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Digital.NSW ICT Purchasing Framework

ICT Agreement (ICTA)

between

Sydney Trains (ABN 38 284 779 682)

and

Siemens Mobility Pty Ltd (ABN 39 625 304 556)

Contract No: CW2577089

Rail Timetable Solution

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ICT Agreement (ICTA)

Parties

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

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

Background

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

PART A: PRELIMINARIES

1. Definitions and Agreement documents

1.1 Defined terms and interpretation

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

1.2 Agreement documents

This Agreement comprises the following documents:

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

- (g) any Supplier's Documents.

1.3 Order of precedence

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

1.4 Role of the Master ICT Agreement

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

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

1.5 Supplier's Documents

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

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

2. Supplier's acknowledgments

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

- (b) The Supplier further acknowledges and agrees that, where this Agreement is entered into under a MICTA, the Customer may appoint or delegate the enforcement of any of its rights from time to time under this Agreement to the Contract Authority.

3. Purchasing Services and/or Deliverables by Order

3.1 Order Form

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

3.2 Electronic execution

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

3.3 Additional Orders

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

3.4 No exclusivity or minimum commitment

The Supplier acknowledges and agrees that:

- (a) except to the extent expressly set out in the Payment Particulars, the Customer is under no obligation to acquire any minimum volumes of Services or Deliverables or to meet any minimum spend level under this Agreement; and

- (b) the Supplier is not an exclusive provider of the Supplier's Activities (nor activities which are the same as or similar to them) to the Customer, and the Customer is not, by executing this Agreement, restricted in any way from engaging any other person to provide activities which are the same as, or similar to, the Supplier's Activities.

3.5 Additional Conditions

The parties agree to comply with any Additional Conditions.

3.6 Reseller arrangements

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

4. Relationship and governance

4.1 General

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

4.2 Nature of relationship

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

4.3 Governance

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

5. Term

5.1 Initial Term

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

5.2 Renewal Period

- (a) Where a Renewal Period has been specified in Item 9 of the Order Form, the Customer may, in its sole discretion, extend the Term for a period not exceeding the relevant Renewal Period (up to, if any, the maximum number of renewals specified in that Item), by giving the Supplier a notice in writing at least 15 Business Days prior to the end of the then current Term (or such other notice period as may be specified in Item 9 of the Order Form).

- (b) Subject to clause 1.4(b), any Renewal Period exercised in accordance with clause 5.2(a) will be on the same terms and conditions of this Agreement as in effect at the end of the then current Term, unless the parties agree to amend this Agreement in accordance with clause 39.6.

PART B: SUPPLIER'S ACTIVITIES

6. Performance of the Supplier's Activities

6.1 General

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

6.2 Customer Supplied Items

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

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- (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, to the extent specified in the Order Documents, 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) subject to clause 6.9, 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 10 Business Days of the date on which the Supplier becomes aware, or ought reasonably to have become aware 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) Without limiting clause 6.8(c), 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 or a negligent or wrongful act or omission of the Customer;
 - (ii) a failure to provide any Critical CSI;
 - (iii) the acts or omissions of an Other Supplier; or
 - (iv) any other event or circumstance which this Agreement expressly states will entitle the Supplier to an extension of time in accordance with this clause 6.8,

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

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- (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 negligent or wrongful act or omission of the Customer, a failure to provide any Critical CSI or the acts or omissions of an Other Supplier, or any other event or circumstance which this Agreement expressly states will entitle the Supplier to delay costs in accordance with this clause 6.9(a), 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 (GIPA Act s.14, Table 4(b), 4(c) and 4(d). [REDACTED]) 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).

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- (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;

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- (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.

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- (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:

- (i) the Customer's Representative;
- (ii) the Deemed Acceptance Notice Recipient 2; and
- (iii) the Deemed Acceptance Notice Recipient 3,

a written reminder notice identifying the Document Deliverable in respect of which it requires a decision by the Customer and identifying that if the Customer does not accept or reject the Document Deliverable within 10 Business Days, it will be deemed to be approved 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.

- (g) In clause 8.2(f):

- (i) **Deemed Acceptance Notice Recipient 2** means GIPA Act s.14, Table 3(a) and 3(b). or an alternate Personnel of the Customer as advised in writing by the Customer to the Supplier from time to time; and
- (ii) **Deemed Acceptance Notice Recipient 3** means GIPA Act s.14, Table 3(a) and 3(b). or an alternate Personnel of the Customer as advised in writing by the Customer to the Supplier from time to time.

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.

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- (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) provided that the Supplier has been given an opportunity to correct the Defect and has failed to do so in accordance with the requirements of clause 9(c), 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 Severity 1 Defect and/or a Severity 2 Defect (each as defined in the relevant Statement of Work), the Supplier must notify the Customer in writing within one Business Day of identifying the Defect.
- (c) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect or an instruction is given under clause 9(a)(i), the Supplier must, at no cost to the Customer, correct the Defect:
 - (i) in accordance with all applicable Service Levels, or if no applicable Service Levels apply, within 15 Business Days after the date on which the non-compliance was notified to, or identified by, the Supplier (or such other timeframe as agreed between the parties in writing); and
 - (ii) in a manner which will cause as little inconvenience to the Customer and Customer Users as is reasonably possible.

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- (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, provided that any such extension will not result in the relevant Warranty Period being longer than 12 months from the later of:
 - (i) Acceptance of the relevant Service or Deliverable; or
 - (ii) if applicable, the commencement of the relevant Hypercare Support Period (as defined in the relevant Statement of Work) for the relevant Service or Deliverable.
- (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 (including margin) and expenses reasonably and necessarily incurred by the Supplier to implement the relevant Change Request.
- (c) The party receiving the draft Change Request Form must notify the other party in writing as to whether it:
 - (i) approves or rejects the Change Request; or
 - (ii) requires further information in relation to any aspect of the Change Request.
- (d) The parties must respond to Change Requests and requests for information regarding Change Requests within seven Business Days of receiving the request or such other timeframe as reasonably agreed between the parties having regard to the nature and substance of the work required by the relevant request.
- (e) Each party will act reasonably in preparing, submitting, reviewing, considering and assessing Change Requests.
- (f) If a Change Request is approved, the:
 - (i) parties must promptly execute the relevant Change Request Form; and
 - (ii) Supplier must perform the Supplier's Activities in accordance with the executed Change Request Form.
- (g) No Change Request is binding on either party or to be carried out by the Supplier until the relevant Change Request Form is executed by both parties in accordance with this clause 10.

10.3 Electronic transactions

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

10.4 Acknowledgements

The parties acknowledge and agree that:

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

11. Personnel**11.1 Nominated Personnel**

- (a) The Supplier must ensure that:
 - (i) each of its Nominated Personnel is made available to perform their role/responsibilities as set out in Item 18 of the Order Form; and
 - (ii) it immediately notifies the Customer's Representative if the Supplier becomes unable or unwilling to comply with this clause 11.1 or otherwise breaches this clause 11.1.
- (b) The Supplier must not remove or replace any of the Nominated Personnel unless the:
 - (i) Customer requests that the Nominated Personnel are replaced pursuant to clause 11.3(e); or

- (ii) Nominated Personnel are no longer available to carry out the Supplier's Activities due to a substantial change in the relevant Nominated Personnel's personal circumstances (including compassionate leave, carers' leave or other extended leave, serious illness, injury, death, termination of employment by the Supplier or resignation).

11.2 Replacement of Nominated Personnel

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

- (a) approved by the Customer. The Customer must act reasonably in granting or withholding approval, or granting approval subject to conditions. If requested by the Customer, the Supplier must provide the Customer with such information as the Customer requires concerning any proposed replacement of any Nominated Personnel (including a resume and an opportunity to interview them); and
- (b) of equal or superior ability to, and has the required experience of, the original Nominated Personnel and meets the Personnel requirements specified in this Agreement.

11.3 Supplier's Personnel

- (a) The Supplier must ensure that all of its Personnel engaged or employed by the Supplier in carrying out the Supplier's Activities:
 - (i) are aware of, and comply with, the Supplier's obligations under this Agreement as if they were the Supplier;
 - (ii) prior to carrying out any part of the Supplier's Activities, are properly trained and qualified and have the requisite competencies, skills, qualifications and experience to:
 - A. perform the duties allocated to them; and
 - B. understand the Supplier's obligations under this Agreement, including with respect to privacy, security, confidentiality and safety; and
 - (iii) are provided with regular training to ensure that the Supplier's Personnel's skills and qualifications are maintained in accordance with all applicable Best Industry Practice.
- (b) On the Customer's request or as part of any audit conducted pursuant to clause 37.2, the Supplier must promptly provide the Customer or its nominee with evidence that the obligations under this clause 11.3 have been complied with (including with respect to the training of the Supplier's Personnel).
- (c) The Supplier must ensure that all of its Personnel, when on the Customer's premises or when accessing Customer Data or the Customer's systems, equipment or facilities, comply with the reasonable requirements and directions of the Customer (including with regard to the Customer's safety and security requirements).
- (d) The Supplier must ensure that its Personnel when entering any Site comply with any conditions of entry or other Site specific requirements as specified in the Order Documents or notified by the Customer to the Supplier from time to time.

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- (e) The Customer may, acting reasonably and in its discretion, give notice in writing requiring the Supplier to remove any of its Personnel (including Nominated Personnel) from work in respect of this Agreement, together with its reasons for removal. The Supplier must promptly arrange for the removal of such Personnel and their replacement with Supplier Personnel reasonably acceptable to the Customer.
- (f) The Supplier must ensure that it (and where appropriate, its outgoing Personnel) effects a process that:
 - (i) minimises any adverse impact on, or delay in, the performance of the Supplier's Activities; and
 - (ii) effects a smooth transition between the outgoing and replacement Personnel, including by identifying and recording:
 - A. any processes and systems in place (or proposed) to manage the provision of the Supplier's Activities; and
 - B. the detail of any outstanding issues in relation to the Supplier's Activities,
 for which any of the outgoing Supplier's Personnel were responsible.
- (g) The process for transition to the replacement Personnel by the Supplier must be performed as expeditiously as possible with regard to the Supplier's Activities, the Dates for Delivery and other timeframes under this Agreement, and to the reasonable satisfaction of the Customer.
- (h) The Supplier will be solely responsible, at its sole cost, for compliance with clause 11.2, including finding and replacing Supplier's Personnel in accordance with clause 11.3(e).
- (i) The Supplier must properly manage its Personnel resourcing (including any planned absences) to maintain a sufficient level of Personnel engaged or employed in the provision of the Supplier's Activities (both in terms of quality and quantity of such Personnel) to ensure that all relevant roles are, and continue to be, adequately resourced and that the Supplier's Activities are provided in accordance with this Agreement.

11.4 Deed of Confidentiality and Privacy

- (a) If specified in Item 19 of the Order Form, 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) Without limiting any other right or remedy of the Customer, the Customer may, by written notice to the Supplier, revoke its consent to any permitted subcontractor if that permitted subcontractor (or its Personnel) has committed an act or omission (or a series of acts or omissions) that would entitle the Customer to terminate this Agreement for cause.
- (e) Where practicable to do so, the Customer must engage in reasonable advance consultation with the Supplier in relation to its concerns regarding a permitted subcontractor's (or its personnel's) performance or compliance, including whether those concerns may be otherwise addressed or remediated, before the Customer gives a notice of revocation under clause 11.5(d).
- (f) The Supplier is solely responsible for managing its supply chains and any risks in its supply chains, including ensuring any permitted subcontractor's compliance with clause 13.
- (g) Any subcontracting by the Supplier does not relieve the Supplier of any of its obligations under this Agreement.
- (h) The Supplier must ensure that each of its subcontractors comply with all of the terms of this Agreement to the extent that they are relevant to the subcontractor.
- (i) The Supplier is responsible for its subcontractors, and liable for their acts and omissions, as though they were the acts and omissions of the Supplier.
- (j) If specified in the Order Form or if required by the Customer as a condition of granting consent to the Supplier's use of any subcontractor, the Supplier must arrange for its subcontractors to enter into a subcontractor deed on terms consistent with, and no less onerous than, the parts of this Agreement applicable to the subcontractor's activities.
- (k) The Order Form may specify additional procurement policy requirements which the parties have agreed will apply to, or be prioritised in, any subcontracting arrangement by the Supplier, including the Policies, Codes and Standards. The parties agree to comply with any such requirements.

11.6 Background checks

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

11.7 Compliance with employment Laws

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

11.8 Non-solicitation

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

12. Compliance**12.1 Compliance with Laws and directions**

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

- (a) acquire and maintain all Authorisations necessary for the performance of the Supplier's Activities;
- (b) ensure that the Supplier's Activities comply with all applicable Laws (including all applicable Australian Laws, even if the Supplier is not domiciled in Australia); and
- (c) comply with any reasonable and lawful 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) a Policy Change; or

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- (ii) a Change in Customer Specific Laws,

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 or Change in Customer Specific Laws (as applicable) can, with the Supplier's best efforts, be achieved without the incurrence of material additional cost and expense to the Supplier; or
- (iv) in respect of a Policy Change, 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 or Change in Customer Specific Laws (as applicable) 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 or Change in Customer Specific Laws (as applicable) without incurring material additional cost and expense, then:

- (i) the Supplier must (acting reasonably) promptly notify the Customer in writing of the additional time, incremental cost and expense

that would be directly attributable to its compliance with the Policy Change or Change in Customer Specific Laws (as applicable), accompanied with reasonable evidence to substantiate the additional time, 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 time, costs and expenses notified to it under clause 12.3(b)(i), in which case the Supplier must comply with the relevant Policy Change or Change in Customer Specific Laws (as applicable) and, subject to so complying, will be entitled to invoice the Customer for such costs and expenses;
- B. reject the incurrence of the time, 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 Change in Customer Specific Laws (as applicable); 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 or Change in Customer Specific Laws (as applicable).

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

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- 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.

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- (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,

but only where the Supplier is in breach of Modern Slavery Laws, or has caused the Customer to breach Modern Slavery Laws.

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;

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- (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.

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- (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.
- (g) If the Customer:
 - (i) deploys Licensed Software for use by Customer Users; and
 - (ii) uses such Licensed Software for the Customer's live operational purposes,

(other than for testing purposes), before the Customer Accepts such Licensed Software, the relevant part of such Licensed Software will be deemed to be 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) Not used; and
 - (iii) Not used.
- (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 Acceptance Testing being carried out three or more times, 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 to reflect the greater of the:
 - A. cost to the Customer of correcting the Defects in the Deliverable; or

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- B. reduced features, functionality or quality of operation as a result of those Defects; or
- (iii) if the relevant Deliverable is a material part of the Supplier's Activities or is material in the context of this Agreement, immediately terminate or reduce the scope of this Agreement pursuant to clause 29.1(d).
- (d) Not used.

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 the Order Documents;
 - (ii) achieve Acceptance;

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- (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 other act or omission 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;

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- (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.

GIPA Act s.14, Table 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 4(b), 4(c) and 4(d).

15.4 Performance reports

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

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

15.5 Performance reviews

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

15.6 Notice

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

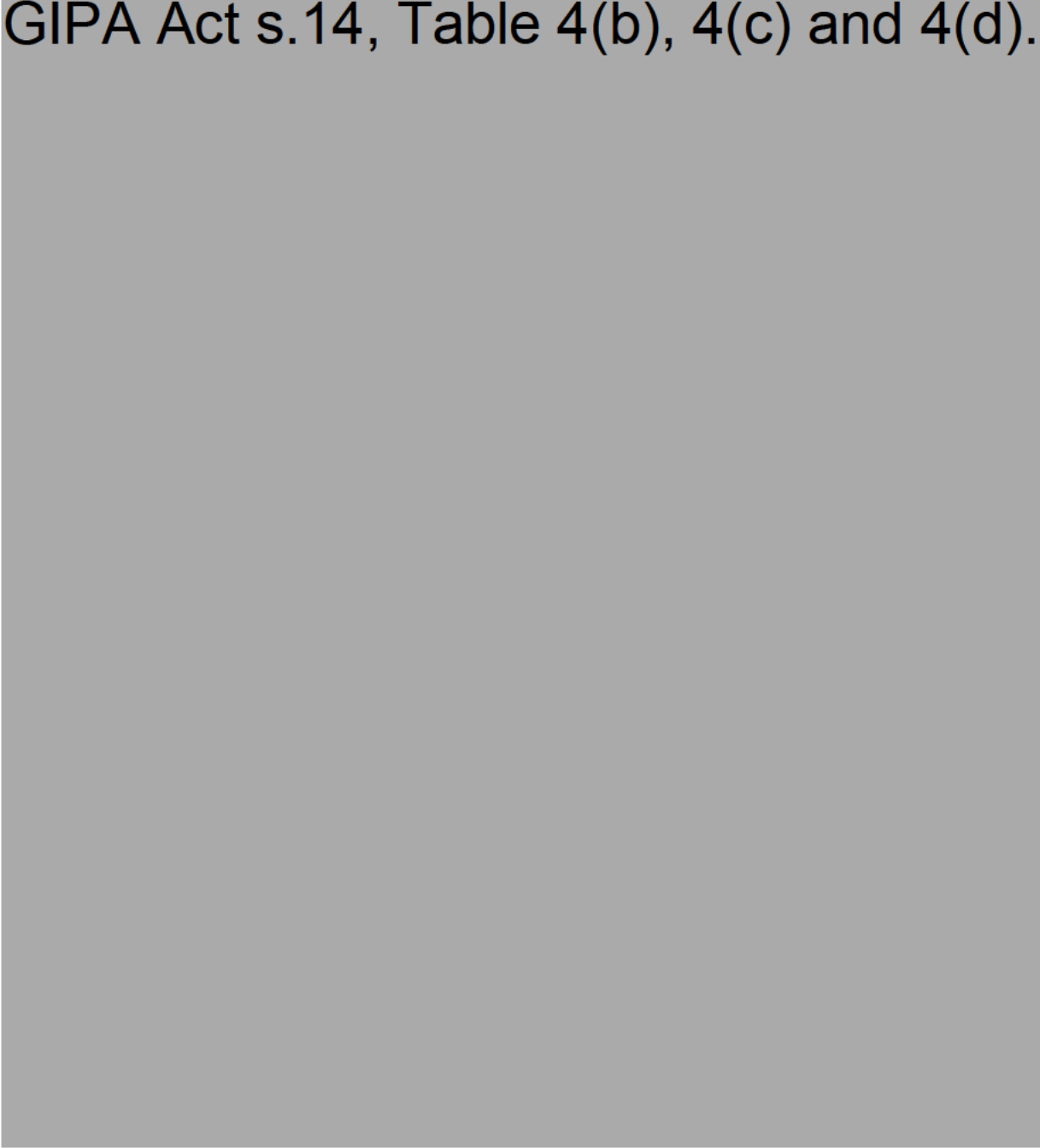
15.7 Meetings

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

16. Liquidated Damages

- (a) This clause 16 applies if Item 29 of the Order Form provides for Liquidated Damages to be payable in relation to a failure by the Supplier to meet an LD Milestone.

GIPA Act s.14, Table 4(b), 4(c) and 4(d).



GIPA Act s.14, Table 4(b), 4(c) and 4(d).

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) Where the Supplier develops or enhances (or has previously developed or enhanced) any Deliverable using Open Source Software or incorporates (or has previously incorporated) any Open Source Software into any Deliverable the Supplier must ensure that the use and/or incorporation of that Open Source Software will not:
 - (i) 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;
 - (ii) diminish the Supplier's obligations or the Customer's rights under this Agreement;
 - (iii) require the Customer to comply with any terms and conditions other than those terms and conditions expressly set out in this Agreement; or
 - (iv) cause the Customer to breach the terms or conditions applying to any Open Source Software.

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.

- (c) Without limiting the Customer's rights or licences under any other provision of this Agreement or at Law, the parties acknowledge and agree that nothing in clause 17.9(a) provides the Customer a right or licence to modify or adapt any Materials or Deliverables.

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;

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- (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.

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- (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 22;
 - 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

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- (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.

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- (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, also notify the Contract Authority where this Agreement is made pursuant to a MICTA; 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

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- (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 22:
 - (i) requires the Supplier to provide the Customer with specific details that relate to the Supplier's other customers or would breach any applicable Laws; and
 - (ii) limits the Supplier's obligations at Law with respect to the notification and resolution of Security Incidents.

23. Confidentiality

- (a) Where either party (**Recipient**) receives or otherwise possesses Confidential Information of the other party (**Discloser**), the Recipient must:
 - (i) keep it confidential;
 - (ii) in the case of the Supplier or its Personnel, only use it where required to exercise its rights or perform its obligations under this Agreement; and

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- (iii) not disclose it to anyone other than:
- A. with the prior consent of the Discloser and on the condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements as specified in this Agreement;
 - B. where required by the GIPA Act (or any other similar Laws) which may require the Customer to publish or disclose certain information concerning this Agreement;
 - C. where required by any other Laws, provided that the Recipient gives the Discloser reasonable notice of any such legal requirement or order to enable the Discloser to seek a protective order or other appropriate remedy (unless it would be in violation of a court order or other legal requirement);
 - D. in the case of the Customer, to:
 - 1) the Contract Authority or responsible Minister (where this Agreement is made under a MICTA); or
 - 2) any Government Agency or Eligible Customer or responsible Minister for a Government Agency or an Eligible Customer; or
 - E. to its Personnel and directors, officers, lawyers, accountants, insurers, financiers and other professional advisers (provided that any professional advisers are subject to reasonable obligations of confidentiality) where the disclosure is in connection with advising on, reporting on, or facilitating the party's exercise of its rights or performance of its obligations under this Agreement.
- (b) The Supplier must not issue any press release or make any other public statement regarding this Agreement or the Supplier's Activities without the prior written consent of the Customer, except as required by Law.
- (c) This clause 23 does not preclude the Customer from disclosing any information (including Confidential Information) of the Supplier to the extent that this Agreement otherwise permits the disclosure of such information.

PART D: FEES AND PAYMENT**24. Payment and invoicing****24.1 Price**

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

- (b) Subject to clause 1.4(b), the Price and any rates or charges specified in the Payment Particulars will be fixed for the Term, unless otherwise specified in the Payment Particulars.

24.2 Benchmarking

- (a) Clauses 24.2 and 24.3 apply if it is specified in the Order Form that benchmarking applies.
- (b) No more than once per annum during the Term and commencing on the first anniversary of the Commencement Date, the Customer may, in its sole discretion, notify the Supplier in writing (**Benchmarking Notice**) that the Customer is seeking to implement a formal independent benchmarking of the cost of the Supplier's Activities in order to consider whether the rates and prices under this Agreement are competitive with the current Australian market for like deliverables and services (**Benchmarking Activities**).
- (c) An independent benchmarker may be agreed between the parties. If the parties cannot agree upon an independent benchmarker within 10 Business Days of the Benchmarking Notice, the Customer may appoint an independent third party benchmarker which the Customer reasonably considers to possess the adequate expertise to carry out the Benchmarking Activities, subject to such third party not being a direct competitor of the Supplier.
- (d) The parties will work together in good faith to expeditiously develop terms of reference which will form the basis of joint instructions for the benchmarker to follow in conducting the Benchmarking Activities. Those terms of reference must, unless otherwise agreed by the parties, be based on the following principles:
 - (i) a "like-for-like" comparison in respect of the Supplier's Activities, conducted by reference to one or both of:
 - A. a "whole of offering" basis in relation to all Services and Deliverables; and
 - B. a product and service category basis; and
 - (ii) appropriate normalisation, including with respect to volumes, method of delivery, quality of service and, in respect of clause 24.2(d)(i)B, taking into account any cross-subsidies offered between different product and service categories.
- (e) The parties will instruct the benchmarker to:
 - (i) conduct the Benchmarking Activities on an objective and independent basis; and
 - (ii) use reasonable efforts to access and rely on recent, accurate and verifiable data in respect of its Benchmarking Activities.
- (f) The parties must ensure that the benchmarker signs a confidentiality deed in favour of the Supplier and the Customer (in a form acceptable to the Customer) prior to undertaking any Benchmarking Activities pursuant to this Agreement.
- (g) Unless otherwise agreed by the parties in writing, the Customer will bear the cost of engaging a benchmarker to undertake the Benchmarking Activities under this clause.

- (h) The parties must each appoint a reasonable number of Personnel to work under the direction of the benchmarker in collecting data necessary for the purposes of the benchmarking exercise.
- (i) The parties agree that the benchmarker may, in its own discretion, determine the information required to carry out the Benchmarking Activities and may carry out the benchmark as he or she sees fit (including by determining the benchmarking methodology).
- (j) The parties must reasonably co-operate with the benchmarker in connection with the Benchmarking Activities carried out under this clause 24.2.

24.3 Outcome of benchmarking

- (a) The benchmarker will be required to deliver a benchmarking report (**Benchmarking Report**) to the parties within 60 days of the Benchmarker's appointment, or within such other period as agreed by the parties in writing.
- (b) If the Benchmarking Report concludes that the rates and prices (or certain rates and prices) under this Agreement exceed the rates and prices offered by the current Australian market for comparable goods, services and activities, then the parties must use all reasonable endeavours to agree on an adjustment to the Payment Particulars to reduce the relevant rates and/or prices to align with the conclusions of the Benchmarking Report.
- (c) If the parties are unable to agree on adjustments to the rates and prices in the Payment Particulars in accordance with clause 24.3(b) within 20 Business Days of the issue of the Benchmarking Report, then, subject to the Supplier's rights under clause 24.3(g), the Customer may, acting reasonably, determine the adjustments required to reduce the rates and prices in the Payment Particulars to reflect the conclusions contained in the Benchmarking Report.
- (d) If the Customer determines that an adjustment to the rates and prices in the Payment Particulars is required in accordance with clause 24.3(c), the Customer may issue a notice to the Supplier notifying it of the adjustment (**Adjustment Notice**).
- (e) The parties acknowledge and agree that if an adjustment to the rates and prices in the Payment Particulars is determined under clauses 24.3(b) or 24.3(c), the Payment Particulars will be deemed to have been amended to reflect the relevant adjustment, on and from the date:
 - (i) on which the parties reach an agreement in respect of the adjustment to the rates and prices under clause 24.3(b); or
 - (ii) specified in an Adjustment Notice issued by the Customer under clause 24.3(d), provided that the Customer will not specify a retrospective date in the Adjustment Notice.
- (f) A party may dispute the results of the Benchmarking Report if it reasonably considers that the findings in, and/or the conclusions of, the Benchmarking Report are based on incorrect facts, assumptions or comparisons. Any such dispute must be notified within 20 Business Days of the issue of the Benchmarking Report and must be resolved in accordance with clause 35.
- (g) The Supplier may dispute an Adjustment Notice if it reasonably considers that the adjustment to the rates and prices proposed in that notice are materially inconsistent with the conclusions contained in the Benchmarking Report. Any such dispute must be notified within 20 Business Days of the issue of the relevant Adjustment Notice and must be resolved in accordance with clause 35.

24.4 Invoicing

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

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- (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

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- (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.

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- (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**).
- (a(2) Without limiting clause 26.2(a), within a reasonable time of the Supplier demonstrating to the Customer's reasonable satisfaction that:
 - (i) the Supplier has overcome the issues that resulted in the Customer exercising its Step-In Rights; and
 - (ii) the Supplier is ready, willing and able to recommence performance of all of its obligations under this Agreement, including delivery of the relevant Supplier's Activities,

the Customer will exercise its rights under clause 26.2(a).'
- (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 \$20 million in respect of each occurrence, to be held for the duration of the Supplier's Activities;

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- (ii) product liability insurance with a limit of cover of \$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 \$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 \$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) Not used.

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 commits a material breach of 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 and only if, in the reasonable assessment of the Customer, the Change in Control or Other Change:
 - (i) creates a probity, financial, legal, operational, security or reputational risk for the Customer, the Transport Cluster or the State of New South Wales; or
 - (ii) has a material adverse effect on the suitability and/or capacity of the Supplier to fulfil its obligations under this Agreement; or
- (d) in any of those circumstances specified in clauses 12.7(b), 13.6, 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 or in New Materials owned by the Supplier 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,

in which case, without limiting the rights or remedies of either party under or in connection with this Agreement or at Law, the Customer must pay the Supplier the Prices (if any) applicable under this Agreement to any Services and/or Deliverables properly supplied by the Supplier in accordance with this Agreement prior to the date of termination but not yet paid for. The Customer may deduct from any payment due to the Supplier under this clause 29.4(a), any debt or other amount due from the Supplier to the Customer under or in connection with this Agreement.

- (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) subject to clause 30(aa), after a suspension has been instructed, recommence the performance or carrying out of,

all or part of the Supplier's Activities (other than the provision of Software Support Services by the Supplier to the extent the Supplier has already commenced to perform Software Support Services in accordance with this Agreement and other than in respect of the licensing of the Licensed Software to the extent that the Licence Period for the relevant Licensed Software has already commenced), at any time. Any such suspension will be effective on and from the date specified in the Customer's direction.
- (aa) Where the Customer issues a direction to the Supplier in accordance with clause 30(a)(ii), the Supplier must recommence the performance or carrying out of all or the relevant part of the Supplier's Activities that were subject to the direction within 30 days of the date of 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 material breach by the Supplier or because of any event 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 GIPA Act s.14, Table 4(b), 4(c) and 4(d). [REDACTED] necessarily incurred by the Supplier as a result of implementing the suspension as directed by the Customer (including reasonable and substantiated de-mobilisation and re-mobilisation costs), 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).
- (e) The parties agree that the maximum duration of any suspension enacted by the Customer under clause 30(a) will be three months.

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;

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- (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 any wrongful act or omission, tort (including negligence) or breach of this Agreement by the Supplier or any of the Supplier's Personnel;
- (b) breach of the Supplier's or its Personnel's obligations under clauses 19.1 (Obligations in relation to Customer Data), 19.2 (Security of Customer Data), 20 (Privacy), 21 (Security), 22 (Security Incident notification) or 23 (Confidentiality);
- (c) Claim brought by a third party arising out of, or in connection with, any actual or alleged infringement of Intellectual Property Rights or Moral Rights in the Deliverables or Services or associated with the Supplier's Activities, or any breach by the Supplier of the warranties in clause 17.12; or
- (d) of the Supplier's or its Personnel's fraud, recklessness or Wilful Misconduct.

34.1B Indemnity Assistance

Clauses 34.1B(a) to 34.1B(c) below apply only in respect of the Supplier's indemnity in clause 34.1(c) and in respect of third party claims that are within the scope of the indemnity in clause 34.1(a).

- (a) The Customer must:
 - (i) promptly notify the Supplier in writing of the third party's claim; and
 - (ii) upon the Supplier confirming its obligations under the indemnity, provide the Supplier with reasonable assistance in defending, settling or otherwise conducting the negotiations or litigation, at the Supplier's cost and expense, including furnishing the Supplier with a copy of each communication, notice or other action relating to the alleged infringement.
- (b) The Customer must (unless there is any government policy that prohibits the Supplier from handling the process for the settlement of the claim) permit the Supplier, at the Supplier's cost and expense, to handle the process for the settlement of the claim and, as permitted by Law, to control and direct any litigation that may follow such claim (including selecting solicitors and counsel), subject to the Supplier agreeing to comply at all times with any government policy relevant to the conduct of the litigation.
- (c) If the Customer does not permit the Supplier to handle the process for the settlement of such claim and, as permitted by Law, to control and direct any litigation that may follow such claim, then the Customer must promptly and fully defend the claim (whilst complying with government policy), and not settle the claim without the Supplier's prior written consent, such consent not to be unreasonably withheld. The Customer must keep the Supplier fully informed throughout the period of the claim, including providing copies of all relevant documents.

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), 34.5(d) and 34.5(e), 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 (in aggregate) to the Limitation Amount.
- (b) In clause 34.5(a), the "**Limitation Amount**" means the amount specified in Item 53 of the Order Form, which may be:
 - (i) a fixed amount;
 - (ii) a multiple of the total amounts paid or payable by the Customer under this Agreement; or
 - (iii) an amount determined by reference to any other mechanism,

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

Total Fees Paid or Payable*	Default Amount
Under \$1,000,000 (including GST)	\$2,000,000
\$1,000,000 and above (including GST)	Two times the total fees paid or payable by the Customer under this Agreement.

Total Fees Paid or Payable*	Default Amount
* "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.
- (e) The Customer'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 the Prices that the Customer is liable to pay to the Supplier.

34.6 Exclusions of liability

- (a) In no event will either party's liability to the other party under or in connection with this Agreement, 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 loss of profit or revenue, loss of production, interruption of business or operations, 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

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- (ii) any kinds of Loss which the parties expressly agree, in Item 53 of the Order Form, will be treated as Loss of the kind referred to in clause 34.6(b)(i),

and where the Customer is the recovering party:

- (iii) any Loss against which the Supplier is required to indemnify the Indemnified Entities under clause 34.1, to the extent such Loss relates to monies, amounts or liabilities owed, due, paid or payable, or obligations owed, to a third party; and
- (iv) subject to applicable common law tests in respect of the recovery of Loss, any costs and expenses relating to any of the following activities (which, for clarity, will be treated as loss of the kind referred to in clause 34.6(b)(i)):
 - A. repairing or replacing the relevant Deliverable or Licensed Software or re-supplying any Services, including the cost of procuring replacement deliverables or services of equivalent functionality and performance internally or from a third party;
 - B. implementing any reasonably necessary temporary workaround in relation to the Licensed Software, Services or Deliverables;
 - C. engaging labour resources to reload any lost or corrupt data to the extent caused or contributed by the Supplier, from the last backup made of such data (regardless of whether the Supplier is responsible for backup of that data as part of the Supplier's Activities); and
 - D. activities undertaken by, or on behalf of, the Customer in connection with the mitigation of Loss.

34.7 Application and contribution

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

34.8 Mitigation

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

35. Dispute resolution

35.1 General

- (a) The parties agree to resolve any dispute between them that arises out of, or in connection with, this Agreement in accordance with the procedure set out in clauses 35.2 to 35.3 or such other procedure set out in Item 54 of the Order Form.

- (b) Either party may give written notice of a dispute to the other party setting out the particulars of the dispute and, where the notice is issued by the Customer, indicating whether the Contract Authority is to be involved in the dispute resolution process (**Dispute Notice**).
- (c) Nothing in this clause 35 limits the ability of either party to commence legal action against the other party for urgent interlocutory relief.

35.2 Escalation

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

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

35.3 Alternative dispute resolution

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

35.4 Acknowledgment

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

35.5 Costs

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

35.6 Continue to perform

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

36. Force Majeure**36.1 Force Majeure Event**

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

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

36.2 Notification and diligence

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

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

36.3 Liability not relieved

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

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

36.4 Prolonged Force Majeure Event

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

36.5 Extensions of time as a result of a Force Majeure Event

- (a) Subject to the terms and conditions of this Agreement (including clause 36.3 above), if:
 - (i) by reason of a Force Majeure Event, a party is unable to perform any obligation required to be performed by it under this Agreement;
 - (ii) such Force Majeure Event has resulted in such party being unable to achieve the timeframes applicable to the performance of its obligations under this Agreement during the period after the conclusion of the Force Majeure Event; and
 - (iii) such party has used all reasonable endeavours to overcome delays in such party's performance of its obligations under this Agreement in accordance with the timeframes applicable to the performance of its obligations under this Agreement,

such party may, by notice in writing to the other party, require the other party to meet with such party to reasonably discuss the extent to which an extension of time will be granted in respect of such party's performance of its obligations under this Agreement during the period after the conclusion of the Force Majeure Event.
- (b) The non-affected party must not unreasonably withhold its consent to the grant of an extension of time under clause 36.5(a).
- (c) Without limiting clause 36.5(b) above, the parties will implement any extension of time granted under clause 36.5(a) in accordance with the Change Control Procedure.

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.

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- (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

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- (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.

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- (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 **Sydney Trains, ABN 38 284 779 682** by its authorised representative, but not so as to incur personal liability, in the presence of:

GIPA Act s.14, Table 3(a) and 3(b).

Signature of witness

GIPA Act s.14, Table 3(a) and 3(b).

Name of witness in full

Date 16/4/2024

GIPA Act s.14, Table 3(a) and 3(b).

Signature of authorised representative

GIPA Act s.14, Table 3(a) and 3(b).

Name of authorised representative in full

☒ If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000, and the witness affixed their electronic signature to a counterpart of this document.

☐ If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

Executed by **Siemens Mobility Pty Ltd (ABN 39 625 304 556)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

GIPA Act s.14, Table 3(a) and 3(b).

Signature of Secretary/other Director

GIPA Act s.14, Table 3(a) and 3(b).

Name of Secretary/other Director in full

12-Apr-24

Date

GIPA Act s.14, Table 3(a) and 3(b).

Signature of Director or Sole Director and Secretary

GIPA Act s.14, Table 3(a) and 3(b).

Name of Director or Sole Director and Secretary in full

12-Apr-24

Date

Schedule 1 - Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

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

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

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

Acceptance Criteria in respect of a Deliverable, means:

- (a) the compliance of that Deliverable with any criteria set out in the Order Form or the Test Plan; and
- (b) where criteria for that Deliverable are not set out in the Order Form or Test Plan, such requirements as reasonably necessary to determine whether that Deliverable complies with the applicable Specifications and the other requirements set out in this Agreement in all material respects.

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 Item 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).

Aggregated LD Cap means the total aggregate maximum amount of Liquidated Damages that are payable in respect of any and all LD Milestones, as specified as such in an Order Form

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.

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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 (except where the Order Form specifies other standard working hours for certain Supplier Activities, in which case the Customer may require 'Business Hours' for the Supplier to be interpreted to extend to those other standard working hours on any Business Day for the Supplier Activities or the Agreement).

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 in Customer Specific Laws means any change in Laws that:

- (a) are specifically applicable to the operations of the Customer;
- (b) do not apply to the Supplier;
- (c) the Supplier is required to comply with under this Agreement; and
- (d) occurs after the Commencement Date in relation to the Statement/s of Work that apply on the Commencement Date, or after the date any relevant further Statement of Work is entered into in relation to any subsequent Statement/s of Work.

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.

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

Confidential Information means information that:

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

but excludes information:

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

Conflict of Interest means the Supplier or its Personnel:

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

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

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

Core Terms means clauses 1 to 39 of this Agreement.

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

Correctly Rendered Invoice means an Invoice which:

- (a) specifies an amount that is due for payment and correctly calculated in accordance with this Agreement;
- (b) is itemised and identifies the GST exclusive amount, the GST component and the GST inclusive amount (as applicable) and enables the Customer to ascertain what the Invoice covers and the amount payable;

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- (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;

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- (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;

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- (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) Not used.

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 or pandemics, 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;

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- (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).

Hypercare Services means additional support services of that name as further described in an Order Document or the Specifications, and as otherwise reasonably required by the Customer.

Hypercare Support Period means, any period in which Hypercare Services are to be provided for any relevant Service or Deliverable (as outlined in any Order Document), .

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;

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- (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.

LD Milestone means a Key Milestone to which Liquidated Damages apply, as specified as such in an Order Form.

LD Milestone Cap means the maximum amount of Liquidated Damages that are payable in respect of a particular LD Milestone, as specified as such in an Order Form.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Open Source Software means software available under a licence which:

- (a) meets the criteria of the Open Source Definition published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>; or

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- (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

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- (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 means:

- (a) any change to any of the Policies, Codes and Standards specified in, or which the Customer otherwise requires the Supplier to comply with under, this Agreement (including with respect to any security requirements); or

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- (b) 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.

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;

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- (d) the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraphs (a) to (c) have occurred;
- (d(2)) any SOCI Cyber Security Incident, as defined in section 12M of the SOCI Act, the occurrence of any circumstances indicating that a SOCI Cyber Security Incident has occurred or is imminent;
- (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.

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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;

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

1.3 Discretion

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

Schedule 2 - Order Form

PART A: ICTA

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

No	Item	Ref	Description or selection
KEY DETAILS			
1.	Customer	Generally Schedule 1	Sydney Trains (ABN 38 284 779 682)
2.	Customer's Representative	Generally Schedule 1	GIPA Act s.14, Table 3(a) and 3(b).
3.	MICTA	1.4 Generally Schedule 1	Is this Agreement entered into pursuant to a MICTA? ☐ Yes ☒ No.
4.	Supplier	Generally Schedule 1	Siemens Mobility Pty Ltd (ABN 39 625 304 556)
5.	Supplier's Representative	Generally Schedule 1	GIPA Act s.14, Table 3(a) and 3(b).
6.	Notices for the Customer	39.13(b)	Customer's address: Attention: GIPA Act s.14, Table 3(a) and 3(b). GIPA Act s.14, Table 3(a) and 3(b). Transport for NSW 231 Elizabeth Street Sydney NSW 2000 Customer's email: GIPA Act s.14, Table 3(a) and 3(b).

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No	Item	Ref	Description or selection
	Notices for the Supplier	39.13(b)	Supplier's address: Attention: GIPA Act s.14, Table 3(a) and 3(b). Siemens Mobility Pty Ltd Level 5 3 Richardson Place North Ryde NSW 2113 Supplier's email: GIPA Act s.14, Table 3(a) and 3(b).
TERM			
7.	Commencement Date	5.1 Schedule 1	The Commencement Date is the date this Agreement is executed by both parties.
8.	Initial Term	5.1 Schedule 1	The Initial Term is a period of five (5) years from the Commencement Date. The Initial Term will include either: (a) Delivery Stage 1, but if the Customer does not elect to proceed to Delivery Stage 2 in accordance with this Agreement, not Delivery Stage 2 (each Stage described in the Statement of Work); or (b) Delivery Stage 1, and if the Customer does elect to proceed to Delivery Stage 2 in accordance with this Agreement, both Delivery Stage 1 and Delivery Stage 2 (each Stage described in the Statement of Work).
9.	Renewal Period	5.2 Schedule 1	The Customer may extend the Term by the following renewal periods (each a Renewal Period): (a) an additional five (5) years to take effect at the end of the Initial Term (Renewal Period 1); (b) if the Renewal Period 1 option has been exercised, an additional two (2) years to take effect at the end of Renewal Period 1 (Renewal Period 2); (c) if the Renewal Period 2 option has been exercised, an additional two (2) years to take effect at the end of Renewal Period 2 (Renewal Period 3); and (d) if the Renewal Period 3 option has been exercised, an additional one (1) year to take effect at the end of Renewal Period 3 (Final Renewal Period). If the Customer elects to exercise all Renewal Period options under this Agreement as outlined above (i.e. Renewal Period 1, Renewal Period 2, Renewal Period 3 and the Final Renewal Period), the Term is 15 years, including the Initial Term.

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No	Item	Ref	Description or selection
	Notice period for renewals	5.2	The default period of at least 15 Business Days prior to the end of the then current Term applies for exercise of each of the Renewal Periods.
ORDERING AND PURCHASING			
10.	Additional Orders	3.3 Schedule 1	The Customer is permitted to place Additional Orders for additional volumes of licences for Licensed Software and/or for additional volumes of Software Support Services under this Agreement by submitting a written notice to the Supplier's Representative, provided that: (a) the Supplier will not be required to provide the relevant additional volumes of licences for Licensed Software and/or additional volumes of Software Support Services before the date that is 3 months following the date on which the Customer places the relevant Additional Order; and (b) the Prices for the relevant additional volumes of licences for Licensed Software and/or additional volumes of Software Support Services will be as set out in the Payment Particulars.
11.	Additional Conditions	3.5 Schedule 1	The Additional Conditions set out in Annexure C to this Schedule 2 (Order Form) apply to this Agreement, as follows: (a) Additional Condition 2 applies to the extent that the Customer requires to use it during the Term; and (b) all other Additional Conditions apply in all circumstances.
12.	Reseller arrangements	3.6	The parties agree that the Supplier will not provide any Services or Deliverables in the Supplier's capacity of a reseller and that all Services and Deliverables will be provided on the same terms and conditions of this Agreement.

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No	Item	Ref	Description or selection
13.	Schedules	Generally Schedule 1	☒ Schedule 1 - Definitions and interpretation ☒ Schedule 2 - Order Form ☒ 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). ☒ Schedule 4 - Payment Schedule ☒ 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). ☒ Schedule 6 - Deed of Confidentiality and Privacy ☒ Schedule 7 - Escrow Deed ☒ Schedule 8 - Performance Guarantee ☐ Schedule 9 - Financial Security
	Modules	1.2(c)	☐ Cloud Module ☒ Services Module ☒ Software Module (Non-Cloud) ☐ Hardware and Other ICT Deliverables Module
SUPPLIER'S ACTIVITIES			
14.	Scope	Generally	The Supplier must supply the Deliverables and Services as set out in the Statement of Work.
15.	Requirements - Accessibility requirements	6.3(b)(ii)	The default accessibility requirements apply.
	Requirements - Work health and safety	12.4(f)	There are no additional work health and safety requirements beyond those contained in clause 12.4(f) and relevant Policies, Codes and Standards referred to in Item 17 of this Order.
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)? ☒ Yes and the Supplier must comply with the requirements in this Item 16. ☐ No

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No	Item	Ref	Description or selection
	Site location		In addition to the Sites listed below, the Sites are any of the sites of the Customer or any other Government Agencies listed in the Specifications or are notified by the Customer in writing from time to time: (a) 44 Rosehill Street, Redfern, NSW; (b) 231 Elizabeth Street, Sydney, NSW; and (c) 177 Wyndham Street, Alexandria, NSW.
	Physical delivery		The Customer will, from time to time, notify the Supplier of the relevant delivery instructions for the delivery of Supplier's Activities on or in relation to Sites. The relevant hours for the delivery of Supplier's Activities on or in relation to Sites will be Business Hours or as otherwise notified by the Customer from time to time.
	Requirements for attendance at the Site		The Supplier must comply with any Site access requirements specified by the Customer from time to time, including any site access sign-in or sign-out procedures when accessing or leaving a Site.
17.	Policies, Codes and Standards	12.2 Schedule 1	The Supplier must comply with the following (as updated, replaced or superseded from time to time, except as otherwise directed by the Customer): (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 Transport for NSW Code of Conduct; (c) the Supplier Code of Conduct published at https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct; (d) the Aboriginal Procurement Policy published at https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy; (e) 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; (f) the NSW Government Internet of Things (IoT) Policy published at https://www.digital.nsw.gov.au/policy/internet-things-iot in so far as it relates to the Supplier's Activities;

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No	Item	Ref	Description or selection
			(g) the Customer's personnel, work place, health and safety policies including those related to: (i) drug and alcohol use; (ii) workplace standards; (iii) safety policies or safety specifications; (iv) return to work and injury management; and (v) equality and discrimination; (h) the Customer's environmental and sustainability policy; (i) the Customer's business ethics, anti-bribery and anti-corruption policies; (j) any Policies, Codes and Standards specified in any Order Document; and (k) any Policies, Codes and Standards as are reasonably notified to the Supplier by the Customer from time to time.
	SME Policies	12.2 Schedule 1	Not applicable - the Supplier is not required to comply with the SME Policies.
	Aboriginal Procurement Policy: Aboriginal participation	12.2(b)	Clause 12.2(b) applies. The Supplier must provide the Aboriginal Participation Plan to the Customer, and work with the Customer to have the Aboriginal Participation Plan approved by the Customer, within 30 days of the Commencement Date. Once the Aboriginal Participation Plan is approved by the Customer, the Supplier must comply with the Aboriginal Participation Plan in accordance with this Agreement. Without limiting any obligation of the Supplier under this Agreement, the Supplier must ensure that the Aboriginal Participation Plan complies with the Aboriginal Procurement Policy.
18.	Nominated Personnel	11.1 Schedule 1	The Nominated Personnel are the Personnel of the Supplier identified as such in the relevant Statement of Work.
19.	Deed of Confidentiality and Privacy	11.4(a) Schedule 1	The Supplier's subcontractors must sign a Deed of Confidentiality and Privacy in the form of Schedule 6.
20.	Permitted subcontractors	11.5(a)	As at the Commencement Date, there are no permitted subcontractors.

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No	Item	Ref	Description or selection
21.	Subcontractor deed	11.5(j)	If requested by the Customer, the Supplier must arrange for its subcontractors to enter into a subcontractor deed in accordance with clause 11.5(j) that contains (at a minimum) terms equivalent to the terms relating to Confidential Information, Privacy, security and relevant Policies as this Agreement.).
	Additional subcontractor procurement policy requirements	11.5(k)	The Supplier must ensure that any subcontracting arrangement it enters into in connection with the provision of Deliverables and Services under this Agreement will include terms that bind the subcontractor to compliance with the Policies, Codes and Standards outlined in this Agreement.
22.	Background checks	11.6(b)	GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

No	Item	Ref	Description or selection
			GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).
	Timeframes and time for background checks		GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).
PERFORMANCE AND DELIVERY			
23.	Timeframes and requirements for performance	6.1	The performance of the Supplier's Activities, the Dates for Delivery and Key Milestones are as set out in the Statement of Work.

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No	Item	Ref	Description or selection
	Specifications	6.1 Schedule 1	Through the initial Statement of Work, the Supplier must provide a 'Rail Timetable Solution' that is itself, and is also comprised of Services and Deliverables that are, fit for purpose as a modern rail timetable system. The Specifications are the specifications contained in: (a) this Order Form (excluding its exhibits, annexures or attachments); (b) any Statement of Work (including any exhibit or attachment expressly identified as being, or forming part of, the Specifications); (c) the Payment Schedule; (d) any exhibits or attachments to the item(s) listed in (a); (e) any exhibits or attachments to the item(s) listed in (b); and (f) any document which is agreed by the parties under a process outlined in this Agreement (including any Order Document). If there is any conflict between any of the Specifications in the documents listed above, the items listed earlier in the list will prevail to the extent of that conflict.
24.	Service Levels	15.2 15.3(e) Schedule 1	As set out in the Statement of Work. The cap on service credits under the initial Statement of Work is GIPA Act s.14, Table 4(b), 4(c) and
25.	Performance reports	15.4(a)(iii)	Unless otherwise set out in the Statement of Work or otherwise agreed by the Customer, the Supplier must provide a monthly service performance report that details the service performance for the immediately preceding month on the 7th Business Day of a calendar month, and have Supplier Personnel reasonably required by the Customer attend a monthly service performance meeting on the 10th Business Day, in each calendar month.
	Additional performance reporting requirements	15.4(c)	As set out in the Statement of Work.

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No	Item	Ref	Description or selection
	Performance reviews	15.5(a)	Unless otherwise set out in the Statement of Work or otherwise agreed by the Customer, the Supplier must engage in an assessment and performance review exercise of itself with respect to the Agreement that will involve 'Customer Satisfaction Surveys' on at least an annual basis (Customer Satisfaction Survey). Each Customer Satisfaction Survey will include the Supplier's compliance with reporting requirements, customer service, understanding of the Customer's needs, budget and account management, communication and such other matters that the Customer notifies as being included in the Customer Satisfaction Survey from time to time.
26.	Meetings	15.7(a)	The Supplier must meet with the Customer and others and attend meetings as set out in the Statement of Work.
27.	Project Plans	6.5(b)	The Supplier must prepare a Project Management Plan including a relevant iterative development plan for the Services and Deliverables as a Project Plan, as described in the Statement of Work and in accordance with the Customer's requirements. The Customer may require the Supplier to update that Project Plan, or to provide an additional Project Plan for any aspect of the Supplier's Activities, from time to time at any agreed intervals (if no interval is agreed, monthly).
	Other Plans	Schedule 1	The Supplier must also prepare any other Plans as described in this Agreement or any Plan.
28.	Stages	6.6(a) Schedule 1	As set out in the Statement of Work.
	Project methodology	6.6(e)	The project methodology is defined in writing in the relevant Statement of Work and may be any combination of a Staged delivery methodology, an agile implementation methodology, or other methodology such as iterative and/or parallel development activities.
	Costs of removing any Stage(s)	6.6(d)	There are no costs.
29.	Liquidated Damages	16(a) 16(b) Schedule 1	Liquidated Damages will apply in relation to a failure to meet LD Milestones as set out in the Statement of Work.
30.	Governance Framework	4.3	As set out in the Statement of Work.
31.	Customer Supplied Items	6.2	As set out in the Statement of Work.

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No	Item	Ref	Description or selection
	Date for provision of CSI	Schedule 1	As set out in the Statement of Work.
	CSI requirements		As set out in the Statement of Work.
	Supplier's costs for CSI and time for payment		Not applicable.
32.	Transition-In Plan	7.2 Schedule 1	A Transition-In Plan is required, and must be prepared by the Supplier for the purposes of this Agreement as described in the initial Statement of Work within 30 days of Stage 1 Phases 1.1. Design Sign-Off & Freeze 1 as set out in the Statement of Work.
	Transition-In Services	7.3 Schedule 1	The Supplier must provide the Transition-In Services in accordance with this Agreement and the Specifications, and the Transition-In Plan. The Supplier must also provide a Business Contingency Plan in accordance with Item 47 of this Order Form. The Supplier acknowledges that it has conducted due diligence investigations prior to entering into this Agreement and the Customer relies on the Supplier's experience and expertise and enters into this Agreement based on the Specifications. The Supplier acknowledges and agrees that it does not need to conduct any further due diligence during the period of the Transition-In-Services or otherwise.
33.	Transition-Out Services	31.1 Schedule 1	The Supplier must provide the Transition-Out Services in accordance with this Agreement and the Specifications, and the Transition-Out Plan. The Supplier must perform, and ensure that each of its Personnel performs, all the services, tasks, functions, activities and responsibilities allocated to the Supplier in the Transition-Out Plan and all other assistance required by the Customer to successfully and seamlessly complete Transition-Out for relevant Services and Deliverables, including the following: (a) Supply of any Deliverables specified in the Transition-Out Plan as items the Supplier must supply; (b) Provision of any training required by the Customer to permit the Customer or any members of its Personnel to supply the Services and Deliverables to which the Transition-Out relates to the satisfaction of the Customer; (c) Provision of detailed handover by: (i) each member of Nominated Personnel;

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No	Item	Ref	Description or selection
			(ii) each other member of the Supplier Personnel nominated by the Customer; and (iii) including shadowing of those persons in their daily duties by replacement Customer Personnel; (d) Provision of reports on the status of the Transition-Out and all other reports required by the Customer; and (e) If specified in the Transition-Out Plan or otherwise requested by the Customer, the Supplier must, by the due date specified in the Transition-Out Plan or by the Customer procure the novation on satisfactory terms to the Customer or its nominee of: (i) any subcontracts, or the relevant parts of subcontracts (where those subcontracts are severable); and (ii) any licence agreements or agreements for inputs, to the extent that they relate to the Services and Deliverables to which the Transition-Out relates. The Supplier must provide the Transition-Out Services to the Customer, or any third party appointed by the Customer, to take over the supply of the Services and Deliverables. Continuation of Business As Usual Services During the Transition-Out Period, for the period in respect of which the Customer continues to pay the Supplier the Price in accordance with this Agreement, the Supplier must continue, and to the extent required by the Customer must ensure that each of its Personnel (including subcontractors) continue, to: (a) provide the Services and Deliverables in accordance with this Agreement and the Transition-Out Plan; (b) allocate the Nominated Personnel to the performance of the Services and Deliverables as required by this Customer Contract; (c) maintain sufficient other Personnel to perform the obligations under this Item 33 and the Transition-Out Plan; and

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No	Item	Ref	Description or selection
			(d) maintain all the existing Personnel (including Nominated Personnel) involved in the provision of the Services and Deliverables, and not remove, replace or reallocate any of those Personnel or reduce the existing resource levels without the Customer's written consent, unless and until specified otherwise in the Transition-Out Plan or agreed with the Customer in writing.
	Transition-Out Plan	31.2 Schedule 1	Within three months following the Commencement Date or at a time otherwise requested by the Customer, the parties must negotiate in good faith to agree as quickly as possible a plan (Transition-Out Plan) for the Transition-Out of the Services and Deliverables supplied under this Agreement, including: (a) the timetable for Transition-Out; (b) the Services and Deliverables that the Supplier no longer has to supply; (c) the time and circumstances in which the Supplier will cease supplying those Services and Deliverables; and (d) the time and circumstances in which the Supplier will cease providing any Nominated Personnel in respect of the relevant Services and Deliverables. Unless otherwise agreed by the parties, the Transition-Out Plan should be based on any draft plan for the Transition-Out Services included as part of the Order Documents. Final updates to the Transition-Out Plan will be confirmed and recorded before the end of the Term (and promptly following any termination) as required by the Customer. If there is no agreed Transition-Out Plan at the time that Transition-Out Services are due to commence because: (a) the Supplier has not complied with its obligation to prepare and submit a Transition-Out Plan; or

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No	Item	Ref	Description or selection
			(b) the Customer has not actually approved a Transition-Out Plan (as opposed to being deemed to have approved one), the Supplier must provide the Transition-Out Services as reasonably directed by the Customer at the times reasonably directed by the Customer during the Transition-Out Period. The directions issued by the Customer under this Item 33 will collectively either be accommodated in or themselves constitute the Transition-Out Plan (as appropriate). For clarity, these arrangements are intended to ensure that the Customer receives suitable Transition-Out Services in the circumstances at the relevant time, and do not relieve the Supplier of any of its obligations in connection with Transition-Out, including to prepare a Transition-Out Plan.
	Transition-Out Period	31.3 Schedule 1	The Customer will determine the Transition-Out Period before the end of the then current Term following consultation with the Supplier. On determination of the Transition-Out Period, the Term will be extended for the length of any Transition-Out Period. Unless the Customer agrees a shorter period in writing (including through its final updates to the Transition-Out Plan, or during the provision of Transition-Out Services), the Transition-Out Period is 36 months following termination or expiry of the then current Term.
34.	User Documentation	8.4(a)	The Supplier must, at all times, make the User Documentation available to the Customer in electronic format at its sole cost.
	Format for the User Documentation	8.4(c)	The Supplier must provide one hard copy of the User Documentation to the Customer and the Customer may make an unlimited number of hard copies of the User Documentation as it requires.
35.	Acceptance Testing	14 Schedule 1	Acceptance Testing must be conducted on all Deliverables where this Agreement, (including the Order Documents or the Specifications) indicate that Acceptance Testing must be conducted on that Deliverable.

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No	Item	Ref	Description or selection
		14.1	The Supplier must comply with Acceptance Testing procedures set out in the Core Terms. The Customer will require the Supplier to produce and maintain Test Plan(s) for its approval as Document Deliverable(s) in connection with all Acceptance Testing. Further Acceptance Testing details including procedures are set out between the Statement of Work and applicable Test Plan. If there are no Acceptance Testing procedures set out in or agreed under the relevant Statement of Work or a Test Plan, then there are no further requirements for Acceptance Testing than those outlined in this Agreement. Where a Statement of Work or a Test Plan refers to 'Supplier Acceptance Testing' the terms of clause 14.2 of the Core Terms apply to that testing. Where a Statement of Work or a Test Plan refers to 'User Acceptance Testing' the terms of clause 14.3 of the Core Terms will also apply.
		14.2 Schedule 1	The Acceptance Criteria are set out between the Statement of Work and applicable Test Plan. If there are no Acceptance Criteria set out in the relevant Statement of Work or a Test Plan, then there are no further requirements for Acceptance Testing than those outlined in this Agreement.
36.	Warranty Period	9 Schedule 1	The Warranty Period for a Service or Deliverable will be set out in the relevant Statement of Work. If no Warranty Period is set out in a Statement of Work, the default position will be: GIPA Act s.14, Table 4(b), 4(c) and 4(d).
INTELLECTUAL PROPERTY			
37.	Ownership of Existing Materials	17.1	No alternative position applies under clause 17.1. The parties retain ownership of Intellectual Property Rights in Existing Materials.

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No	Item	Ref	Description or selection
	Licence to use Existing Materials	17.2 17.5	(a) In respect of Existing Materials, other than Existing Materials in Excluded Document Deliverables: (i) clause 17.2 applies; (ii) the Supplier grants to the Customer the licence to Existing Materials that is described in clause 17.2(a) and such licences includes all rights and purposes referred to in clause 17.2(b); and (iii) the Customer's licence to Existing Materials is perpetual in accordance with clause 17.5. (b) In respect of Excluded Document Deliverables (as defined below), clause 17.2 does not apply and accordingly, unless otherwise specified in the applicable Module Terms, the Supplier grants to the Customer an irrevocable (for the Term of this Agreement), non-exclusive, worldwide (but only for purposes within Australia), transferable (but only as expressly contemplated by this Agreement), sublicensable (but only to members of the Transport Cluster, Other Suppliers (other than Other Suppliers that are Direct Competitors), Customer Users (other than Customer Users that are Direct Competitors) or other persons this Agreement expressly permits to use the Deliverables), royalty-free licence to use, copy, adapt, translate, reproduce, and modify any Intellectual Property Rights in the Excluded Document Deliverables for the Term of this Agreement and 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; (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 or the Transport Cluster, including any statutory requirements concerning State records or auditing.

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No	Item	Ref	Description or selection
			In this paragraph (b) and in paragraph (b) of the below row titled 'Licence to use New Materials': (v) Direct Competitor means an entity that owns and provides a rail timetabling solution to customers in competition with the Supplier; and (vi) Excluded Document Deliverables means any Document Deliverable/s expressly identified as an 'Excluded Document Deliverable' in the relevant Statement of Work. (c) The Customer grants to the Supplier the licence to the Customer's Existing Materials that is described in clause 17.2.
	Ownership of New Materials	17.3	The default position in clause 17.3(a) applies – the Supplier owns any New Materials it creates in carrying out the Supplier's Activities.
	Licence to use New Materials	17.4 17.5	(a) In respect of New Materials, other than New Materials in Excluded Document Deliverables: (i) the Supplier grants to the Customer a licence to New Materials in accordance with clause 17.4 and such licences includes all rights and purposes referred to in clause 17.4; (ii) clause 17.4(b) applies to New Materials, in relation to any purpose whatsoever; and (iii) the Customer's licence to New Materials is perpetual in accordance with clause 17.5. (b) In respect of Excluded Document Deliverables, clauses 17.4 and 17.5 do not apply and the Supplier grants the Customer a licence to such Excluded Document Deliverables in accordance with paragraph (b) of the above row titled 'Licence to use Existing Materials'. (c) Clause 17.6 is not applicable.

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No	Item	Ref	Description or selection
	Third party Intellectual Property Rights	17.7	Clause 17.7 applies in relation to third party Intellectual Property Rights. For clarity, no separate or additional terms and conditions apply to third party Intellectual Property Rights and the Supplier must ensure that: a) it provides and makes available all third party Intellectual Property Rights in accordance with this Agreement, in the same manner as if such Intellectual Property Rights were owned by the Supplier; and b) must obtain all required approvals, authorisations, consents and licences to give effect to such arrangements.
38.	Escrow	18	The Escrow Materials will be held in escrow. Within 7 days of the Commencement Date, the parties will enter into an escrow agreement in substantially the same form as Schedule 7. The escrow arrangement will remain in effect for the Term (including any Transition-Out Period).
	Escrow Materials	18 Schedule 1	The Escrow Materials are as per the definition of 'Escrow Materials' in Schedule 7 (Escrow Deed).
DATA AND SECURITY			
39.	Location of Personal Information	20.1(a)(iv) Schedule 1	The Supplier may not transfer Personal Information outside New South Wales, Australia or access it, or allow it to be accessed, from outside New South Wales, Australia, except as set out in the row immediately below.
	Data Location Conditions	19.3(b) Schedule 1	Except as set out in this Item 39 below, the Customer does not provide its consent for the Supplier or its Personnel to (and the Supplier and its Personnel must not) transfer, store, view, access, disclose, or process Customer Data outside the jurisdiction of New South Wales. Except as set out in this Item 39 below, the Supplier must keep any Customer Data within, and must ensure that all of the Supplier's computing system, hardware and software used to store, host, process and access Customer Data (including production, test and backup environments) will be based in the jurisdiction of New South Wales. Notwithstanding the foregoing, but without limiting any other obligation of the Supplier under this Agreement, the Supplier is permitted to transfer, store, process, access, disclose or view Customer Data (including Personal Information) from and to the following jurisdictions: GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

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No	Item	Ref	Description or selection
			GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f). for the sole purpose of performing Support Services under this Agreement. The Supplier may not transfer Customer Data to any third party, or allow any third party to access Customer Data, without the prior written consent of the Customer. The Supplier must comply with, and must not act or omit to act in any way that would cause or be likely to cause the Customer to be in breach of, the <i>State Records Act 1998</i> (NSW) when performing its obligations under this Agreement.
40.	Security obligations, standards and Information Security Requirements	19.2 21.2	(a) The Information Security Requirements and other applicable security standards and requirements include those set out in this Item 40. (b) The Supplier and its Personnel must comply with the following guidelines, codes and policies to the extent applicable to the delivery of the Services and Deliverables (as updated, superseded or replaced from time to time, except as otherwise directed by the Customer in writing): GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

			(c) In addition to the above and without limiting any obligation of the Supplier under this Agreement, the Supplier must: (i) comply with the SOCI Requirements, to the extent such requirements are applicable to the Supplier, the Services or the Deliverables; and (ii) comply with any direction of the Customer issued for the purpose of the Customer complying with the SOCI Requirements, to the extent direction is reasonable. In this paragraph (c), SOCI Requirements means: - the <i>Security of Critical Infrastructure Act 2018</i> (Cth) (the SOCI Act); - any Laws related to the SOCI Act; and - any directions or orders of an Authority relating to the SOCI Act. (d) The Supplier and its Personnel must comply with the following Customer guidelines, codes and policies relating to secrecy and security requirements in connection with the Supplier's delivery of Deliverables under this Agreement (as updated, superseded or replaced from time to time, except as otherwise directed by the Customer in writing): GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).
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			GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).
			(e) The Customer will notify the Supplier in advance and in writing any policies, guidelines, codes or standards that are specified after the Commencement Date (including by weblink). (f) The Supplier must comply with a secure software development framework which is aligned to an industry recognised framework, such as OWASP. (g) Without limiting the foregoing, the Supplier must: (i) comply with any written Customer security procedures that are in effect during the Term from time to time in relation to the security of any Customer Data and Customer Supplied Items; (ii) implement the security practices detailed in this Agreement and in any Customer policies (notified to the Supplier) against any unauthorised copying, use, disclosure, access, damage or destruction of Customer Data and Customer Supplied Items that are in the Supplier's possession or control; (iii) comply with any secrecy and security requirements (including any policies, standard or codes) set out in this Agreement; (iv) keep itself informed of, and comply with, Best Industry Practice in respect of secrecy or security requirements when performing its obligations under this Agreement (the

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			parties acknowledge that adherence with ISO27001 satisfies "Best Industry Practice" requirements to the extent ISO27001 incorporates relevant requirements that apply in the particular context or circumstance); and (v) comply with all other reasonable requirements and directions of the Customer regarding conduct, behaviour, protection of privacy, use of systems, safety and security (including submitting to security checks as required and complying with any obligation imposed on any person by Law).
	Security certifications	21.2(e)	(a) Unless and except to the extent the Customer agrees otherwise in writing, the Supplier must have, obtain and maintain GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f). (b) The Supplier must ensure that Siemens AG (HRB 12300) GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f). (c) The Supplier must: (i) itself undertake in the future to have, obtain and maintain, accreditation (where accreditation is available) that it is compliant with; and (ii) comply with, the following standards, as amended from time to time: GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f). (vi) any standards, specifications, guidelines and classification schemes specified in any Order Document.

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	Security audits	21.3 Schedule 1	Clause 21.3 applies in full. However, in respect of the reports and information required to be provided under clauses 21.3(b)(iii) and 21.3(b)(iv), the Supplier is permitted to redact information that, if disclosed to the Customer, would compromise the security of its organisation and systems.
41.	Backup of Customer Data	19.4	The Supplier must make and store backup copies of the Customer Data stored within the Supplier's systems in accordance with Best Industry Practice.
	Retention of Customer Data	19.7	The Supplier must retain Customer Data, as well as complete, accurate and up-to-date records of all Customer Data accessed, collected or changed by it, in accordance with the requirements for that data under the Statement of Work and clause 19, and subject to the directions of the Customer. Unless the Customer directs otherwise in writing, such information is to be retained for a period of seven years following termination or expiry of this Agreement.
42.	Security Incident	22.2(a) Schedule 1	The timeframe application under clause 22.2(a) is as soon as possible (and in any case within 48 hours).
FEES AND PAYMENT			
43.	Payment Particulars	24.1(a)	As set out in the Payment Schedule and the relevant Statement of Work.
	Price model (exception)	24.1(b)	As set out in the Payment Schedule.
44.	Benchmarking	24.2	Benchmarking does not apply.
45.	Invoicing timeframes	24.4(a)	The default timeframes apply, unless otherwise expressly specified in the relevant Statement of Work.
46.	Payment requirements and invoicing	24.5(a)	The Supplier must submit Correctly Rendered Invoices for payment. The Supplier can submit invoices via the Customer's Ariba system. Alternatively, invoices are to be sent via email to: GIPA Act s.14, Table 3(f) and 4(d). The Supplier is advised that this email address is only used for the auto-collection of new invoices only. Invoices sent to this mailbox must satisfy the criteria below in order to ensure that they can be processed and paid: (a) all invoices must be sent as PDF attachments; (b) only one 'PDF' file, containing only one invoice, should be attached;

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			(c) 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 (d) a valid contract number and/or purchase order number must be quoted on all invoices. All queries or requests for assistance should be directed to the TSS Procurement Service Desk on [REDACTED] GIPA Act s.14, Table 3(f) and 4(d).
	Time for payment	24.5(a) Schedule 1	The Customer will pay any Correctly Rendered Invoice within 30 days of receipt of the Correctly Rendered Invoice.
	Purchase order number and Agreement reference number for Correctly Rendered Invoices	Generally	The Customer will notify the purchase order number (and, to the extent applicable, the Agreement reference number) to be specified on Correctly Rendered Invoices to the Supplier.
	Supplier's nominated bank account	24.5(a)(i)	The Supplier's bank account details to which payments should be transferred will be as stated in the Correctly Rendered Invoice.
RISK ALLOCATION AND MANAGEMENT			
47.	Business Contingency Plan	25.2(a) 25.2(b)(iii) 25.2(d)	The Supplier must provide a Business Contingency Plan that meets the requirements of this Item 47 and the Statement of Work. For the purposes of this Agreement, the Business Contingency Plan is a Deliverable. The Supplier must prepare a Business Contingency Plan (specific to the Deliverables and Services provided to the Customer under this Agreement) for the approval of the Customer within 30 days of the Commencement Date. The Business Contingency Plan must: (a) comply with Best Industry Practice (including in relation to the planned continued provision of the Services to the Customer where there is an interruption to the Customer's business that is contemplated by the Business Contingency Plan) and must at a minimum be consistent with the Customer's business continuity policies; (b) specify when the Business Contingency Plan is to be activated; (c) define relevant interruptions to the Customer's business;

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No	Item	Ref	Description or selection
			(d) specify: (i) the steps to be taken to recover one or more of the Deliverables or Services; (ii) in the instance of an interruption to the Customer's business, the steps that will ensure (insofar as reasonable) the Deliverables or Services are fully operable within 5 hours of an interruption to the Customer's business or otherwise in accordance with the Service Levels; (iii) the Supplier Personnel, Customer Personnel and other persons to be involved; and (iv) the communications to be implemented, when the Business Contingency Plan is activated; (e) enable (insofar as reasonable) the Deliverables and Services to be provided in accordance with the Service Levels (except as specifically agreed by the Customer); (f) specify the training and testing required before activating the Business Contingency Plan; (g) specify and address all other matters requested by the Customer; (h) include strategies, plans and procedures that will limit downtime of the Deliverables or Services; (i) include procedures to reduce the impact of a Force Majeure Event and Disasters on the Deliverables and Services; (j) cover all risks potentially caused by or arising in connection with a Contagion; and (k) be specifically tailored for the Customer. The Supplier must make such amendments to the Business Contingency Plan as the Customer may reasonably request from time to time that relate to the provision of Deliverables or Services or the performance of the Supplier's obligations under this Agreement.

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No	Item	Ref	Description or selection
			The Supplier acknowledges that, at the Commencement Date, there is an epidemic or pandemic (Contagion), being the ongoing global outbreak of the Contagion known as the 'SARS-CoV-2 virus (the Novel Coronavirus Covid-19)'. The Supplier confirms it has conducted due diligence investigations in respect of both the actual and potential impact of the Contagion, and the Supplier has addressed such in its Business Contingency Plan in accordance with the requirements of this Agreement applying to such Business Contingency Plan. The Supplier must review and update the Business Contingency Plan six monthly, as well as in any other circumstances in which it is required to do so under this Agreement. The Supplier must test the operability of the Business Contingency Plan annually.
48.	Step-In Rights	26	Clause 26 does not apply.
49.	Insurance	27(a)	GIPA Act s.14, Table 4(b) and 4(d).
	Cyber security and other insurances	27(a)	
		27(b)	
50.	Performance Guarantee	28.1	GIPA Act s.14, Table 4(b) and 4(d).
51.	Financial Security	28.2	Not applicable - the Supplier is not required to provide a Financial Security.
52.	Termination for convenience	29.2(b)(ii)B	GIPA Act s.14, Table 4(b), 4(c) and 4(d).

No	Item	Ref	Description or selection
			GIPA Act s.14, Table 4(b), 4(c) and 4(d).
53.	Limitation Amount	34.5(b)	GIPA Act s.14, Table 4(b) and 4(d). "Paid or payable" includes amounts that at the relevant time have not been paid but that would have become payable if the parties performed all their obligations under this Agreement and all Statements of Work entered into under this Agreement. It is not limited to amounts that at the relevant time have become due and payable.

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No	Item	Ref	Description or selection
	Alternate approach to uncapped liability	34.5(c)	GIPA Act s.14, Table 4(b) and 4(d).
	Non-excluded Losses	34.6(b)(ii)	GIPA Act s.14, Table 4(b) and 4(d).
54.	Alternative dispute resolution	35	The dispute resolution procedure in clauses 35.2 to 35.3 applies.
55.	Prolonged Force Majeure Event	36.4	For the purpose of clause 36.4, the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 29.1(d) if a Force Majeure Event prevents or inhibits the Supplier's performance of any obligation required to be performed under this Agreement for 60 or more days.

PART B: Cloud Module

Not applicable.

PART C: Services Module

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

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

No	Item	Mod ref	Description or selection
SCOPE			
56.	Services	1.1	The Supplier must provide Services that include those described in the Statement of Work and any services, functions and responsibilities not specifically identified in this Agreement that are: (a) reasonably related to the services specified above to be provided by the Supplier, or (b) reasonably required for the proper performance and provision of the services to be provided or other obligations and responsibilities of the Supplier.
57.	Non-ICT Services	Generally	Not applicable, unless otherwise specified in the Statement of Work.
58.	Services Period	1.3 Annexure A	The Supplier must provide the Services for the Term, which includes any Renewal Period.

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No	Item	Mod ref	Description or selection
SUPPORT SERVICES			
59.	Support Services	2.1 2.	The Supplier must provide Support Services in accordance with the requirements of Part D (Software Module: Non-Cloud) (Part D), the Statement of Work and the Specifications.
	Support Period	2.2 Annexure A	Refer to Part D for Support Services, the Statement of Work and the Specifications.
60.	Help desk	2.4	Refer to Part D for Support Services, the Statement of Work and the Specifications.
61.	Software Support Services	3.1 3.2(b) Annexure A	Refer to Part D for Support Services, the Statement of Work and the Specifications.
	Updates	3.2	Refer to Part D for Support Services, the Statement of Work and the Specifications.
	New Releases	3.2	Refer to Part D for Support Services, the Statement of Work and the Specifications.
	Security Corrections	3.2(f)	Refer to Part D for Support Services, the Statement of Work and the Specifications.
62.	Period to maintain the Software after provision of Updates and New Releases	3.2(g)	Refer to Part D for Support Services, the Statement of Work and the Specifications. The Supplier must agree with Customer whether it will be an 18 month period, or a longer period, before the acknowledgment and agreement in clause 3.2(g) can apply.
63.	Support Services for Hardware and Other ICT Deliverables	4.1 4.2 Annexure A	Not applicable.
64.	Preventative Maintenance	4.3 Annexure A	Refer to Part D for Support Services, the Statement of Work and the Specifications.
65.	Engineering changes	4.4	Refer to Part D for Support Services, the Statement of Work and the Specifications.
66.	Remedial Maintenance	4.5 Annexure A	Refer to Part D for Support Services, the Statement of Work and the Specifications.

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No	Item	Mod ref	Description or selection
DEVELOPMENT SERVICES			
67.	Development Services	5.1 Annexure A	The Supplier must provide Development Services as described in the Statement of Work and required by the Customer, including to ensure the Software Solution is compatible with the Customer Environment and complies with the Specifications and other requirements specified in the Order Documents.
68.	Software Solution	5.2 Annexure A	The Supplier must provide the Software Solution as described in the Statement of Work and required by the Customer, and carry out the Development Services to ensure that the Software Solution is compatible with the Customer Environment, complies with the Specifications and meets other related requirements of the Customer in line with the same, including as specified in this Agreement.
69.	Design Specification	5.3(a) 5.3(b)	The Supplier must prepare a Design Specification with respect to the provision of the Software Solution and the Development Services that is consistent with the requirements of clause 5.3 of the Services Module and otherwise meets all other requirements of the Customer to ensure the Software Solution is satisfactory and will meet the Specifications. For clarity, the Design Specification includes each of the following separate Document Deliverables: (a) the User Requirement Specification; (b) the System Requirement Specification; (c) the Interface Control Documents; and (d) the System Architecture Description.
70.	Service Levels or criteria that apply to the Development Services	5.4(d)	The Service Levels and other criteria that apply to the Development Services are outlined in the Statement of Work.
71.	Alternative project delivery methodology	5.5	The Parties agree that if the relevant Statement of Work describes an alternative development methodology (e.g. Agile methodology) then that delivery methodology will apply to the Services provided under that Statement of Work as appropriate.
SYSTEM INTEGRATION SERVICES			
72.	Systems Integration Services	6.1 Annexure A	The Supplier must provide the System Integration Services as required by the Customer, outlined in the Statement of Work and Specifications.
	Scope of Systems Integration Services	6.2	The Supplier must supply System Integration Services as agreed by the Customer and in accordance with its instructions as may be updated from time to time, including to ensure all aspects and components of the System are designed, configured, installed and tested so that they meet the requirements of the Specifications.

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No	Item	Mod ref	Description or selection
	SI Plan and SI Specifications	6.3	The default positions apply. The Supplier must prepare these documents for the Customer as a Deliverable prior to starting the Systems Integration Services.
DATA SERVICES			
73.	Data Services	7.1 7.2(a) Annexure A	The Supplier must provide Data Services.
74.	Backup	7.4	Not applicable.
75.	Data cleansing	7.5	Not applicable.
76.	Data analysis	7.6	The Supplier must provide data analytics Services as required by the Customer, and supply the appropriate technical resources to lead collaborative workshops with the Customer to determine the data analysis needed to inform the Data Migration Plan and delivery of the Services.
77.	Data migration	7.7	The Supplier must perform data migration Services as required by the Customer, an outline of which is set out in the Statement of Work and the Specifications.
78.	Data Migration Plan	7.7	The Supplier must prepare a Data Migration Plan as outlined in the Statement of the Work and the Specifications, and as agreed with the Customer.
OTHER PROFESSIONAL SERVICES			
79.	Professional Services	8.1 Annexure A	The Customer must provide any Professional Services required to be provided under the Statement of Work.
	Specifications and standards	8.2	The requirements applicable to any Professional Services are as set out in the Statement of Work.
80.	Dates for Delivery and timeframes	8.2 8.3	The Dates for Delivery and timeframes are as set out in the Statement of Work.
MANAGED SERVICES			
81.	Managed Services	9.1 9.2 Annexure A	Not applicable.
	Transition-In Services	9.3	Not applicable.
82.	Procedures Manual	9.4	Not applicable.

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No	Item	Mod ref	Description or selection
83.	Managed Third Party Contracts	9.5 Annexure A	Not applicable.
84.	Assets	9.6 Annexure A	Not applicable.
85.	Transition-Out Services	9.7	Not applicable.
TRAINING SERVICES			
86.	Training Services	10.1	The Supplier must provide all training Services and Deliverables in accordance with Part D, the Statement of Work and the Specifications.
	Training Reports	10.2	Unless the Customer advises otherwise, the Supplier must provide Training Reports and the default requirements apply.
GENERAL			
87.	Additional/ancillary Deliverables and Services	11.1 11.2	The Customer must provide any additional/ancillary Deliverables and Services required to be provided under the Statement of Work.
88.	Records	12	The default position applies.
89.	Operating procedures	13(a)(iv)	As referenced in the User Documentation.

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

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

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

No	Item	Mod ref	Description or selection
SCOPE			
90.	Scope	1.1 2.1(a) 9.1	The Supplier must provide: (a) Licensed Software; and (b) Software Support Services (including for any software provided as part of the Development Services in Part C), as described in the Statement of Work and any services, functions and responsibilities not specifically identified in this Agreement that are: (c) reasonably related to the services specified above to be provided by the Supplier, or (d) reasonably required for the proper performance and provision of the services to be provided or other obligations and responsibilities of the Supplier.
	Licensed Software and Software Support Services	1.1 2.1(a) 9.3(a) Annexure A	The Supplier must supply the Licensed Software, Software Support Services and associated Deliverables in accordance with the Statement of Work and the Specifications.
SUPPLY OF LICENSED SOFTWARE			
116.	Dates for Delivery	2.1(b)	The Date for Delivery of the Licensed Software, the User Documentation and the Third Party Components (if any) and other relevant Deliverables are set out in the relevant Statement of Work.
	Installation	2.1(c) 2.2	The Supplier is responsible for installing the Licensed Software, but only to the extent set out in the relevant Statement of Work.
	Download of Licensed Software	2.1(d)	The default position applies.
117.	Data backups by the Customer	2.3(a)	The default position applies.
	Data backups by the Supplier	2.3(b)	Not applicable.

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No	Item	Mod ref	Description or selection
118.	Licence Period	3.1 Annexure A	The Licence Period is the Term.
	Licensing model	3.2	GIPA Act s.14, Table 4(b) and 4(d).
	Permitted Users	3.2 Annexure A	The Customer may permit any Personnel or subcontractors nominated by the Customer to use the Licensed Software from time to time for the Permitted Purposes.
	Permitted Purposes	3.3 Annexure A	The Permitted Purposes include any of the purposes described in clause 3.3(i) to 3.3(iv) of the Software Module (Non-Cloud) for the Transport Cluster (in addition to the Customer), and the business purposes of the Transport Cluster.
	Scope of licence	3.3	The default position of clause 3.3(b) of the Software Module (Non-Cloud) applies.
119.	Updates and New Releases - General	4.1(a)	The Supplier must offer and provide Updates, New Releases as part of the Licensed Software licence.
	Updates	4.2(a) 4.2(c)	No alternative arrangements apply.
	New Releases	4.2(a) 4.2(c)	No alternative arrangements apply.
	Security Corrections	4.2(e)	No alternative arrangements apply.
	Period to maintain the Licensed Software after provision of Updates and New Releases	4.2(f)	The default 18 month period under clause 4.2(f) applies. However, without limiting clause 4.2(f), if the Customer rejects the Update or New Release offered by the Supplier, the Supplier must continue to offer standard support for the current version of the Licensed Software and the previous three New Releases.
120.	Transfer rights	5.1	The Customer may sub-license and transfer its excess licences and associated licensing rights and obligations under this Agreement to any Government Agency or other Eligible Customer as nominated by the Customer from time to time.
121.	Restrictions	6.1(a)	Clause 6.1(a)(iv) is not applicable.
122.	End of Licence Period	6.2(a)	Any return or destruction of copies of the Licensed Software that is required of the Customer will be six months, or such other period agreed by the parties in writing, and recorded in the Transition-Out Plan for the approval of the Customer.
123.	Third Party Components	7.1(b) Annexure A	There are no Third Party Components and in any event, no separate or alternative terms apply.

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No	Item	Mod ref	Description or selection
	Third party warranties	7.2	Pass through and third party warranties apply in addition to any other rights or remedies that apply under this Agreement.
124.	Record keeping	8.1	Not applicable.
125.	Software Audits	8.2(b) 8.2(c)	The default position in clause 8.2 applies, and Software Audits are permitted to be undertaken once per calendar year only.
	Results and consequences of Software Audit	8.3(b)	The default position in clause 8.3(b)(ii) applies.
SOFTWARE SUPPORT SERVICES			
126.	Support Period	9.2	The Supplier must provide the Support Services for the Term, which includes any Renewal Periods.
	Software Support Services	9.3(b)	The Supplier must provide the Software Support Services including as required by the Specifications and described in the relevant Statement of Work.
127.	Help desk	10	The Supplier must provide help desk Services at the times and during the hours of operation as described in the Statement of Work and Specifications.
TRAINING			
128.	Training Services	11.1	The Supplier must provide the training Services and Deliverables as set out in the relevant Statement of Work and Specifications.
	Training Reports	11.2	Unless the Customer advises otherwise, the Supplier must provide Training Reports and the default requirements apply. Training reporting requirements are otherwise as set out in the relevant Statement of Work and Specifications.
GENERAL			
129.	Additional/ancillary Deliverables and Services	12	As set out in the relevant Statement of Work.
130.	Export Laws	13(a)(ii) Annexure A	GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).
131.	Records	14	The default position applies.
132.	Operating procedures	15(a)(iv)	As referenced in the User Documentation.

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Annexure A to Order Form – Supplier's Documents

Not applicable.

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Annexure B to Order Form – Statement of Work

Refer to separate document attached.

Annexure C to Order Form – Additional Conditions**ADDITIONAL CONDITION 1: NOT USED****ADDITIONAL CONDITION 2: ADDITIONAL STATEMENTS OF WORK**

1. Overview

This Additional Condition applies to provide a procedure where the Customer:

- (a) is procuring Services and/or Deliverables or other Supplier's Activities from the Supplier under this Agreement through a current Order Form and related Statement of Work; and
- (b) is considering procuring a supplemental, related but technically separate scope of services, deliverables and/or other activities (**Additional Items**) under this Agreement and that same Order Form, except through a new, additional Statement of Work to that Order Form (**Additional Statement of Work**).

2. Effect

For clarity, this Additional Condition:

- (a) has as its main purpose the establishment of a procedure to agree an Additional Statement of Work which, once formed, will be treated as a Statement of Work incorporated within or attached to the Order Form under this Agreement with the same priority accorded to Statements of Work under clause 1.2 of this Agreement;
- (b) does not require the Change Control Procedure in clause 10 of this Agreement to be followed; and
- (c) otherwise exists alongside, and does not limit or prejudice, the Customer's other rights or available procedures under this Agreement.

3. Additional Statement of Work Mechanism**3.1 Customer may issue Additional Statement of Work Proposal**

- (a) If the Customer is considering procuring Additional Items from the Supplier through an Additional Statement of Work, the Customer may issue to the Supplier an Additional Statement of Work Proposal in substantially the same form as Attachment A to this Additional Condition 2.
- (b) Each Additional Statement of Work Proposal issued by the Customer under clause 3.1(a) of this Additional Condition 2 must:
 - (i) specify the details required by Parts 1 and 2 of the Additional Statement of Work Proposal outlined in Attachment A to this Additional Condition 2: and
 - (ii) must attach:
 - A. Attachment 1 of the Additional Statement of Work Proposal, which sets out the proposed Additional Statement of Work; and

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- B. Attachment 2 of the Additional Statement of Work Proposal, which sets out any Service Levels that will apply to the particular Additional Items and Additional Statement of Work that the Customer is considering (if any), in addition to those set out in this Agreement.
- (c) The Customer may withdraw an Additional Statement of Work Proposal at any time prior to entering into an Additional Statement of Work.

3.2 Supplier may submit Draft Additional Statement of Work

- (a) Where the Customer has issued an Additional Statement of Work Proposal to the Supplier, the Supplier must:
 - (i) prepare and submit a Draft Additional Statement of Work in accordance with clause 3.2(b) of this Additional Condition 2; or
 - (ii) notify the Customer that the Supplier will not submit a Draft Additional Statement of Work,

within the time specified in the Additional Statement of Work Proposal or within the time otherwise agreed by the parties (or if no time is specified or agreed, within 10 Business Days of being issued the Additional Statement of Work Proposal).
- (b) Where the Supplier submits a Draft Additional Statement of Work in accordance with clause 3.2(a)(i) of this Additional Condition 2, the Supplier must do so by returning to the Customer a Draft Additional Statement of Work in substantially the form required by Schedule 3 and:
 - (i) setting out the proposed Price in Attachment 1 of the Additional Statement of Work Proposal, which must be determined using rates and prices calculated in accordance with, and not exceeding, the rates and prices in the Payment Particulars where and to the extent those rates and prices are applicable to the work or services to which the Additional Statement of Work Proposal relates; and
 - (ii) duly completing any remaining relevant particulars in Attachment 1 of the Additional Statement of Work Proposal and setting out any amendments the Supplier (acting reasonably) proposes to the Additional Statement of Work Proposal issued by the Customer,

(Draft Additional Statement of Work).

3.3 Review of Draft Additional Statement of Work

- (a) After receiving a Draft Additional Statement of Work from the Supplier under clauses 3.2(a)(i) or 3.3(c)(i) of this Additional Condition 2, the Customer may:
 - (i) prepare and issue to the Supplier a document titled "Additional Statement of Work" in draft form, substantially in the form of Attachment B (or in any other form chosen by the Customer); or
 - (ii) by notice in writing to the Supplier, within 20 Business Days (or such other longer period agreed by the parties):
 - A. request the Supplier to submit an amended Draft Additional Statement of Work, in which case the Customer's notice must set out the aspects of the Draft Additional Statement of Work which require amendment; or

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B. reject the Draft Additional Statement of Work.

- (b) If the Customer does not issue:
- (i) an Additional Statement of Work in draft form, under clause 3.3(a)(i) of this Additional Condition 2; or
 - (ii) a notice under clause 3.3(a)(ii) of this Additional Condition 2, within the timeframe required by clause 3.3(a)(ii) of this Additional Condition 2,
- the Customer will be deemed to have rejected the Draft Additional Statement of Work.
- (c) If the Customer requests the Supplier to submit an amended Draft Additional Statement of Work under clause 3.3(a)(ii)A of this Additional Condition 2, the Supplier must, within 5 Business Days (or such other period agreed by the parties):
- (i) submit an amended Draft Additional Statement of Work that addresses the issues identified in the Customer's notice under clause 3.3(a)(ii)A of this Additional Condition 2; or
 - (ii) notify the Customer that the Supplier will not submit an amended Draft Additional Statement of Work, in which case the Supplier's original Draft Additional Statement of Work is deemed to be rejected.
- (d) Where the Supplier submits an amended Draft Additional Statement of Work under clause 3.3(c)(i) of this Additional Condition 2, this clause 3.3 will reapply.

3.4 Refusal by Supplier to provide or amend a Draft Additional Statement of Work

If the Supplier notifies the Customer that:

- (a) under clause 3.2(a)(ii) of this Additional Condition 2, the Supplier will not submit a Draft Additional Statement of Work; or
 - (b) under clause 3.3(c)(ii) of this Additional Condition 2, the Supplier will not submit an amended Draft Additional Statement of Work,
- then:
- (c) the Supplier must provide the Customer with detailed reasons why the Supplier will not submit the Draft Additional Statement of Work or the amended Draft Additional Statement of Work (as the case may be); and
 - (d) the Supplier must provide the Customer with any further information reasonably requested by the Customer regarding the reasons why the Supplier will not submit the Draft Additional Statement of Work or the amended Draft Additional Statement of Work (as the case may be).

3.5 Costs

The Supplier is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated by this clause 3 of this Additional Condition 2 and the Supplier is not entitled to make, and the Customer will not be liable upon, any Claim in respect of such costs.

4. Formation of Additional Statements of Work

- (a) If the Customer issues a document titled "Additional Statement of Work" in accordance with clause 3.3(a)(i) of this Additional Condition 2, the Supplier must:
 - (i) co-operate and work with the Customer to finalise and execute the relevant Additional Statement of Work; and
 - (ii) provide to the Customer, on the date that the Supplier executes the relevant Additional Statement of Work, a copy of the executed relevant Additional Statement of Work.
- (b) Without limiting the methods by which a party may execute an Additional Statement of Work, a party may execute an Additional Statement of Work physically, electronically, digitally or by any other legally effective means.
- (c) The parties agree that each time they enter into an Additional Statement of Work:
 - (i) the Additional Statement of Work forms part of this Agreement, and will not constitute a separate contractual relationship between the parties; and
 - (ii) each party must carry out their respective obligations under that Additional Statement of Work from the date on which it is executed by the parties.

5. Definitions

In this Additional Condition, unless the contrary intention appears:

Additional Items has the meaning given in clause 1(b) of this Additional Condition 2.

Additional Statement of Work has the meaning given in clause 1(b) of this Additional Condition 2.

Additional Statement of Work Proposal means a proposal in the form set out in Attachment A of this Additional Condition 2 (or in a form chosen by the Customer), issued under clause 3.1 of this Additional Condition 2.

Draft Additional Statement of Work has the meaning given in clause 3.2(b) of this Additional Condition 2.

Attachment A to Additional Condition 2 - Additional Statement of Work Proposal

Part 1 of the Additional Statement of Work Proposal - Identification
This Additional Statement of Work Proposal is issued by the Customer under the Agreement between [Insert name of Customer] and [Insert name of Supplier]
ICTA No: [Insert]
Additional Statement of Work Proposal No: [Insert]
Supplier response required by: [Insert]
Additional Statement of Work Proposal issued by: [Insert name of Customer]
Part 2 of the Additional Statement of Work Proposal - Attachments
Proposed Statement of Work
Proposed Additional Service Levels (if any)

Attachment B to Additional Condition 2 - Additional Statement of Work

Part 1 of the Additional Statement of Work - Identification
This Additional Statement of Work is issued by the Customer under the Agreement between [Insert name and ABN of Customer] and [Insert name and ABN of Supplier]
ICTA No: [Insert]
Additional Statement of Work No: [Insert]
Customer: [Insert name, ABN and address of Customer]
Supplier: [Insert name, ABN and address of Supplier]
Part 2 of the Additional Statement of Work - Attachments
Statement of Work
Additional Service Levels (if any)

Executed as an agreement:

Signed for and on behalf of **Sydney Trains ABN 38 284 779 682** by its authorised representative, but not so as to incur personal liability, in the presence of:

Signature of witness

Signature of authorised representative

Name of witness in full

Name of authorised representative in full

☐ If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000, and the witness affixed their electronic signature to a counterpart of this document.

☐ If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

Executed by **Siemens Mobility Pty Ltd ABN 39 625 304 556** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

ADDITIONAL CONDITION 3: SUPPLEMENTAL TERMS**1. Use by the Transport Cluster**

- (a) The Supplier acknowledges and agrees that:
- (i) the Deliverables and the Services are to be provided to, and for the benefit of, the Customer and the Transport Cluster, and the Customer and each Cluster Member may make use of the Deliverables and Services and other items or activities under and in accordance with this Agreement;
 - (ii) any obligation of the Supplier under this Agreement to perform an act or supply any Deliverable, Service or other item or activity is an obligation to perform that act or supply that Deliverable, Service, item or activity for the benefit of the Customer and each Cluster Member;
 - (iii) a breach of Agreement or negligence by the Supplier in relation to performance or failure to perform this Agreement may result in a Loss being suffered by the Customer and other Cluster Members;
 - (iv) in addition to entering into this Agreement in its own right, the Customer also enters into this Agreement as agent for each Cluster Member for the sole purpose of:
 - A. each Cluster Member obtaining (and being able to enforce directly or through the Customer) any rights granted to the Customer; and
 - B. each Cluster Member obtaining (and being able to enforce directly or through the Customer) the benefit of the indemnities in this Agreement,
 as if references to the Customer under this Agreement include each Cluster Member;
 - (v) for the purpose of this Agreement, the Customer shall be deemed to be acting as the trustee of the benefits expressed to be given to each Cluster Member under this Agreement and with their respective authority; and
 - (vi) any obligation of the Customer under this Agreement may be performed by the Customer or any other Cluster Member.
- (b) The Supplier:
- (i) acknowledges that any claim it makes arising out of or relating to this Agreement must be made against the Customer and not against any other Cluster Member;
 - (ii) agrees that it will not make a claim against any Cluster Member (other than the Customer) arising out of or relating to this Agreement; and
 - (iii) agrees that Losses suffered by any Cluster Member arising from a breach of this Agreement, or other act or omission (including negligence), by the Supplier are deemed to be the Losses of, and recoverable by, the Customer for the purposes of this Agreement, as if those Losses were suffered by the Customer itself.

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- (c) The Customer holds the benefit of the Supplier's obligations under this Agreement as principal and on trust for each Cluster Member.
- (d) In addition to and without limiting the rights granted under any other provision in this Agreement, the Customer and each Cluster Member are entitled to use the Deliverables, Services and other items or activities for all purposes necessary to enable the Customer and each Cluster Member to carry out their respective business, functions and operations, including to administer, update or process its own data or the data of the Transport Cluster.
- (e) The Customer is entitled to exercise all rights, powers, authorities, discretions or remedies conferred on the Customer by this Agreement or any law as if the Customer were the sole beneficiary of the undertakings, promises, representations, indemnities and warranties made and obligations owed by the Supplier under this Agreement.
- (f) Subject to paragraph 1(g)(i) and 1(g)(iii), each Cluster Member may enforce any right or term of this Agreement that is provided for the benefit of the Customer, under and in accordance with this Agreement.
- (g) The Customer acknowledges and agrees that:
 - (i) the limitations and exclusions applying to the Supplier's liability under this Agreement apply in the aggregate to all Losses suffered or incurred by the Transport Cluster under this Agreement;
 - (ii) the limitations and exclusions applying to the Customer's liability under this Agreement apply in the aggregate to all Claims made against the Transport Cluster under this Agreement; and
 - (iii) to the extent possible in the circumstances, the Customer will make all Claims against the Supplier on behalf of the Transport Cluster.
- (h) For the purposes of this Agreement:
 - (i) **Cluster Member** means a member of the Transport Cluster; and
 - (ii) **Transport Cluster** means Transport for NSW (including Roads and Maritime Services), Sydney Trains, NSW Trains, Sydney Metro, State Transit Authority of NSW, Sydney Ferries, Transport Service, Transport Asset Holding Entity, the Office of Transport Safety Investigations and any other government agency or department that currently forms, may in the future form, part of the NSW Government's Transport cluster portfolio.

Annexure D to Order Form –Transport for NSW Information Security Standard clarifications

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

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GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

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GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

GIPA Act s.14, Table 1(f), 2(d), 2(e) and 3(f).

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
<u>[Insert version number; e.g. version 1.0]</u>	<u>[Insert; e.g. Draft / Final]</u>	<u>[Insert date]</u>	<u>[Insert Name and Title]</u>	<u>[Briefly summarise the nature of the revision]</u>

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

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

GIPA Act s.14, Table 1(g), 4(b), 4(c) and 4(d).

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Schedule 5 - Change Request Form

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

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

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

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

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

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

Background

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

1. Definitions and Interpretation**1.1 Definitions**

In this Deed:

Confidential Information means information that:

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

but excludes information:

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

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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) establish, maintain, enforce and continuously improve security measures and safeguards in accordance with Best Industry Practice, designed to 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 reasonable 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 establish, maintain, enforce and continuously improve security measures and safeguards in accordance with Best Industry Practice designed to 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 (acting reasonably) 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 (which may occur via the Supplier) 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 (acting reasonably), 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 (except to the extent it is contained in systems, archives or backups which are inaccessible and cannot be practicably deleted);
- (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.

3.6 Retention of Confidential Information and Personal Information

Subject to the Recipient's compliance with its other obligations under this Deed on an ongoing basis, but notwithstanding clauses 3.5(a) and 3.5(b), the Recipient will be entitled to retain copies of records of Confidential Information and/or Personal Information to the extent, and only for the period, that such retention is mandated by any laws to which the Recipient is subject.

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.

5.6 Electronic execution

Subject to applicable laws, the parties may execute this deed and any document entered into under it, electronically (including through an electronic platform).

Executed as a deed poll:

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

[If the Recipient is an individual]

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

_____ Signature of witness	_____ Signature of Recipient
_____ Full name and position of witness	_____ Full name and position of Recipient
_____	_____ Date

[If the Recipient is a company]

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

_____ Signature of director	_____ Signature of director/company secretary
_____ Full name of director	_____ Full name of director/company secretary
_____ Date	_____ Date

Schedule 7 - Escrow Deed

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

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

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

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

RECITALS

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

1. Interpretation**1.1 Definitions**

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

In this deed:

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

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

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

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

Escrow Materials means the Source Code and/or object code of the Licensed Software and all other software programs owned by the Supplier, documentation, drawings and plans, as well as a list of any third party software programs that would enable a competent programmer skilled in the use of the Deliverables and any necessary development tools to keep the Deliverables in good order and repair that are stated in section 2 of the Information Schedule.

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

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

Information Schedule means Attachment 1 to this deed.

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

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the ICT Agreement for financial reasons;

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

Intellectual Property Rights means all intellectual property rights including:

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

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

New Release has the meaning given in the ICT Agreement.

Related Body Corporate has the meaning given in the ICT Agreement.

Software Application means the software application(s) specified in section 2 of the Escrow Deposit Specification Form.

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

Statement of Work has the meaning given in the ICT Agreement.

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

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

Transport Cluster has the meaning given in the ICT Agreement.

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

1.2 References to certain general terms

In the deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
 - (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
 - (e) a reference to a document (including the deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of the deed, and a reference to the deed includes all schedules, exhibits, attachments and annexures to it;
 - (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the deed, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;

- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) the word "includes" and similar expressions are not used as, nor intended to be, interpreted as words of limitation;
- (l) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (m) a reference to "\$" or "dollar" is to Australian currency or such other currency specified in the Order Documents; and
- (n) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that authority, institute, association or body.

2. Supplier's deposit obligations

2.1 Supplier to make deposits

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

- (a) within 14 days of the date of this deed;
- (b) at least once every three months;
- (c) prior to the 'Go-Live' date for each 'phase' under the initial Statement of Work (i.e. for Stage 1, phases 1.1, 1.2 and 1.3); and
- (d) within 14 days after any the New Release is incorporated into the implemented version of any Source Code then held by the Escrow Holder.

2.2 The Customer may test deposits

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

2.3 Escrow Holder to provide access

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

- (a) remove the Escrow Material from the custody of the Escrow Holder;
- (b) install, download or copy the Escrow Material onto such computer system or hardware as the Customer may reasonably specify; and

- (c) analyse and conduct reasonable tests in relation to the Escrow Material as provided for under clause 2.2.

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

2.4 Support to provide assistance with testing

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

2.5 Failure to deposit correct version in escrow

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

3. Escrow Holder's obligations

3.1 Obligations

The Escrow Holder must:

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

3.2 Limit on obligations

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

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

4. Confidentiality

The Escrow Holder must not disclose to any person:

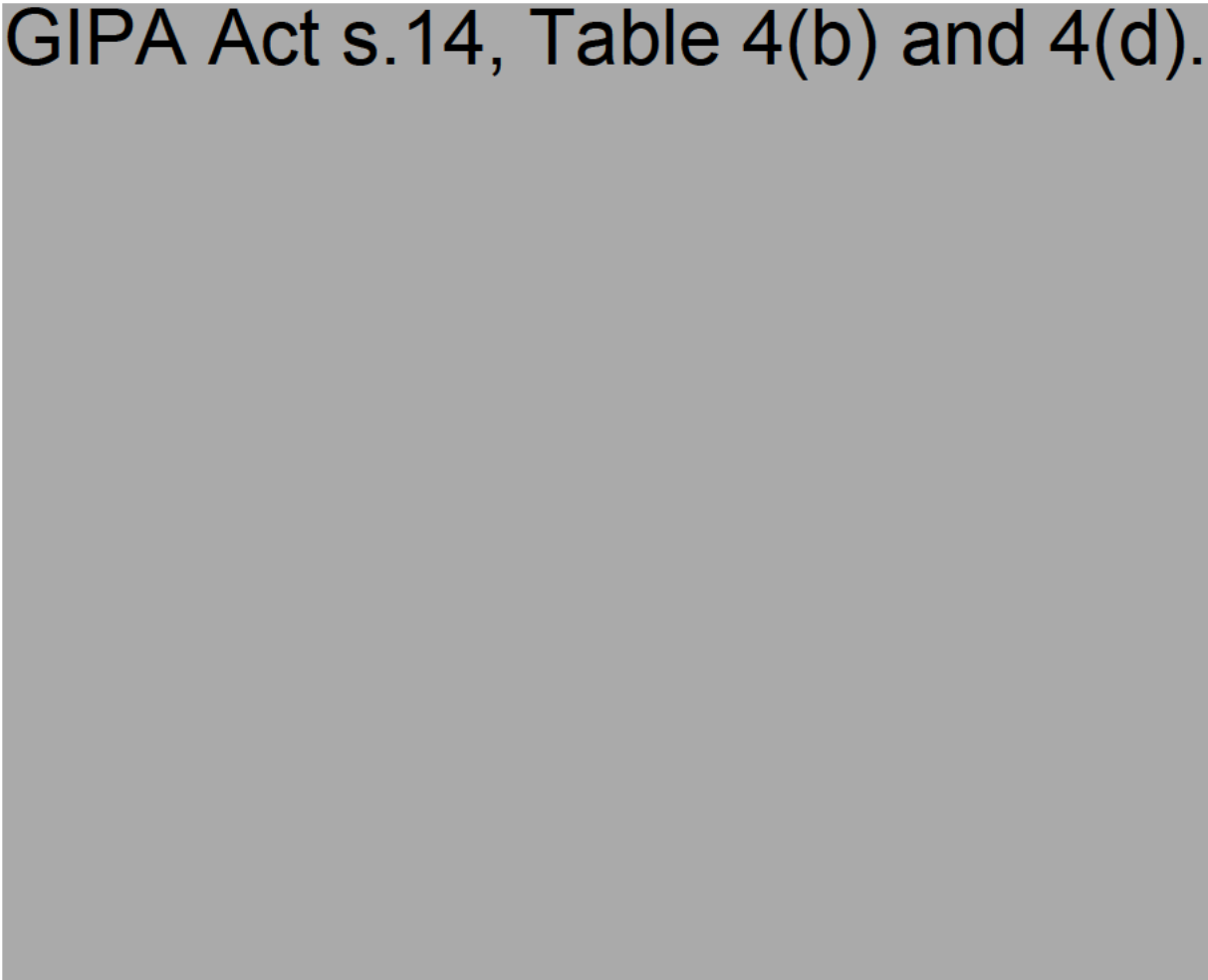
- (a) any part of the Escrow Material;
 - (b) any information about the Escrow Material; or
 - (c) any information about this deed,
- other than as permitted by this deed or as required by law.

5. Release to the Customer

5.1 The Customer may request release

If one of the following circumstances occurs:

GIPA Act s.14, Table 4(b) and 4(d).



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

5.2 Supplier may dispute release

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

5.3 Release of Escrow Material to the Customer

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

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

5.4 Grant of licence

If the Escrow Material is released to the Customer under this clause 5, then the Supplier grants the Customer a licence to use the Escrow Material on terms consistent with the ICT Agreement, provided that such licence includes a right of modification (for the purposes of using, running, supporting and/or maintaining the Software Application) and applies for the remainder of the relevant Licence Period (including any Transition-Out Period) that would have applied if the ICT Agreement had expired at the end of the relevant Term.

6. Release to Supplier

6.1 Release of Escrow Material to Supplier

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

6.2 No other release to Supplier is permitted

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

7. Release by agreement or by court order

7.1 Release by agreement

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

7.2 Release by court order

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

7.3 Notice to the Customer

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

8. Fees and charges

8.1 Payment of fees

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

8.2 Annual Fee subject to change

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

8.3 Invoices

The Escrow Holder may issue invoices as follows:

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

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

8.4 GST inclusive prices

Unless otherwise stated, the fees include GST.

9. GST

9.1 GST gross up

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

9.2 Tax invoice

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

9.3 Adjustment

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

9.4 Reimbursements

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

10. Ownership and risk

10.1 Acknowledgements

Each party acknowledges that:

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

10.2 Loss or damage to Escrow Material

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

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

10.3 Warranty

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

10.4 Act or omission of Escrow Holder

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

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

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

11. Termination

11.1 Upon insolvency

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

11.2 Upon release of Escrow Material

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

11.3 Upon provision of notice

This deed may be terminated by:

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

11.4 By the Customer or the Supplier

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

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

11.5 Consequences of an Escrow Holder termination event

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

11.6 Return of Escrow Material on termination

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

12. Notices

- (a) Any notices contemplated by this deed must be in writing and delivered to the relevant email or postal address as set out below (or to any new address that a party notifies to the others):
 - (i) to the Customer: *[Insert]*
 - (ii) to the Escrow Holder: *[Insert]*
 - (iii) to the Supplier: *[Insert]*.

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

13. No assignment

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

14. General

14.1 Discretion in exercising rights

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

14.2 Partial exercise of rights

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

14.3 Approvals and consents

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

14.4 Remedies cumulative

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

14.5 Operation of law

Rights given to the parties under this deed and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

14.6 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) Nothing in this clause 14.6 prevents any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

14.7 No partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as constituting the relationship between the Customer, the Supplier and the Escrow Holder as that of partners, joint venturers or any other fiduciary relationship.

14.8 Entire agreement

This deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this deed; or
- (b) any correspondence or other documents relating to the subject matter of this deed that may have passed between the parties prior to the date of this deed and that are not expressly included in this deed.

14.9 Joint and several liability

- (a) The obligations of the Escrow Holder, if more than one person, under this deed, are joint and several. Each person constituting the Escrow Holder acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the others as if those acts or omissions were its own and the Customer may proceed against any or all of them.
- (b) The obligations of the Supplier, if more than one person, under this deed, are joint and several. Each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the others as if those acts or omissions were its own and the Customer may proceed against any or all of them.

14.10 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

14.11 Provisions limiting or excluding liability

Any provision of this deed which seeks to limit or exclude a liability of the Customer, the Supplier or the Escrow Holder is to be construed as doing so only to the extent permitted by law.

14.12 Variations

This deed may only be varied by a document signed by or on behalf of the Customer, the Supplier and the Escrow Holder.

14.13 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by the Customer will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by the Customer under this deed will only be effective and binding on the Customer if it is given or confirmed in writing by the Customer.
- (c) No waiver by the Customer of:
 - (i) a breach of any term of this deed; or
 - (ii) any other failure by the Escrow Holder to comply with a requirement of this deed,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this deed or failure to comply with any other requirement of this deed.

14.14 Survival

Clauses 3.1(e) and 3.1(f) ("Obligations"), 4 ("Confidentiality"), 5.4 ("Grant of licence"), 8.4 ("GST inclusive prices"), 9 ("GST"), 10.3 ("Warranty"), 11.5 ("Consequences of an Escrow Holder termination event"), 11.6 ("Return of Escrow Material on termination"), 14 ("General"), 14.15 ("Governing Law and jurisdiction") and 1 ("Interpretation") survive the termination (for any reason) of this deed.

14.15 Governing Law and jurisdiction

This deed is governed by the laws applicable in the State of New South Wales, Australia. Each party irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the courts of New South Wales, Australia and the courts entitled to hear appeals from those courts.

14.16 Electronic execution

Subject to applicable laws, the parties may execute this deed and any document entered into under it, electronically (including through an electronic platform).

Attachment 1 to Escrow Deed - Information Schedule

1. Fees and charges

Establishment Fee: (first year) \$[] plus GST

Annual Fee: (first year and subsequent years) \$[] plus GST
(subject to increases under clause 8.2)

2. Escrow Material

- (a) the Source Code which incorporates computer programs or computer interfaces;
- (b) all documentation relating to the material referred to in paragraph (a) which a reasonably qualified programmer would require for understanding, maintaining and modifying such material; and
- (c) media on which that Source Code is stored or deposited:

[Insert description of media, e.g. CD ROM]

Attachment 2 to Escrow Deed - Escrow Deposit Specification Form

1. Depositor information

Company Name:

Technical Contact:

Email:

Telephone:

2. Software Application information

Product Name(s)/Version(s)

Software modules:

Product Name(s)/Version(s)	
Software modules:	

3. Media information

Medium	Quantity	Label

4. Escrow deposit details

4.1 Compilation

(a) What hardware is required to compile the Software Application?

(b) What operating system and version is used in the compilation process?

(c) What development environment (compilers/linkers/other tools) is necessary to compile the Software Application?

(d) List all third party libraries/components that are required to compile the software (brand name, version and Supplier) and indicate which (if any) are not included in the deposit?

(e) List all non-third party libraries/components that are required to compile the software.

(f) Detail the steps to follow to compile the Source Code and produce a version of the Software Application that runs.

(g) List all of the files that are created by the compilation process and are needed to successfully run the Software Application.

4.2 Running the application

(a) What hardware is required to successfully run the Software Application? If identical to item 4.1(a) please leave blank.

- (b) What software (in addition to the operating system) is required to successfully run the Software Application?

4.3 Documentation

- (a) Please provide an overview of the technical documentation.

- (b) Please provide an overview of the user documentation.

- (c) Please include a short description on the layout of the deposit.

- (d) Please include a full directory listing of the contents of the deposit media.

4.4 General information

- (a) What are the main functions performed by the Software Application?

- (b) List the additional material (reports, databases, etc.) included with the deposit.

- (c) Is a copy of the development environment (compilers and third party software) included with the deposit?

(d) Does your company use a formal coding convention? Please provide a brief description of the convention used.

5. Remarks

6. Signature

Date: Signature:

Name (please print):

For and on behalf of the Supplier

The Supplier warrants that the details set out above are correct and complete.

Executed as a deed:

Executed for and on behalf of **[Insert name of Customer]** ABN **[Insert ABN]** by its authorised delegate in the presence of:

Signature of witness

Signature of authorised delegate

Full name of witness

Full name of authorised delegate

Date

- ☐ If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000, and the witness affixed their electronic signature to a counterpart of this document.
- ☐ If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

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

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Date

Date

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

Signature of director

Full name of director

Date

Signature of company secretary/director

Full name of company secretary/director

Date

OFFICIAL: Sensitive - NSW Government**Schedule 9 - Financial Security**

This deed poll (**Deed**) is made on the date of execution of this Deed

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

Given by: **[Insert full name of Institution] of [Insert registered address] (Institution)**

Recitals

- A. By an agreement dated **[Insert] (Agreement)** between **[]** ABN **[]** (**Supplier**) and the Customer, the Supplier agreed to carry out the Supplier's Activities (as defined in the Agreement).
- B. Under the provisions of the Agreement, the Supplier is required to provide this Deed to the Customer.

Operative

- 1. The Institution unconditionally undertakes and covenants to pay to the Customer on demand without reference to the Supplier and notwithstanding any notice given by the Supplier to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Customer to a maximum aggregate sum of **(\$Insert)**.
- 2. The Institution's liability under this Deed will be a continuing liability and will continue until payment is made under this Deed of the maximum aggregate sum or until the Customer notifies the Institution that this Deed is no longer required.
- 3. The liability of the Institution under this Deed must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Agreement or the Supplier's Activities or acts or things to be executed, performed and done under the Agreement or by reason of any breach or breaches of the Agreement by the Supplier or the Customer.
- 4. The Institution may, at any time, without being required to do so pay to the Customer the maximum aggregate sum less any amount or amounts it may previously have paid under this Deed and, as a consequence, the liability of the Institution under this Deed will immediately cease.
- 5. This Deed will be governed by, and construed in accordance with, the laws of the State of New South Wales, Australia.

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Executed as a deed poll:

Signed, sealed and delivered for and on behalf of [Insert] ABN [Insert ABN] by its attorney

Name of attorney (print)

Under power of attorney

Registration Number / Book Number

(Powers of attorney created in Victoria do not have a number. Insert the date of the power of attorney instead.)

in the presence of:

Signature of witness

Signature of attorney

By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

Name of witness

Date

Statement of Work

Rail Timetable Solution for Sydney Trains



Annexure B to Order Form: Statement of Work (SoW)

Rail Timetable Solution

Hacon Ingenieurgesellschaft mbH – A Siemens Company
Lister Straße 15
30163 Hannover
Germany

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Services Module



Guidance note: This Services Module may be used for the provision of ICT Services (Non-Cloud), including:

- Support Services for both Hardware and Software (but not Licensed Software or Software as a Service);
- Development Services;
- Systems Integration Services;
- Data Services;
- Professional Services;
- Managed Services;
- Services relating to training; and
- the additional and ancillary Services and Deliverables specified in this Module.

This Module should not be used to procure Software Support Services with respect to Licensed Software. Instead, for such Services, the Customer should use the Software Module (Non-Cloud) which covers Services with respect to Licensed Software and Software Support Services for Licensed Software.

The Hardware and Other ICT Deliverables also includes Hardware Support Services. Either this Module or the Hardware and Other ICT Deliverables could be used for the provision of such Support Services. If the Customer is not procuring Hardware and if Hardware Support Services are being procured with other Services within the scope of this Module, it is preferable to use this Module to reduce the number of Modules that you need to complete.

Please refer to the Digital.NSW ICT Purchasing Framework User Guide for more details in relation to the use of this 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.

OFFICIAL: Sensitive – NSW Government*Services Module | Department of Customer Service***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.

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- (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.

OFFICIAL: Sensitive – NSW Government*Services Module | Department of Customer Service***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.

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- (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):

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- (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

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- (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;

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- 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

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- (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:

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- (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;

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- 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

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- (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;

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- 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.

OFFICIAL: Sensitive – NSW Government*Services Module | Department of Customer Service***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.

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- (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.

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- (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;

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- (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

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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 9.6.

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.

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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.



Software Module (Non-Cloud)

	Guidance note: This is the Software Module (Non-Cloud). It is to be used to procure: • Licensed Software; and/or • Software Support Services for Licensed Software. As with the other Modules, it can also be used to procure additional and ancillary Deliverables and Services. This Module includes provisions that are not otherwise covered by the ICT Agreement, but which are specific to Software (Non-Cloud). If the Customer is procuring software support Services for software other than Licensed Software, the Customer should use the Services (Non-Cloud) Module. If the Customer is procuring software development Services, the Supplier should use the Services Module (Non-Cloud), which includes specific provisions relating to the development of software. Please refer to the Digital.NSW ICT Purchasing Framework User Guide for more details in relation to the use of this Module.
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Software Module (Non-Cloud)

Background

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

PART A: PRELIMINARIES

1. General

1.1 Scope

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

1.2 Acknowledgements

The parties acknowledge and agree that the:

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

PART B: SOFTWARE LICENSING

2. Licensed Software

2.1 Provision of Licensed Software

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

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Permitted Purpose and in the manner contemplated under the Agreement; and

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

2.2 Installation by the Supplier

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

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

2.3 Backups

- (a) Unless otherwise specified in the Order Form:
 - (i) prior to loading data into the Licensed Software, the Customer must take and maintain adequate backups of the data that is loaded into the Licensed Software; and
 - (ii) the Supplier must reasonably assist the Customer in relation to any transfer or restoration of such data and in relation to any backups made by the Customer.
- (b) Where it is specified in the Order Form that it is the Supplier's responsibility to backup any data that is loaded into the Licensed Software, the Supplier must:
 - (i) perform an initial backup of such data;
 - (ii) take and maintain adequate and regular backups of such data ; and

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- (iii) carry out any other Data Services relevant to data backup specified in the Order Documents.
- (c) A backup undertaken under clause 2.3(b) must be undertaken in a manner which enables the relevant data to be accurately and completely restored, in the event that any failure of the Licensed Software causes damage to, or loss of, that data.

3. Licensing**3.1 Licence Period**

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

3.2 Licensing model

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

OFFICIAL: Sensitive – NSW Government*Software Module | Department of Customer Service***3.3 Scope of licence**

- (a) Notwithstanding clauses 17.2, 17.4 and 17.5 of the Agreement, the parties agree that the licence rights with respect to the Licensed Software will be on the terms specified in this Module.
- (b) Unless otherwise specified in the Order Form, the Supplier grants (or must procure a grant) to the Customer and its Personnel a non-exclusive licence to access and use the Licensed Software for any purpose in connection with:
 - (i) the Customer performing its obligations, and exercising its rights, under the Agreement;
 - (ii) the full use of the Licensed Software as contemplated under the Agreement, including, where applicable, installing, operating, supporting, enhancing, upgrading and maintaining the Licensed Software or integrating it with other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (iii) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Licensed Software and associated Deliverables or systems that may integrate or interoperate with the Licensed Software;
 - (iv) the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; or
 - (v) such other Permitted Purpose specified in the Order Form.
- (c) For clarity, the Customer may use or make such number of copies of the Licensed Software as are reasonably required for:
 - (i) evaluation and training;
 - (ii) backup or disaster recovery;
 - (iii) archiving or record-keeping;
 - (iv) security purposes;
 - (v) the Customer's internal business or operational purposes; or
 - (vi) exercising any of the Customer's rights at Law or under the Agreement.
- (d) The Customer may sub-license or transfer its rights under clause 3.3 to any class of Permitted Users. The Customer must use its reasonable endeavours to ensure that Permitted Users only access and use the Licensed Software for the Permitted Purpose and in accordance with this Module.
- (e) The parties acknowledge and agree that:
 - (i) the rights and licences specified in this clause 3.3 are included in the Price and will be provided to the Customer and Permitted Users on a royalty-free basis and at no additional charge to the Customer and Permitted Users, unless otherwise specified in the Order Form;

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- (ii) the Customer obtains no right, title or interest with respect to the Licensed Software, except to the extent expressly set out in the Agreement, including in this clause 3.3; and
- (iii) nothing in this Module is intended to exclude or restrict any rights that the Customer has at Law, including under Part III, Division 4A of the *Copyright Act 1968* (Cth).

4. Updates and New Releases

4.1 Application

This clause 4 applies where:

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

4.2 Updates and New Releases

- (a) The Supplier must offer and provide the Customer all:
 - (i) Updates applicable to the Licensed Software; and/or
 - (ii) New Releases applicable to the Licensed Software,

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

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- (f) If the Customer rejects the offer by the Supplier of an Update or New Release (other than any Security Correction), the Supplier must (unless otherwise specified in the Order Form) continue to maintain the version of the Licensed 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 Licensed Software may have its usefulness reduced over time;
 - (ii) the Supplier may not be able to remedy any Defects in the Licensed Software; and
 - (iii) the Supplier is not responsible for any Defect in the Licensed Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the Update or New Release been installed.
- (g) If the Customer accepts an Update or New Release the:
- (i) Specifications with respect to the Licensed Software will be deemed to be amended to the extent that the specifications for the Update and New Release supersede the existing Specifications;
 - (ii) Supplier must promptly update the User Documentation to the extent required to reflect the Update and New Release and, once updated, promptly provide a copy to the Customer;
 - (iii) Supplier must deliver the Update and New Release in a timely manner and in accordance with any timeframes agreed between the parties in writing; and
 - (iv) Agreement will continue to apply in all respects to the Update and New Release.

4.3 No restriction

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

5. Transfer of licences**5.1 Transfer rights**

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

5.2 Effect of transfer

Transfers under clause 5.1 will:

- (a) take effect from the effective transfer date as notified by the Customer to the Supplier in writing; and

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

6. Additional licensing conditions**6.1 Restrictions**

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

6.2 End of Licence Period

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

7. Third parties**7.1 Third Party Components**

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

OFFICIAL: Sensitive – NSW Government*Software Module | Department of Customer Service***7.2 Third party warranties**

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

8. Audits**8.1 Records of usage**

If specified in the Order Form, the:

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

8.2 Audit and verification

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

OFFICIAL: Sensitive – NSW Government*Software Module | Department of Customer Service***8.3 Results and consequences of Software Audit**

- (a) Upon completion of each Software Audit, the Supplier must promptly provide the Customer's Representative with a copy of the Software Audit's report or findings.
- (b) If the results of any Software Audit demonstrate that the Customer has exceeded the scope of the licences granted to it under the Agreement and, as a result, the Customer has underpaid the Supplier under the Agreement, then:
 - (i) the Supplier must notify the Customer's Representative of the excess scope and any unpaid licence fees; and
 - (ii) if requested by the Supplier, the Customer must pay to the Supplier the unpaid licence fees as calculated in accordance with the then current rates and charges that the Customer is paying for the Licensed Software under the Agreement, unless otherwise set out in the Order Form. The parties agree that this will be the Supplier's sole and exclusive remedy with respect to this matter (to the fullest extent permitted by Law).

PART C: SOFTWARE SUPPORT SERVICES

9. Provision of Software Support Services**9.1 Application**

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

9.2 Support Period

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

9.3 General

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

10. Help desk

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

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

PART D: GENERAL

11. Training**11.1 Training Services**

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

11.2 Training Reports

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

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

12. Additional and ancillary Deliverables and Services

12.1 Provision of additional and ancillary Deliverables and Services

The Supplier must supply:

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

12.2 Requirements

The Supplier must provide all additional, related, incidental and/or ancillary Deliverables and Services specified in clause 12.1 in accordance with all applicable requirements and timeframes under the Agreement.

13. Exports

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

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14. Records

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

15. Exceptions

- (a) The Supplier is not liable for any failure of the Licensed Software or Software Support Services to comply with the Agreement to the extent arising as a result of:
 - (i) any Critical CSI not operating in accordance with the Agreement;
 - (ii) any misuse of the Licensed Software or the Software Support Services by the Customer;
 - (iii) the Customer's combination, operation or use of the Licensed 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;

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- B. the Supplier supplied the Licensed Software on the basis that the Licensed Software can be combined, operated or used with the Customer's or relevant third party products; or
 - C. such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Licensed Software;
- (iv) damage caused by the operation of the Licensed Software other than in accordance with any recommended and reasonable operating procedures specified in the Order Form and User Documentation; or
- (v) any Virus, Denial of Service Attack or other malicious act that adversely affects the Licensed Software, Software Support Services or associated Services and Deliverables (or any software installed on the Deliverables or connected to them), except to the extent that the Virus, Denial of Service Attack or other malicious act was:
 - A. introduced or carried out by the Supplier or its Personnel;
 - B. caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or
 - C. due to the Supplier or its Personnel breaching the Agreement, including any failure to comply with the security obligations under the Agreement.
- (b) The Customer may, at its sole discretion, request the Supplier to provide Services in respect of correcting or resolving any of the issues set out in clause 15(a) and, if so, the Supplier must provide such Services on a time and materials basis, based on the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing. However, any issue that results from one or more of the circumstances specified in clauses 15(a)(iii)A to 15(a)(iii)C or clauses 15(a)(v)A to 15(a)(v)C must be rectified at the Supplier's sole cost and in accordance with the Agreement.

Annexure A: Definitions and interpretation

1. Definitions and interpretation

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

Permitted Users means:

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

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

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

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

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

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

Training Reports has the meaning given to this term in clause 11.2(a).

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

1.2 Interpretation

Unless as otherwise expressly specified, in this Module:

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