connecting Parramatta River.	Sydney Ferries is a NSW Government Agency constituted under Part 3A of the Transport Administration Act 1988 (NSW).
6.	Asset Management Branch	Leads the development of a safe, efficient, integrated transport system that keeps people and goods moving, connects communities and shapes the future of our cities, centres and regions. Responsible for strategy, planning, policy, regulation, funding allocation and other non-service delivery functions for all modes of transport in NSW including road, rail, ferry, light rail, point to point, regional air, cycling and walking.	Asset Management Branch or AMB means the unit formerly known as the Asset Standards Authority or ASA within TfNSW that sets, controls, maintains, owns and publishes the network and asset standards for Transport Assets.
7.	Office of Transport Safety Investigations	OTSI contributes to the safe operation of bus, ferry and rail passenger, and rail	The Office of Transport Safety Investigations is an

		freight services in NSW by investigating safety incidents and accidents and transport safety risks, identifying system-wide safety issues, and sharing lessons with transport operators, regulators and other stakeholders.	independent statutory body of the New South Wales Government.
8.	Transport Asset Holding Entity;	Custodian of the expansive NSW rail network, TAHE's role is to deliver long-term sustainable returns to fulfil commitments to our customers, the community and the people of NSW.	Transport Asset Holding Entity of New South Wales ABN 59 325 778 353, constituted by Part 2 Division 1 of the Transport Administration Act 1988 (NSW), known, prior to 1 July 2020, as Rail Corporation New South Wales.
9.	Point to Point Commissioner	The Point to Point Transport Commissioner is responsible for taxi and booking service provider authorisations and taxi licensing.	Statutory office appointed under the Point to Point Transport (Taxis and Hire Vehicles) Act 2016.
10.	Port Authority	Port Authority manages the navigation, security and operational safety needs of commercial shipping in NSW.	Port Authority of New South Wales (Port Authority) is State Owned Corporation.
11.	State Transit Authority of NSW (STA)	Operates bus services in Sydney.	STA is a NSW Government Agency.

Annexure B to Order Form – Statement of Work

[A copy of SoW formed under this Agreement will be inserted here.]

Annexure C to Order Form – Additional Conditions Annexure

1. Statement of Work

- 1.1. **(Agreeing statement of work)** The parties may enter into statement of work (**SoW**) during the Term.
- 1.2. **(Initiating draft SoW)** If the Customer wishes to discuss with the Supplier to provide Deliverables under an SoW, the Customer may:
 - (a) propose a draft SoW setting out its requirements and deliverables and provide it to the Supplier. The Supplier must review the draft, provide comments (if any), and if required by the Customer, complete the SoW for the Customer's review; or
 - (b) request the Supplier to prepare a draft SoW in accordance with the Customer's requirements for the Customer's review. The Supplier must prepare a draft SoW according to this Agreement for the Customer's review within 5 Business Days, or such other period reasonably agreed.
- 1.3. **(Working on draft SoW)** On receipt of the Supplier's comments to the Customer drafted SoW, or the Supplier's draft SoW, the Customer may:
 - (a) for any reason, notify the Supplier that the Customer no longer wishes to continue discussions to progress the draft SoW; or
 - (b) work together with the Supplier to agree an SoW from the draft SoW. The Parties must negotiate the draft SoW in good faith.
- 1.4. **(Agreeing SoW)** If the Customer approves the draft SoW, the parties will sign the agreed SoW. The signed SoW will form part of the Agreement and is subject to the terms of the Agreement.
- 1.5. **(SoW expiry)** Any SoW that has an end date after the Agreement expires or is terminated will continue to be effective until that SoW expires or is terminated earlier according to this Agreement. For clarity, the Supplier must continue to complete the Supplier's Activities under that SoW until it expires or is terminated.
- 1.6. **(SoW termination)** For clarity, the Customer may terminate a SoW in accordance with clause 29 of the Core Terms, or any other termination rights under the Agreement that allow the Customer to reduce its scope. Termination of an SoW will not terminate the Agreement or any other SoW unless otherwise specified by the Customer in the applicable termination notice.
- 1.7. **(SoW acknowledgements)** The Supplier acknowledges that:
 - (a) the Customer's provision of a draft SoW, or request for the Supplier to prepare a draft, is no promise or representation that the Supplier will receive any work from the Customer;
 - (b) the Supplier's work in preparing, reviewing, and working together with the Customer to finalise any draft SoW is carried out at the Supplier's risk and own cost; and
 - (c) no SoW is binding until the SoW is signed by both parties. The Customer will have no liability to the Supplier if the Customer does not sign an SoW. This is the case even if the Supplier has allocated resources to start performing the Supplier's Activities, or has started providing the Supplier's Activities, for that SoW.
- 1.8. **(SoW – commercial terms)** If the Customer wishes to enter into any SoW with the Supplier in relation to the Tender:
 - (a) the commercial terms (including scope and price) for the Supplier's Activities in such SoW will:
 - (i) be no less favorable to the Customer than as set out in the Supplier's Tender Response, subject to and to the extent of any increase in scope required by the Customer; and

- (ii) be fairly and reasonably adjusted for changes in scope (including price decreased for any decreases in scope); and
- (b) the Supplier must not change the commercial terms (including scope and price) to make them less favorable to the Customer because the Supplier determines that more work effort is required than anticipated, subject to and to the extent of any increase in scope required by the Customer.

2. Use by the Transport Cluster

2.1. The Supplier acknowledges and agrees that:

- (a) the Supplier's Activities to be provided by the Supplier under the Agreement will operate across the Transport Cluster. In addition to being used by the Customer, the Deliverables, Services and other outputs from the Supplier's Activities may also be leveraged and used by other entities in the Transport Cluster at no additional cost; and
- (b) all entities forming part of the Transport Cluster will be taken to be a Customer User as defined under the Agreement and therefore:
 - (i) the benefits conferred on Customer Users by this Agreement (including with respect to the use of the Deliverables and Services) will also be conferred on all entities forming part of the Transport Cluster; and
 - (ii) any Loss suffered by a member of the Transport Cluster in connection with a breach of this Agreement or any other act or omission (including negligence) by the Supplier or its Personnel are deemed to be the Loss of the Customer and recoverable by the Customer under terms of this Agreement. To be clear, this paragraph does not give any member of the Transport Cluster any right to take any legal action directly against the Supplier under the Agreement, and any Loss incurred by the Transport Cluster will be subject to the Limitation Amount set out in Item 53 of the Order Form where such Limitation Amount applies to the liability of the Supplier.

2.2. If there is any inclusion of additional members to the Transport Cluster listed under clause 6.1(d) of this Annexure C during the Term, the Customer will notify the Supplier of such change as soon as practical. If the Supplier requires a variation to the Supplier's Activities as a result of the change, the Supplier may submit a Change Request in accordance with Clause 10 of the Core Terms. The Customer's approval of such Change Request will not be unreasonably withheld or delayed.

3. Acquisitions, divestures, restructures and other changes

3.1. **(Acquisitions)** The Customer will notify the Supplier if an entity comes under the control of or merges with the Customer. Such entity will become a Customer User on and from the date notified by the Customer to the Supplier.

3.2. **(Divestures)** At the Customer's request, if any part of the Customer is no longer a part of the Customer (Divested Entity), the Supplier must:

- (a) promptly enter into a separate agreement with the Divested Entity
- (b) agree to separate agreement terms that are substantially similar to, and no less beneficial to, the Divested Entity than these Agreement terms; and
- (c) have regard to any necessary changes required by the Divested Entity on the same terms as this Agreement,

for a period no longer than the Term.

3.3. **(Other changes)** The Supplier will use its best endeavours to comply with the Customer's reasonable directions and requests as a result of any other change, restructure or reorganisation (including due to any

machinery of government change) of the Customer or its business or operations. This clause 3.3, does not limit the Supplier's other obligations in this clause 3.

- 3.4. **(No commercial impact)** Except as agreed, the Supplier must not impose any fee or Price increase if any of the events referred to in this clause 3 occurs to the Customer.

4. **Baseline Cost Plan**

- 4.1. In relation to any Supplier's Activities that are to be provided on a time and materials basis by the Supplier under a SoW, the Supplier will:
- (a) prepare a resource and estimated cost plan based on the agreed baseline schedule set out in the SoW ("**Baseline Cost Plan**");
 - (b) on a fortnightly basis or as otherwise agreed, provide a report to the Customer that tracks:
 - (i) actual costs incurred against planned baseline costs to date; and
 - (ii) forecast total cost at completion of the work against planned baseline total cost at work completion, as stated in the Baseline Cost Plan (including explaining any variances (over and under) of more than 5% against Baseline Cost Plan at project completion; and
 - (c) update the Baseline Cost Plan to reflect any variances to resourcing, effort and resulting estimated cost as agreed through the Change Control Procedure.

5. **Other termination rights by the Customer**

- 5.1. **(Other rights)** The termination rights set out in clause 5 are in addition to any other termination rights the Customer may have, including under clause 29 of the Core Terms.
- 5.2. **(Agreement termination)** The Customer may, for any or no reason, terminate this Agreement by at least 20 Business Days' notice to the Supplier, provided that at the time of such termination:
- (a) there is no SoW; or
 - (b) if there is a SoW, that SoW has been completed or terminated.
- 5.3. **(SoW termination)** The Customer may for any or no reason, terminate any SoW by at least 20 Business Days' notice to the Supplier. For clarity, the Supplier will be entitled to payment for any Supplier Activities performed by the Supplier under the SoW up to and including the termination date.
- 5.4. **(Termination consequences)** The Customer will have no liability to the Supplier arising out of, or in connection with, the exercise of the Customer's termination rights according to this clause 5. For clarity, any amount payable under clause 29.2 of the Core Terms does not apply. The Supplier acknowledges that the notice period provided by the Customer to terminate under this clause 5 is sufficient. Despite the preceding paragraphs, the Customer will be liable for payment of the amount payable for any Supplier Activities performed by the Supplier according to the SoW before the date the SoW is terminated.

6. **Amendments to Core Term and Schedule 1**

- 6.1. The parties agree to amend the Core Terms and Schedule 1 of the ICTA in accordance with this clause.

- (a) **(No deemed acceptance for Professional Services)**

For Professional Services, the following changes apply:

- (i) **(Document Deliverables)**

- (A) Clause 8.1(e) is amended by deleting “*except where clause 8.2(f) applies.*”
- (B) Clause 8.2(f) is amended by deleting “*If the Customer does not approve or reject the relevant Document Deliverable or otherwise communicate with the Supplier in relation to that reminder notice within 10 Business Days of its receipt, then the relevant Document Deliverable will be deemed to have been approved by the Customer.*”
- (ii) **(Acceptance Testing)** Clause 14.3(f) is amended by deleting “*If the Customer does not take one of the actions referred to in clause 14.3(c) or otherwise communicate with the Supplier in relation to that reminder notice within 15 Business Days of its receipt, then the relevant Deliverable will be deemed to have been Accepted by the Customer.*”
- (b) **(Master ICT Agreement not used)** This Agreement is not formed under a Master ICT Agreement (MICTA). All references to **MICTA** and **Contract Authority** have been deleted from this Agreement.
- (c) **(Orders)** Clause 3.3 of the Core Terms is replaced in its entirety and replaced with the following clause:

3.3 Orders

- (a) This clause applies where it is specified in Item 10 of the Order Form that the Customer may place Orders for Services and/or Deliverables within the scope of this Agreement.
- (b) If, at any time during the Term, the Customer wishes to order any 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 Services and/or Deliverables. The written notice will be in the form required by the Customer and will include information relating to the Order, including the number of Services and/or Deliverables required.
- (c) Except to the extent agreed by the parties in writing, any 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 Order to the Supplier:
 - (i) that Order forms part of this Agreement, and will not constitute a separate contractual relationship between the parties; and
 - (ii) the Supplier must supply the Deliverables and/or Services in accordance with that Order, subject to any reasonable qualifications specified in Item 10 of the Order Form.
- (d) **(Definitions)**

“Transport Cluster” means the network of Government Agencies and entities which form part of the NSW Government's transport cluster portfolio, including Transport for NSW, Sydney Trains (City Rail), Sydney Metro, NSW Trains (CountryLink), Sydney Ferries, Asset Management Branch, State Transit Authority of NSW, Point to Point Transport Commissioner, Port Authority, Office of Transport Safety Investigations, Transport Asset Holding Entity and any other Government Agency or other entity that may in the future form part of the NSW Government's transport cluster portfolio.”

Schedule 3 - Statement of Work Template



Guidance note: The Statement of Work forms part of the Order Form. Details in relation to the Supplier's Activities (including Services and Deliverables to be provided) should be inserted below. The Statement of Work should be consistent with any requirements in the other parts of the Order Form. Where necessary, relevant Items in the Order Form can refer to this Statement of Work.

This is a template only and not all parts below will be applicable for all procurements. Delete and amend as necessary.

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
[Insert version number; e.g. version 1.0]	[Insert; e.g. Draft / Final]	[Insert date]	[Insert Name and Title]	[Briefly summarise the nature of the revision]

3. Introduction and overview of the Supplier's Activities

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

4. Services and Deliverables

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

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

(b) The Deliverables to be provided are:

(i) [Insert]; and

(ii) [Insert].

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

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

(i) [Insert]; and

(ii) [Insert].

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

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

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

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

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

5. Specifications

The Specifications for [Insert Deliverable/Service] include:

(a) [Insert]; and

(b) [Insert].

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

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

6. Customer Supplied Items (CSI)

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

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

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

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

7. Timeframes and Dates for Delivery

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

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

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

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

8. Key Milestones

The following dates constitute Key Milestones:

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

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

9. Transition-In Services

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

10. Transition-Out Services

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

11. Roles and responsibilities

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

12. Business Contingency Plan

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

13. Project Plan and management

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

14. Stages and methodology

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

15. Acceptance Testing

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

16. Governance arrangements

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

17. Assumptions and dependencies

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

18. Service Level agreement

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

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

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

19. Pricing

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

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

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

OR

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

20. Interpretation

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

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

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

Schedule 4 - Payment Schedule

4.1 Schedule of Rates – Support Services .

[Redacted text block]

4.2 Schedule of Rates / Pricing Details for Cloud Services and Licensed Software

[Redacted text block]

[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

4.3 Schedule of Rates for Professional Services

4.4 Payment

- (a) The Customer agrees to pay the Supplier for Support services, annually in advance;
 - (b) For Cloud Services and Licensed Software, on receipt of the Services/Deliverables;
 - (c) For Professional Services:
 - (i) For T&M work the monthly in arrears for the Services/Deliverables provided
 - (ii) For SOW work the Customer agrees to pay the Supplier in accordance with the Payment Schedule set out in the SOW.
- and within 30 days of receipt of a correctly rendered invoice.

4.5 Operating Model / Account Set up

The Supplier will make administration changes as appropriate to facilitate the licenses to the Customer

In case of multiple TfNSW accounts, transfer of licenses between accounts will be facilitated by the Supplier once annually.

Schedule 5 - 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>

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

Schedule 6 - Deed of Confidentiality and Privacy

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

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

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

Background

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

1. Definitions and Interpretation

1.1 Definitions

In this Deed:

Confidential Information means information that:

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

but excludes information:

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

Customer Data means all data (including metadata) and information relating to the Customer or any Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any Government Agency, including Personal Information, in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed or produced as part of carrying out the Supplier's Activities, but excluding any Performance Data.

Deed means this deed poll.

Government Agency means any of the following:

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

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

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

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

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

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

Privacy Laws means:

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

1.2 Interpretation

In this Deed:

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

2. Access and non-disclosure

- (a) The Recipient acknowledges and agrees that:
 - (i) in the course of performing duties under the Agreement, it may receive or have access to Confidential Information and/or Personal Information;
 - (ii) compliance with this Deed and the protection of Confidential Information and Personal Information are of paramount importance to the Customer; and
 - (iii) the obligations in this Deed are for the benefit of the Customer and the Customer may enforce the obligations under this Deed.
- (b) The Recipient must not disclose any Confidential Information or Personal Information that it receives or obtains in connection with the Agreement or the Supplier's Activities except with the consent of the Customer or as otherwise authorised under the Agreement or this Deed.
- (c) If the Customer grants its consent for the Recipient to disclose Confidential Information or Personal Information, it may impose conditions on that consent. In particular, the Customer may require that the Recipient obtain the execution of a deed in these terms by the person to whom the Recipient proposes to disclose the Personal Information or Confidential Information.
- (d) The Recipient's obligations under this Deed will not be taken to have been breached to the extent it is required by law to disclose the Confidential Information or Personal Information. However, if the Recipient is required by law to disclose any Confidential Information or Personal

Information, the Recipient must, before doing so, immediately notify the Customer and comply with any reasonable directions or requirements given by the Customer.

3. Recipient's obligations

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

3.2 Comply with Privacy Laws

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

3.3 Security measures

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

- (a) where the Recipient has access to Confidential Information or Personal Information by password or other secure means, not disclosing that password or means of access to any other person unless it has been authorised in writing to do so by the Customer; and
- (b) complying with the security requirements under the Agreement or as notified by the Customer to the Recipient.

3.4 Breach of obligations

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

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

3.5 Return of Confidential Information and Personal Information

If requested by the Customer, the Recipient must:

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

4. Remedies

The Recipient acknowledges that:

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

5. General

5.1 No exclusion of law or equity

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

5.2 Waiver

The Recipient acknowledges and agrees that:

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

5.3 Governing Law

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

5.4 Continuing obligations

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

5.5 Revocation or amendment

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

Executed as a deed poll:

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

[If the Recipient is an individual]

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

Signature of witness

Signature of Recipient

Full name and position of witness

Full name and position of Recipient

Date

[If the Recipient is a company]

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

Signature of director

Signature of director/company secretary

Full name of director

Full name of director/company secretary

Date

Date

Schedule 7 - Escrow Deed – Not applicable

Schedule 8 - Performance Guarantee – Not applicable

Schedule 9 – Financial Security – Not applicable



Services Module

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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 17.7 (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 31 (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 11.1 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 12.
- (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 12 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 13(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 Licensed 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) Licensed 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.