

## MODULE 10 – AS A SERVICE

### Box 1 Services

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p><b>Contract Period (clause 2.1)</b></p> <p>Specify the Services Commencement Date, and, if applicable, the period of time for which the Services will be provided</p>	As per Item 10 of the General Order Form.
<p><b>Service definition (clause 2.3)</b></p> <p>Describe the Service to be provided, ie:</p> <ul style="list-style-type: none"> <li>a. Infrastructure as a Service</li> <li>b. Platform as a Service</li> <li>c. Software as a Service, and</li> <li>d. any Management Services (unless subject to a separate module), eg <ul style="list-style-type: none"> <li>implementation</li> <li>user training</li> <li>support services</li> <li>ongoing system administration</li> <li>monitoring and performance management</li> <li>backup and recovery services</li> </ul> </li> </ul> <p>The Service Definition should include the strategy for the delivery of the Services that is appropriate for the Customer's needs and its user population, such as:</p> <ul style="list-style-type: none"> <li>a. identification of the Services to be performed</li> <li>b. identification of Client Contracts and Third Party Contracts and how they are to be managed</li> <li>c. a mechanism to determine when Transition In Services are complete and the Services can commence</li> <li>d. implementation of the Services, and</li> </ul> <p>Note: Module 10 expects that the Parties will enter into a Service Level Agreement.</p> <p>Specify any <b>Support Services</b> that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup and recovery services.</p>	<p><b>Software as a Service</b></p> <p><b><u>THE CLOUD SERVICES.</u></b></p> <p>For the purposes of this Customer Contract, <b>Cloud Service</b> means the hosted, on demand As a Service defined in Module 10 and described in the General Order Form, this Module 10 Order Form and the Agreement Documents as listed in Schedule 2 of the General Order Form including upgrades and updates thereto made generally available by Contractor to its customers.</p> <p><b>1. <u>SCOPE OF THE SERVICE</u></b></p> <p><b>I. Grant of Rights.</b> Customer's use of a Cloud Service shall not exceed the Usage Metric Limitations for such Cloud Service set forth in Item 11 of the General Order Form and this Module 10 Order Form. Any access to and/or use of the Cloud Service in excess of the applicable Usage Metric Limitation shall be subject to additional fees (as per Item 11 of the General Order Form) beginning on the date of such excess access/usage and continuing for the duration of the initial Contract Period, applicable Renewal Term or overage term. Upon Customer's request, the Contractor will provide guidance regarding reporting tools provided with the Cloud Service to assist the Customer to monitor its access and usage of Cloud Services.</p> <p>The rights granted in the Contract apply to the exclusion of any terms and conditions of use imposed by or for the Contractor (or an Affiliate or Subcontractor) which are relevant to the provision of the Cloud Services under this Contract wherever appearing, and even if a user is required to click 'I agree' to such terms and conditions.</p> <p><b>II. Permitted Users.</b> Customer shall be responsible for the acts and omissions of its Permitted Users as if they were the acts and omissions of Customer.</p> <p><b>III. Restrictions.</b> Customer shall not (i) modify the Cloud Service or Documentation or Cloud Materials; (ii) infringe any Intellectual Property Rights when using a Cloud Service; (iii) interfere with or disrupt any Cloud Service; (iv) use a Cloud Service in the operation of a</p>

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>Example wording for additional rights (which is a position agreed in the SuccessFactors agreement) is as follows:</p> <p><b>Overages</b></p> <p><i>For the purposes of this clause, the term Overages means a Subscription license for the Cloud Service based on the terms set out in this clause.</i></p> <p><i>In the event of a business event which results in an increase of the workforce of the Customer of at least 5% ("Material Business Event"), then Customer may elect to purchase the increase to the Usage Metric Limitations (as required due to the excess use) as an Overages subscription.</i></p> <p><i>For the avoidance of doubt:</i></p> <ol style="list-style-type: none"> <li>a. <i>the Overages license can only be purchased in the event of a Material Business Event; and</i></li> <li>b. <i>the Overages subscription is an option and nothing in this clause prevents the Customer from electing to purchase the normal Subscription if appropriate for the excess use.</i></li> </ol> <p><i>Any Overages subscription purchased pursuant to this clause will be on the following terms:</i></p> <ol style="list-style-type: none"> <li>a. <i>the Subscription Term will have a minimum Initial Subscription Term of 12-months with the option of two renewal periods of 12 months each;</i></li> <li>b. <i>the renewal will be an active renewal whereby the Customer Contract will confirm that the Initial Subscription Term will end unless the Parties agree in writing to extend for the renewal period;</i></li> <li>c. <i>the price for the Permitted Users under an Overages license will be based on the Expansion Pricing set out in Item 11 of the General Order Form; and</i></li> <li>d. <i>the Overages subscription will be effected by an amendment to the original Customer Contract.</i></li> </ol>	<p>service bureau, outsourcing or time-sharing service; (v) circumvent or disclose the user authentication, or security of a Cloud Service or any host, network, or account related thereto; (vi) access or use a Cloud Service for the purpose of building a competitive product or service or copying its features or user interface.</p> <p><b>IV. Third Party Web Services and Mobile Access.</b> For clarity, clause 17.2 of Module 10 includes that Third Party Web Services are not part of the Cloud Service, and Customer is solely responsible for any use of Third Party Web Services by Customer, and Customer agrees to comply with all vendor terms and conditions associated with the use of any Third Party Web Services not provided by the Contractor. Permitted Users may also access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app stores. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not the terms of this Customer Contract.</p> <p><b>V. Modifications to the Cloud Services, guidelines and policies.</b></p> <p>(i) For clarity, the rights in clause 4.3 of Module 10 to change add or delete, includes the right to modify the Cloud Services, including the Documentation and the operational guidelines and policies applied by the Contractor to provide and support the Cloud Services, including that the Modifiable Exhibits (the <b>Cloud Policies</b>), may be modified by the Contractor. <b>Modifiable Exhibits</b> means the Service Level Agreement and the Support Policy for SAP Cloud Services.</p> <p>(ii) For clarity, the right in clause 4.3 of Module 10 to change add or delete does not limit the Contractor's obligations to provide information, including under Box 4 of this Module 10 Order Form.</p> <p>(iii) For clarity, the notice to be provided under clause 4.4 of Module 10 is for any modification to the Cloud Service or the Cloud Policies and if the modification constitutes an enhancement may be sent by email, the support portal, release notes, Documentation or the Cloud Service.</p> <p>(iv) If clause 4.6 of Module 10 applies, then the Parties agree that Customer's right to terminate is Customer's sole and exclusive remedy against Contractor for the changes made under clauses 4.3, 4.4 or 4.5 of Module 10 unless Contractor has materially diminished the functionality of the As a Service (in which case termination will not be a sole and exclusive remedy), provided that Contractor will also refund and prepaid and unused Price from the date of termination.</p>

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
	<p><b><u>VI.</u> No Future Functionality Commitments.</b> Customer agrees that its purchase of subscription(s) for any Cloud Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Contractor, including any roadmaps, with respect to future functionality or features. However, this subsection VI does not affect the Contractor's obligation to provide the Cloud Services in accordance with this Customer Contract for the Subscription Term.</p> <p><b><u>VII.</u> On-Premise Components.</b> The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Customer. The System Availability SLA does not apply to these components. In addition to the support policy referenced in the Order Form, specific SAP support and maintenance policies apply to the On-Premise Components and can be found in SAP Support Note 2658835. For clarity, all other terms of this Contract apply to the Cloud Service.</p> <p><b><u>2. DATA PROTECTION, SECURITY, AND SUPPORT POLICIES AND PROGRAMS.</u></b></p> <p><b><u>I.</u> Security.</b> The Customer shall maintain commercially reasonable security standards, for its and its Permitted Users' use of the Cloud Service, including without limitation the use of regular required password changes and virus scans.</p> <p><b><u>II.</u> Cloud services system availability and maintenance windows.</b> The Parties acknowledge that the Cloud Services System Availability and Maintenance Windows are as described in the Service Level Agreement.</p> <p><b><u>3. CONTRACTOR RESPONSIBILITIES AND OBLIGATIONS</u></b></p> <p><b><u>I.</u> Technical Support.</b> A description of the technical support the Contractor will provide for the Cloud Service is set out in this Module 10 Order Form and the SAP Support Policy for SAP Cloud Services.</p> <p><b><u>II.</u> Access to Customer Data.</b> For clarity, clause 9.4 of Module 10 includes the following: Without limiting the Customer's ability to access all hosted Customer Data at any time (except during Maintenance Windows), the export and retrieval of Customer Data may be subject to technical parameters (including as to volume and format) stated in the Documentation.</p> <p><b><u>III.</u> Effect of Expiration or Termination.</b> For clarity, clause 13.2 of Module 10 means that upon the effective date of expiration or</p>

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
	<p>termination of this Customer Contract, subject to Box 8 below, Customer's access to the Cloud Service will be terminated, and Customer shall immediately cease all access to and use of the Cloud Service, Cloud Materials, and Contractor Confidential Information.</p>
<p><b>Training Services (clause 10.3)</b></p>	
<p>Specify whether the Contractor will provide any training services associated with the Service. If yes, specify the time when training services will be provided.</p>	<p>Not applicable.</p>
<p><b>Documentation (clause 10.4)</b></p>	
<p>Specify any Contractor documents, in addition to User Documentation, to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.</p>	<p>As set out in Schedule 2 (Agreement Document) of the Customer Contract.</p>
<p><b>Pricing</b></p>	
<p>Specify whether the Service is for a fixed price or on a subscription basis. If for a fixed price, set out the pricing for the Service. If on a subscription basis, specify how payment is made (eg monthly, yearly, etc). Specify the price of any training services. (clause 10.3)</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p><b>Approved Purpose (clauses 1.2 and 7.1(b))</b></p>	
<p>Specify the purpose for which the Customer and Permitted Users shall use the Service.</p>	<p><b>Grant of Rights.</b> Subject to the termination provisions of this Customer Contract, Contractor grants to Customer a non-exclusive, non-transferable right during the Subscription Term to implement, configure and permit its Permitted Users to remotely access and use the Cloud Service, and to access and use the Cloud Materials in connection with the Transport for NSW Cluster's use of the Cloud Service, solely for the Transport for NSW Cluster's own internal business purposes which includes any activities within its portfolio or Agency responsibility.</p> <p>For the avoidance of doubt, each entity forming part of the Transport for NSW Cluster and their Personnel are Permitted Users for the purposes of this Customer Contract.</p> <p>The Contractor acknowledges and agrees that:</p> <ul style="list-style-type: none"> <li>a) in entering into and obtaining the benefits, rights and remedies under this Customer Contract, including the benefit of the Contractor's obligations and any indemnity</li> </ul>

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
	<p>given by the Contractor, the Customer acts on its own behalf and as trustee for each Permitted User; and</p> <p>b) the Customer is entitled to recover from the Contractor all Losses suffered or incurred by all Permitted Users, as if those Losses were suffered or incurred by the Customer itself, provided that, the aggregate liability of Contractor to the Customer and all Permitted Users is as set out in Item 39 of the General Order Form.</p> <p>For the purposes of this Customer Contract, Transport for NSW Cluster means Transport for NSW, 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.</p>

### Box 2 Transition In

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p><b>Specification of Transition In Services (clause 10.1)</b></p> <p>Specify any Transition In Services to be provided, such as:</p> <ol style="list-style-type: none"> <li>due diligence</li> <li>data migration</li> <li>business contingency plans</li> <li>testing of Services</li> <li>handover arrangements</li> </ol> <p><b>Due diligence</b> may include assessment and definition of the:</p> <ol style="list-style-type: none"> <li>Customer's goals, requirements and expectations in respect of the Services</li> <li>Contractor's understanding of the Customer's and/or user's experience and requirements in relation to the Services</li> <li>objectives to be met by the Contractor</li> <li>nature and scope of the Service, including the Environment, the Assets, Client Contracts and Third Party Contracts (and any requirement to novate or assign any of them)</li> <li>end users who will be supported by the Service</li> <li>necessary Assets and Additional Items and how they may need to be procured</li> </ol>	<p>As per this Customer Contract (including the applicable Cloud Service Supplement) where applicable, or as described in a separate Customer Contract for Professional Services under Module 7.</p>

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>g. migration of Customer Data  h. data retention and disposal requirements  i. required Deliverables  j. resources required (including any Customer Supplied Items or Customer assistance)  k. complexity of the project, and  l. any Transition Out Services plan.</p> <p><b>Data migration</b> services should include the drafting of a Procedures Manual (if one does not exist as part of the Service Definition) for approval by the Customer (eg within 14 days). The Procedures Manual should describe the key attributes of the Services, including:</p> <p>a. the governance arrangements between the Customer and the Contractor  b. the governance arrangements dealing with the Contractor and any third parties  c. the protocols for managing security issues between the Parties  d. the protocols for identifying and managing risks  e. how the key aspects of the Services will be provided to the Customer  f. the procedures for varying Services and providing Additional Services  g. how user complaints and disputes will be managed  h. updating the Procedures Manual  i. Data backups, if required outside of disaster recovery processes.</p> <p>Note: Once the Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it.</p> <p><b>Business Contingency Plan</b>  The Parties may agree to include a Business Contingency Plan in accordance with clauses 6.45 to 6.48 of Part 2 of the Procure IT Framework.</p>	

### Box 3 Customer Use and Access to the As a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<b>Terms under which the Service is available (clause 4.1)</b>	
<p>Consider issues including;</p> <ul style="list-style-type: none"> <li>a. authorisation to access the Service, eg individual and multi-user passwords</li> <li>b. maximum Contractor Systems capacity</li> <li>c. is the Customer responsible to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification of the Service Definition changes during the Contract Period</li> <li>d. is the Service provided on a shared service basis to the Customer and other clients from a common code base and/or common environment</li> <li>e. conditions under which the Contractor may change any characteristics of the Service, and if the specifications of the Service must be amended accordingly; and</li> <li>f. conditions under which the Contractor may correct errors patch or install new versions of the Service.</li> </ul>	<p>See Box 1 - Service Definition and Documentation:</p> <ul style="list-style-type: none"> <li>1. Scope of the Service;</li> <li>2. Data Protection, Security and Support Policies and Programs; and</li> <li>3. Contractor Responsibilities and Obligations.</li> </ul>
<b>Data Centre Region (clause 5.2(b) and clause 5.6)</b>	
<p>Specify the physical location(s) by country or region of the contractors computing hardware and software used to store, host and process Customer Data, including production, test and backup environments.</p> <p>Note: the location(s) must not be changed without the prior written consent of the Customer (cl. 5.2(b)).</p>	<p>As per Item 25a of Schedule 1 (General Order Form).</p>

#### Box 4 Data Control and Access

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<b>Security and Encryption (clause 5.2(c))</b>	
<p>Specify the level of security and encryption required for the Customer Data as defined by the Customer's Information Security Management System (ISMS).</p>	<p>The Contractor will assist Customer upon request by providing information regarding security features that Contractor makes available for its Cloud Services.</p>

<p>Note: All NSW Government Departments, Statutory Bodies and Shared Service Providers are required to have an ISMS.</p>	<p>Without limiting clause 3.11 of Schedule 13 of the Customer Contract or any other security obligations applicable to a Contract, Contractor will use commercially reasonable security technologies (such as encryption, password protection and firewall protection) in providing the Cloud Service, and such other security measures and technologies as are described in the Contract Specifications, and must comply with such technologies, measures and standards in the provision of the Cloud Services. The Customer may audit the Contractor's compliance with such technologies, measures and standards in accordance with Item 40A of the Customer Contract. The Customer may reasonably request the Contractor to provide additional information available to the Contractor regarding security of the Cloud Services, and the Contractor must provide the information within a reasonable time following the request provided the information is available to the SAP Australia account team, approved for release to the Contractor's customers, and is not already covered in documentation available for self-service via the SAP Support Portal or SAP Trust Centre or successor location.</p>
<p><b>Business Continuity Plan (clause 5.2(d))</b></p>	
<p>Detail any business continuity plan, including backup and disaster recovery procedure, in place for implementation by the Contractor, if required.</p>	<p>Where applicable, as set out in the SAP Cloud Security Schedule</p>
<p><b>Data Retention and Disposal (clause 5.2(e))</b></p>	
<p>Specify the retention period for the Customer Data and retention and disposal requirements the Contractor will implement and comply with in relation to Customer Data.</p>	<p>At Customer's request upon termination or expiration of this Customer Contract, Contractor shall, within a reasonable time period (and in any event within 120 days), remove, delete, purge, overwrite or otherwise render inaccessible all Customer Data still remaining on the servers used to host the Cloud Services (excluding any Customer Data in the Ariba Network) to the extent possible based on the then-current technology available within the Cloud Services, unless and to the extent applicable laws and regulations require further retention of such data.</p> <p>See also Box 1 above (Services Definition) with respect to "Effect of Expiration or Termination".</p> <p>Additionally, see Box 8 below (re clause 13.2(c)).</p>
<p><b>Security Standards for Customer Access Facilities (clause 5.3(b))</b></p>	
<p>Specify the security standards that the Customer Access Facilities will meet.</p>	<p>Customer shall be solely responsible for connection of Customer's computers to a telecommunications service that provides Internet access in a secure manner.</p>
<p><b>On-site visit (clause 5.5)</b></p>	
<p>Specify any requirements by the Contractor for on-site visits to the facilities where the Service is provided.</p>	<p>No on-site visits to the Site permitted, as the Site is a secure data hosting facility.</p>







Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<ul style="list-style-type: none"> <li>b. freeze non-critical software changes in any of the Customer's software that is being supported as part of the Service</li> <li>c. provide all reasonable transition assistance for the delivery of Customer Data to the new service provider or to the Customer and the reloading of the production databases</li> <li>d. provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties in the Transition Out Plan)</li> <li>e. provide a list of the outstanding issues detailed on any issues register</li> <li>f. answer questions and provide such other information as may be reasonably sought by the new service provider and/or by the Customer to assist it in the transition process</li> <li>g. surrender any remaining Customer owned reports and documents still in the Contractor's possession, and that</li> <li>h. the Contractor ceases to become liable to perform any part of the Service after it is transitioned to a new service provider or to the Customer</li> <li>i. the Contractor's obligations to meet the Service Levels is not reduced and the Contractor remains liable for failing to meet any</li> <li>j. the Customer must continue to pay the full Services Price until the last day of the Contract Period, notwithstanding that some or all of the Service may have been transitioned to a new service provider or to the Customer (unless otherwise agreed in the Order Documents)</li> <li>k. the Contractor must, subject to clause 13.2, return to the Customer all Customer Data within 14 days of termination of the Customer Contract and back up and secure Customer data for a further 60 days after termination of the Customer Contract, and</li> <li>l. grant or assist the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian Market which is integral to the ongoing provision of the Services, subject to payment of</li> </ul>	

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>licence fees by the Customer (or new service provider), and</p> <p>m. not delete any Customer Data at the end of the Customer Contract without the express prior approval of the Customer.</p>	

#### Box 8 Return of Customer Data on termination

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p><b>Customer data deletion and certification (clause 13.2(c))</b></p>	
<p>Specify the period within which the Contractor must delete the Customer Data and whether certification it has been deleted is required.</p>	<p>As specified above in Box 4 (Data control and access), 120 days.</p>
<p><b>Customer data format (clause 13.2(d))</b></p>	
<p>Specify the format that the Customer Data must be provided to the Customer.</p>	<p>As per the Contract Specifications (or if not specified therein, in a standard format including csv or excel).</p>

#### Box 9 Additional terms – Infrastructure as a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p><b>Additional terms and conditions (cl. 15.1)</b></p>	
<p>Specify any additional terms and conditions in relation to Infrastructure as a Service.</p>	<p>Not applicable.</p>



**4. Statutory Requirements.** Without prejudice to clause 9.1(g) of this Customer Contract (including the Contractor's obligation to comply with the laws specified in Item 30 of the General Order Form), the Contractor does not guarantee that the Cloud Service complies with all Statutory Requirements.

**5. Regulatory Matters.** The Cloud Services, Documentation and Cloud Materials are subject to export control laws of various countries, including without limitation the laws of the United States and Germany. Customer agrees that it will not submit the Cloud Services, Documentation or Cloud Materials to any non-NSW Government agency for licensing consideration or other regulatory approval without the prior written consent of Contractor, and will not export the Cloud Services, Documentation and Cloud Materials to countries, persons or entities prohibited by such laws.

**6. Counterparts and Electronic Signature.** Signatures sent by electronic means (facsimile or scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

**7. Customer Data.**

For clarity:

(a) the obligations on Customer in clause 4.7 regarding Customer Data includes that Customer shall be responsible for the content of the Customer Data supplied or generated through the use of the Cloud Service; and

██  
██  
██

**8. Suitability.** Customer is solely responsible for determining the suitability of the Cloud Service for Customer's business.

**9. Data Privacy and Security – Data Controller to Data Processor Agreement.** Contractor and Customer are subject to the terms and conditions of the DPA which is made part of this Customer Contract as an Agreement Document, and which permits Contractor to perform its obligations pursuant to this Customer Contract in regards to Personal Information of Customer's employees and other personnel housed in the Computing Environment.

**10. Retrieval of Customer Data.**

- (a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations stated in the Documentation.
- (b) Before the Subscription Term expires, Customer may use the self-service export tools (as available in the Cloud Service) to perform a final export of Customer Data from the Cloud Service.
- (c) Not used.
- (d) If Customer requires access to a Cloud Service to export and retrieve its Customer Data after the effective date of termination or expiration of this Customer Contract, Customer may extend the Subscription Term for a minimum term of ninety

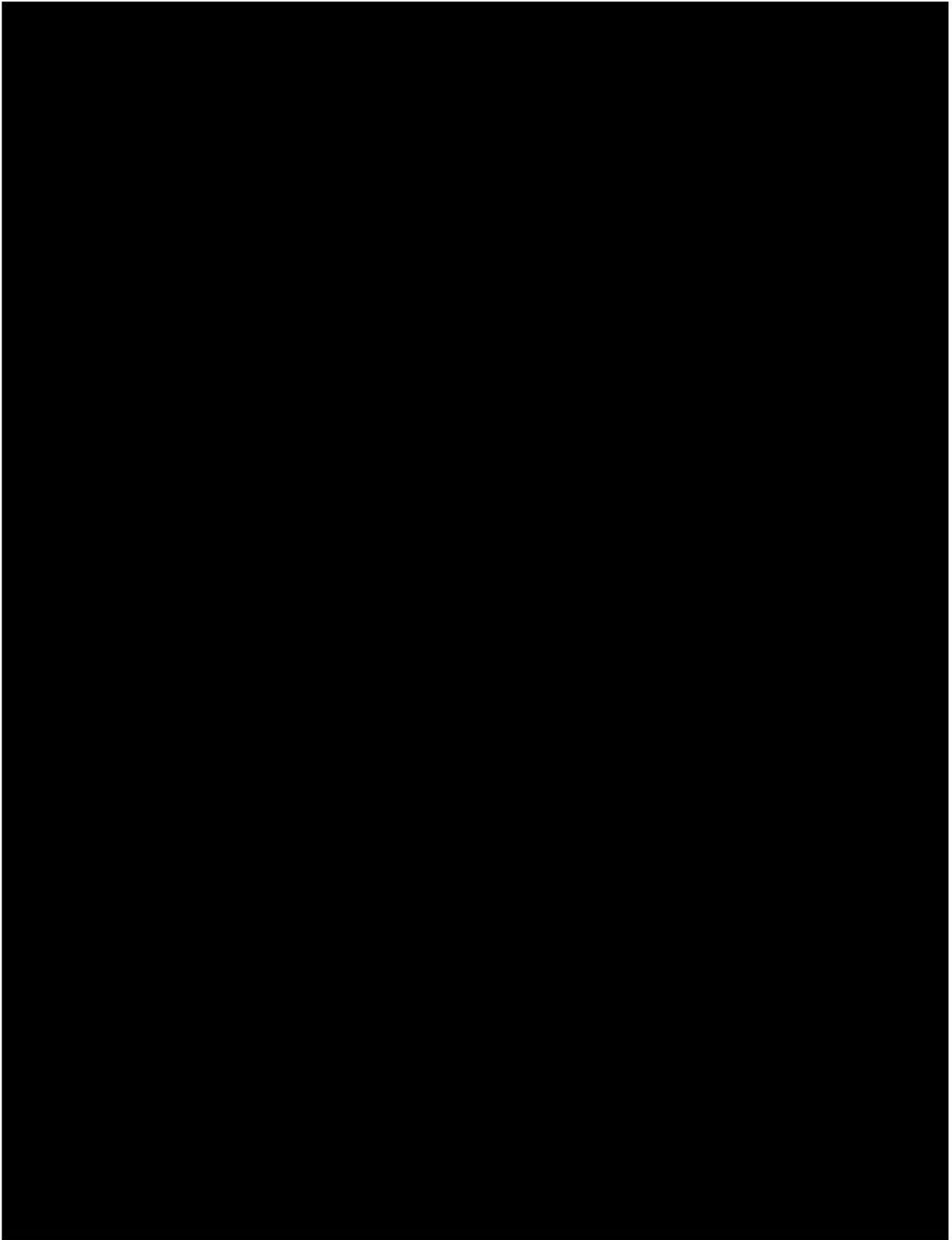
	<p>(90) days by notifying Contractor at least (30) days prior to the effective date of termination or expiration and paying subscription fees for such extension, if applicable. Subscription fees for such extension, if applicable, shall be calculated as a monthly proration of the annual Contract Price in effect for the Cloud Service(s) immediately preceding termination or expiration of this Customer Contract. Subject to the foregoing, Contractor shall have no obligation to maintain or provide any Customer Data. Additionally, See Box 4 above (re clause 5.2(e)).</p> <p>(e) Following the end of this Customer Contract and any Subscription Term extension described in Section 10(d) above, Contractor will delete or overwrite the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention, and, upon written request from Customer to SAP, provide certification or written confirmation that the Customer Data has been deleted or overwritten. Retained data is subject to the confidentiality provisions of this Customer Contract.</p> <p>(f) These clauses apply instead of clauses 25.9(b) and 25.9(c) of the Customer Contract.</p> <p><b>11. Suspension of Cloud Service.</b></p> <p>(a) Contractor reserves the right to suspend Customer's access to the Cloud Service solely to the extent necessary: (i) to prevent or stop the conduct of illegal activity or suspected illegal activity; (ii) to prevent or mitigate damage or imminent damage to Contractor's systems or data stored on such systems; and/or, (iii) in response to a court order or other lawful order from a law enforcement or other agency ("<b>Preventative Suspension</b>").</p> <p>(b) In the event of a Preventative Suspension, Contractor will, to the extent permitted by applicable law and as quickly as is reasonable, provide Customer with notice of the Preventative Suspension and limit such Preventative Suspension to the minimum extent required (for example, on a per user basis if such limited Suspension is both technically feasible and sufficient to address the reason for the Suspension). Upon receipt of the notice from Contractor of the Preventative Suspension, if Customer requires additional information regarding the Preventative Suspension, such as the grounds for the suspension, the estimated time of the suspension and a summary of the actions Contractor intends to take regarding the Preventative Suspension, then Contractor will provide such information that it is able to provide to Customer to the extent Contractor is able to under law and subject to any confidentiality</p>
--	---

	<p>obligations Contractor has with any other third party regarding the Preventative Suspension.</p> <p>(c) Contractor must promptly restore access upon: (i) cessation of the prohibited activity; (ii) Contractor's receipt of reasonable assurances that the prohibited activities will not resume; and/or (iii) expiration or withdrawal of the relevant order, as applicable.</p> <p>(d) Contractor will not be liable for any damages of any kind arising from any Preventative Suspension performed in compliance with the foregoing provisions except to the extent that the Preventative Suspension was caused by an intentional or negligent act or omission of a representative of Contractor, any Contractor Related Company or any of their Subcontractors. Contractor must refund or credit charges payable for any period of Preventative Suspension caused by an intentional or negligent act or omission of the Contractor, any Contractor Related Company or Subcontractor (or any representative of such entities), on request from the Customer.</p> <p><b>12 Security of Critical Infrastructure Act</b></p> <p>The parties acknowledge that the Customer and Contractor have, or may in the future have, requirements for managing the security of assets that are considered 'Critical Infrastructure Assets' as defined, and governed, by the Australian Security of Critical Infrastructure Act 1988 (Cth) (hereinafter "SOCI Act"). Each party will comply with these requirements to the extent such requirements are applicable to the relevant party in connection with:</p> <p>(a) in the case of Customer, the Customer Data and Customer's use of the Cloud Service; and (b) in the case of Contractor, to the extent the SOCI Act applies to the Contractor in its capacity as the Cloud Service provider under or in connection with this Customer Contract.</p>
--	---

**This Module 10 Order Form is part of the Customer Contract**



**SIGNED AS AN AGREEMENT**



## Attachment 1 to Module 10 Order Form (Additional Conditions)

## 1. Amendments to Module 10 terms

1.1 The Parties agree to amend the Module 10 terms by:

- (a) deleting the existing definition of "Permitted User" and replacing it with the following:

*"Permitted User or Authorized User means such persons that the Customer has permitted to use the As a Service for an Approved Purpose, in accordance with the Customer Contract, including individual end users."*

- (b) deleting and not replacing all of clause 5 Data Control and Audit.

- (c) Adding the following new clause 7.1(f) into clause 7.1:

*(f) sublicense, licence, sell, lease, rent or otherwise make the Service available to third parties (other than Named Users who are using the Service in accordance with Customer's authorised use of the Service) except as permitted in the Service Definition or in a separate written agreement.*

- (d) Adding in the following new clauses into clause 11:

11.2 *The warranty in clause 11.1 shall not apply to the extent that any non-conformity is caused by third party products, content or service being accessed through the Service that are identified as third party products, content or service.*

11.3 *If there is a breach of the warranty under clause 11.1:*

- (a) *Contractor must correct and re-perform the deficient Cloud Service (as applicable) and that correction will be full satisfaction of Contractor's obligation in connection to a breach of the warranty in clause 11.1; and*
- (b) *if Contractor is unable to correct and re-perform the Cloud Service after using all reasonable endeavours, Contractor will notify Customer in writing, in which case Customer or Contractor may terminate its subscription for the affected Cloud Service, and:*
- (i) *Contractor will refund any fees paid by Customer for the Cloud Service for the remainder of the Subscription Term (starting on the date Customer reported the non-conformity) in full and final settlement of all claims in connection to a breach of the warranty in clause 11.1; or*
- (ii) *if Customer rejects the offer of such refund, Customer may choose to exercise any rights available to it under the Agreement and applicable law.*

11.4 *The Customer shall provide the Contractor with prompt written notice of any non-conformity described in clause 11.1 within ninety (90) days of Customer's discovery of such non-conformity.*

11.5 *The Contractor warrants that it will provide the Cloud Service with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service. Customer's sole and exclusive remedy and the Contractor's entire liability for breach of the warranty in this clause will be: (a) the re-performance of the deficient Cloud Service; and (b) if the Contractor fails to re-perform, the Customer may terminate its subscription for the affected Cloud*

*Service. Any termination must occur within 3 months of the Contractor's failure to re-perform. Contractor will refund any prepaid and unused fees paid by the Customer to Contractor from the date of the termination pursuant to this clause 11.5. For clarity, the limits on liability in this clause do not impact liability Contractor may have due to separate breaches of contract by the Contractor including in respect of security and privacy.*

11.6 *The warranty in clause 11.5 will not apply if: (a) the Cloud Service is not used in accordance with the Customer Contract or Documentation; (b) any non-conformity is caused by the Customer, or by any product or service not provided by the Contractor; or (c) the Cloud Service was provided for no fee."*

(e) Clause 8.1 is deleted and replaced with the following:

*"8.1 The Contractor and the Customer agree that, for the purposes of the Services provided under this Module, clause 18.5 of the Customer Contract is replaced with the following:*

*The financial cap on the Contractor's legal liability (including any financial cap specified in Item 39 of the General Order Form), does not apply where that liability arises from:*

- (i) *bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b); or*
- (ii) *loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);*
- (iii) *breach of the Contractor's obligation of confidence under or pursuant to clause 14;*
- (iv) *a breach by Contractor of its data protection and security obligations that result in an unauthorized use or disclosure of Personal Information; or*
- (v) *the Contractor's indemnity for IP Claims as stated in clause 19.1(c)."*

(f) Clause 13.2(d) is deleted. For clarity, the Module 10 Order Form sets out the rights for Customer to retrieve its Customer Data from the Cloud Service.

## Exhibit 1 to the Module 10 Order Form

**PERSONAL DATA PROCESSING AGREEMENT FOR SAP CLOUD SERVICES****1. DEFINITIONS**

- 1.1. "Controller" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to SAP be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 1.2. "Data Protection Law" means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement.
- 1.3. "Data Subject" means an identified or identifiable natural person as defined by Data Protection Law.
- 1.4. "EEA" means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
- 1.5. "GDPR" means the General Data Protection Regulation 2016/679.
- 1.6. "My Trust Center" means information available on the SAP support portal (see: [REDACTED]) or the SAP agreements website (see: [REDACTED]) or any subsequent website(s) made available by SAP to Customer.
- 1.7. "New SCC Relevant Transfer" means a transfer (or an onward transfer) to a Third Country of Personal Data that is either subject to GDPR or to applicable Data Protection Law and where any required adequacy means under GDPR or applicable Data Protection Law can be met by entering into the New Standard Contractual Clauses.
- 1.8. "New Standard Contractual Clauses" means the unchanged standard contractual clauses, published by the European Commission, reference 2021/914 or any subsequent final version thereof which shall automatically apply. To avoid doubt Modules 2 and 3 shall apply as set out in Section 8.
- 1.9. "Personal Data" means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is:
  - a) entered by Customer or its Authorized Users into or derived from their use of the Cloud Service; or
  - b) supplied to or accessed by SAP or its Subprocessors in order to provide support under the Agreement. Personal Data is a sub-set of Customer Data (as defined under the Agreement).
- 1.10. "Personal Data Breach" means a confirmed:
  - a) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or
  - b) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
- 1.11. "Processor" means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
- 1.12. "Schedule" means the numbered Appendix with respect to the Standard Contractual Clauses (2010) and the numbered Annex with respect to the New Standard Contractual Clauses.

- 1.13. "Standard Contractual Clauses (2010)" means the Standard Contractual Clauses (processors) published by the European Commission, reference 2010/87/EU.
- 1.14. "Subprocessor" or "sub-processor" means SAP Affiliates, SAP SE, SAP SE Affiliates and third parties engaged by SAP, SAP SE or SAP SE's Affiliates in connection with the Cloud Service and which process Personal Data in accordance with this DPA.
- 1.15. "Technical and Organizational Measures" means the technical and organizational measures for the relevant Cloud Service published on My Trust Center (see: [REDACTED]  
[REDACTED])
- 1.16. "Third Country" means any country, organization or territory not acknowledged by the European Union under Article 45 of GDPR as a safe country with an adequate level of data protection.

## **2. BACKGROUND**

### **2.1. Purpose and Application**

- 2.1.1. This document ("DPA") is incorporated into the Agreement and forms part of a written (including in electronic form) contract between SAP and Customer.
- 2.1.2. This DPA applies to Personal Data processed by SAP and its Subprocessors in connection with its provision of the Cloud Service.
- 2.1.3. This DPA does not apply to non-production environments of the Cloud Service if such environments are made available by SAP. Customer shall not store Personal Data in such environments.

### **2.2. Structure**

Schedules 1 and 2 are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects (Schedule 1) and the applicable Technical and Organizational Measures (Schedule 2).

### **2.3. Governance**

- 2.3.1. SAP acts as a Processor and Customer and those entities that it permits to use the Cloud Service act as Controllers under the DPA.
- 2.3.2. Customer acts as a single point of contact and shall obtain any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use SAP as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller using the Cloud Service. Where SAP informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the Cloud Service. Customer shall forward such information and notices to the relevant Controllers.

## **3. SECURITY OF PROCESSING**

### **3.1. Applicability of the Technical and Organizational Measures**

SAP has implemented and will apply the Technical and Organizational Measures. Customer has reviewed such measures and agrees that as to the Cloud Service selected by Customer in the Order Form the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.

### **3.2. Changes**

- 3.2.1. SAP applies the Technical and Organizational Measures to SAP's entire customer base hosted out of the same data center or receiving the same Cloud Service. SAP may change the Technical and Organizational Measures at any time without notice so long as it maintains a

comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

- 3.2.2. SAP will publish updated versions of the Technical and Organizational Measures on My Trust Center and where available Customer may subscribe to receive e-mail notification of such updated versions.

#### **4. SAP OBLIGATIONS**

##### 4.1. Instructions from Customer

SAP will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and each use of the Cloud Service then constitutes further instructions. SAP will use reasonable efforts to follow any other Customer instructions, as long as they are required by Data Protection Law, technically feasible and do not require changes to the Cloud Service. If any of the before-mentioned exceptions apply, or SAP otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, SAP will immediately notify Customer (email permitted).

##### 4.2. Processing on Legal Requirement

SAP may also process Personal Data where required to do so by applicable law. In such a case, SAP shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

##### 4.3. Personnel

To process Personal Data, SAP and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. SAP and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.

##### 4.4. Cooperation

- 4.4.1. At Customer's request, SAP will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding SAP's processing of Personal Data or any Personal Data Breach.

- 4.4.2. If SAP receives a request from a Data Subject in relation to the Personal Data processing hereunder, SAP will promptly notify Customer (where the Data Subject has provided information to identify the Customer) via e-mail and shall not respond to such request itself but instead ask the Data Subject to redirect its request to Customer.

- 4.4.3. In the event of a dispute with a Data Subject as it relates to SAP's processing of Personal Data under this DPA, the Parties shall keep each other informed and, where appropriate, reasonably co-operate with the aim of resolving the dispute amicably with the Data Subject.

- 4.4.4. SAP shall provide functionality for production systems that supports Customer's ability to correct, delete or anonymize Personal Data from a Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, SAP will correct, delete or anonymize any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.

##### 4.5. Personal Data Breach Notification

SAP will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. SAP may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by SAP.

##### 4.6. Data Protection Impact Assessment

If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, SAP will provide such documents as are generally available for the Cloud Service (for example, this DPA, the Agreement, Audit Reports and Certifications). Any additional assistance shall be mutually agreed between the Parties.

## **5. DATA EXPORT AND DELETION**

### **5.1. Export and Retrieval by Customer**

During the Subscription Term and subject to the Agreement, Customer can access its Personal Data at any time. Customer may export and retrieve its Personal Data in a standard format. Export and retrieval may be subject to technical limitations, in which case SAP and Customer will find a reasonable method to allow Customer access to Personal Data.

### **5.2. Deletion**

Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Personal Data from the Cloud Service (which shall constitute a "return" of Personal Data). At the end of the Subscription Term, Customer hereby instructs SAP to delete the Personal Data remaining on servers hosting the Cloud Service within a reasonable time period in line with Data Protection Law (not to exceed 6 months) unless applicable law requires retention.

## **6. CERTIFICATIONS AND AUDITS**

### **6.1. Customer Audit**

Customer or its independent third party auditor reasonably acceptable to SAP (which shall not include any third party auditors who are either a competitor of SAP or not suitably qualified or independent) may audit SAP's control environment and security practices relevant to Personal Data processed by SAP only if:

- a) SAP has not provided sufficient evidence of its compliance with the Technical and Organizational Measures that protect the production systems of the Cloud Service through providing either: (i) a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or (ii) a valid ISAE3402 or ISAE3000 or other SOC1-3 attestation report. Upon Customer's request audit reports or ISO certifications are available through the third party auditor or SAP;
- b) a Personal Data Breach has occurred;
- c) an audit is formally requested by Customer's data protection authority; or
- d) provided under mandatory Data Protection Law conferring Customer a direct audit right and provided that Customer shall only audit once in any 12 month period unless mandatory Data Protection Law requires more frequent audits.

### **6.2. Other Controller Audit**

Any other Controller may assume Customer's rights under Section 6.1 only if it applies directly to the Controller and such audit is permitted and coordinated by Customer. Customer shall use all reasonable means to combine audits of multiple other Controllers to avoid multiple audits, unless the audit must be undertaken by the other Controller itself under Data Protection Law. If several Controllers whose Personal Data is processed by SAP on the basis of the Agreement require an audit, Customer shall use all reasonable means to combine the audits and to avoid multiple audits.

### **6.3. Scope of Audit**

Customer shall provide at least 60 days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice. The frequency and scope of any audits shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited in time to a maximum of 3 business days. Beyond such restrictions, the parties will use current certifications or other

audit reports to avoid or minimize repetitive audits. Customer shall provide the results of any audit to SAP.

#### 6.4. Cost of Audits

Customer shall bear the costs of any audit unless such audit reveals a material breach by SAP of this DPA, then SAP shall bear its own expenses of an audit. If an audit determines that SAP has breached its obligations under the DPA, SAP will promptly remedy the breach at its own cost.

### 7. **SUBPROCESSORS**

#### 7.1. Permitted Use

SAP is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- a) SAP or SAP SE on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. SAP shall be liable for any breaches by the Subprocessor in accordance with the terms of this Agreement;
- b) SAP will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA; and
- c) SAP's list of Subprocessors in place on the effective date of the Agreement is published by SAP on My Trust Center or SAP will make it available to Customer upon request, including the name, address and role of each Subprocessor SAP uses to provide the Cloud Service.

#### 7.2. New Subprocessors

SAP's use of Subprocessors is at its discretion, provided that:

- a) SAP will inform Customer in advance (by email or by posting on the My Trust Center) of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor; and
- b) Customer may object to such changes as set out in Section **Error! Reference source not found.**

#### 7.3. Objections to New Subprocessors

7.3.1. If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the Agreement (limited to the Cloud Service for which the new Subprocessor is intended to be used) on written notice to SAP. Such termination shall take effect at the time determined by the Customer which shall be no later than 30 days from the date of SAP's notice to Customer informing Customer of the new Subprocessor. If Customer does not terminate within this 30 day period, Customer is deemed to have accepted the new Subprocessor.

7.3.2. Within the 30 day period from the date of SAP's notice to Customer informing Customer of the new Subprocessor, Customer may request that the parties discuss in good faith a resolution to the objection. Such discussions shall not extend the period for termination and do not affect SAP's right to use the new Subprocessor(s) after the 30 day period.

7.3.3. Any termination under this Section **Error! Reference source not found.** shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

#### 7.4. Emergency Replacement

SAP may replace a Subprocessor without advance notice where the reason for the change is outside of SAP's reasonable control and prompt replacement is required for security or other urgent reasons. In this case, SAP will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 7.2 applies accordingly.

### 8. **INTERNATIONAL PROCESSING**

#### 8.1. Conditions for International Processing



SAP shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.

## 8.2. Applicability of the Standard Contractual Clauses (2010)

8.2.1. Where, for the period up to and including 26 September 2021, Personal Data of a Controller that is subject to GDPR is processed in a Third Country, or where Personal Data of a Swiss or United Kingdom based Controller or another Controller is processed in a Third Country and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into Standard Contractual Clauses (2010), then:

- a) SAP and Customer enter into the Standard Contractual Clauses (2010);
- b) Customer joins the Standard Contractual Clauses (2010) entered into by SAP or SAP SE and the Subprocessor as an independent owner of rights and obligations; or
- c) other Controllers whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into Standard Contractual Clauses (2010) with SAP or the relevant Subprocessors in the same manner as Customer in accordance with Section 8.2.1 **Error! Reference source not found.** and **Error! Reference source not found.** above. In such case, Customer will enter into the Standard Contractual Clauses (2010) on behalf of the other Controllers.

8.2.2. The Standard Contractual Clauses (2010) shall be governed by the law of the country in which the relevant Controller is established.

8.2.3. Where applicable Data Protection Law adopts the New Standard Contractual Clauses as meeting any required adequacy means as an alternative or update to the Standard Contractual Clauses (2010) then the New Standard Contractual Clauses shall apply in accordance with Section 8.3.

## 8.3. Applicability of New Standard Contractual Clauses

8.3.1. The following shall apply with effect from 27 September 2021 and shall solely apply in respect of New SCC Relevant Transfers:

8.3.1.1. Where SAP is not located in a Third Country and acts as a data exporter, SAP (or SAP SE on its behalf) has entered in to the New Standard Contractual Clauses with each Subprocessor as the data importer. Module 3 (Processor to Processor) of the New Standard Contractual Clauses shall apply to such New SCC Relevant Transfers.

8.3.1.2. Where SAP is located in a Third Country:

SAP and Customer hereby enter into the New Standard Contractual Clauses with Customer as the data exporter and SAP as the data importer which shall apply as follows:

- a) Module 2 (Controller to Processor) shall apply where Customer is a Controller; and
- b) Module 3 (Processor to Processor) shall apply where Customer is a Processor. Where Customer acts as Processor under Module 3 (Processor to Processor) of the New Standard Contractual Clauses, SAP acknowledges that Customer acts as Processor under the instructions of its Controller(s).

8.3.2. Other Controllers or Processors whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into the New Standard Contractual Clauses with SAP in the same manner as Customer in accordance with Section 8.3.1.28.3.1.2 above. In such case, Customer enters into the New Standard Contractual Clauses on behalf of the other Controllers or Processors.

8.3.3. With respect to a New SCC Relevant Transfer, on request from a Data Subject to the Customer, Customer may make a copy of Module 2 or 3 of the New Standard Contractual Clauses entered into between Customer and SAP (including the relevant Schedules), available to Data Subjects.

8.3.4. The governing law of the New Standard Contractual Clauses shall be the law of Germany.

## 8.4. Relation of the Standard Contractual Clauses to the Agreement

Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses (2010) or the New Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and Subprocessor rules, such specifications also apply in relation to the Standard Contractual Clauses (2010) and the New Standard Contractual Clauses.

- 8.5. Third Party Beneficiary Right under the New Standard Contractual Clauses
  - 8.5.1. Where Customer is located in a Third Country and acting as a data importer under Module 2 or Module 3 of the New Standard Contractual Clauses and SAP is acting as Customer's sub-processor under the applicable Module, the respective data exporter shall have the following third party beneficiary right:
  - 8.5.2. In the event that Customer has factually disappeared, ceased to exist in law or has become insolvent (in all cases without a successor entity that has assumed the legal obligations of the Customer by contract or by operation of law), the respective data exporter shall have the right to terminate the affected Cloud Service solely to the extent that the data exporter's Personal Data is processed. In such event, the respective data exporter also instructs SAP to erase or return the Personal Data.

## **9. DOCUMENTATION; RECORDS OF PROCESSING**

- 9.1. Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations relating to maintaining records of processing.

### **Schedule 1 Description of the Processing**

This Schedule 1 applies to describe the Processing of Personal Data for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

#### **1. A. LIST OF PARTIES**

- 1.1. Under the Standard Contractual Clauses (2010)
  - 1.1.1. Data Exporter
 

The data exporter under the Standard Contractual Clauses (2010) is the Customer who subscribed to a Cloud Service that allows Authorized Users to enter, amend, use, delete or otherwise process Personal Data. Where the Customer allows other Controllers to also use the Cloud Service, these other Controllers are also data exporters.
  - 1.1.2. Data Importer
 

SAP and its Subprocessors that provide and support the Cloud Service are data importers under the Standard Contractual Clauses (2010).
- 1.2. Under the New Standard Contractual Clauses
  - 1.2.1. Module 2: Transfer Controller to Processor
 

Where SAP is located in a Third Country, Customer is the Controller and SAP is the Processor, then Customer is the data exporter and SAP is the data importer.
  - 1.2.2. Module 3: Transfer Processor to Processor
 

Where SAP is located in a Third Country, Customer is a Processor and SAP is a Processor, then Customer is the data exporter and SAP is the data importer.

## 2. B. DESCRIPTION OF TRANSFER

### 2.1. Data Subjects

Unless provided otherwise by the data exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, business partners or other individuals having Personal Data stored in the Cloud Service, transmitted to, made available to, accessed or otherwise processed by the data importer.

### 2.2. Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data per Cloud Service subscribed. Customer can configure the data fields during implementation of the Cloud Service or as otherwise provided by the Cloud Service. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data that Authorized Users enter into the Cloud Service and may include bank account data, credit or debit card data.

### 2.3. Special Data Categories (if agreed)

2.3.1. The transferred Personal Data may comprise special categories of personal data set out in the Agreement ("Sensitive Data"). SAP has taken Technical and Organizational Measures as set out in Schedule 2 to ensure a level of security appropriate to protect also Sensitive Data.

2.3.2. The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):

- a) training of personnel;
- b) encryption of data in transit and at rest;
- c) system access logging and general data access logging.

2.3.3. In addition, the Cloud Services provide measures for handling of Sensitive Data as described in the Documentation.

### 2.4. Purposes of the data transfer and further processing; Nature of the processing

2.4.1. The transferred Personal Data is subject to the following basic processing activities:

- a) use of Personal Data to set up, operate, monitor and provide the Cloud Service (including operational and technical support);
- b) continuous improvement of service features and functionalities provided as part of the Cloud Service including automation, transaction processing and machine learning;
- c) provision of embedded Professional Services;
- d) communication to Authorized Users;
- e) storage of Personal Data in dedicated data centers (multi-tenant architecture);
- f) release, development and upload of any fixes or upgrades to the Cloud Service;
- g) back up and restoration of Personal Data stored in the Cloud Service;
- h) computer processing of Personal Data, including data transmission, data retrieval, data access;
- i) network access to allow Personal Data transfer;
- j) monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database;
- k) security monitoring, network-based intrusion detection support, penetration testing; and
- l) execution of instructions of Customer in accordance with the Agreement.

2.4.2. The purpose of the transfer is to provide and support the Cloud Service. SAP and its Subprocessors may support the Cloud Service data centers remotely. SAP and its

Subprocessors provide support when a Customer submits a support ticket as further set out in the Agreement.

2.5. Additional description in respect of the New Standard Contractual Clauses:

2.5.1. Applicable Modules of the New Standard Contractual Clauses

- a) Module 2: Transfer Controller to Processor
- b) Module 3: Transfer Processor to Processor

2.5.2. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

In respect of the New Standard Contractual Clauses, transfers to Subprocessors shall be on the same basis as set out in the DPA.

2.5.3. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

Transfers shall be made on a continuous basis.

2.5.4. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period.

Personal Data shall be retained for the duration of the Agreement and subject to Section 5.2 of the DPA.

### 3. **C. COMPETENT SUPERVISORY AUTHORITY**

3.1. In respect of the New Standard Contractual Clauses:

3.1.1. Module 2: Transfer Controller to Processor

3.1.2. Module 3: Transfer Processor to Processor

3.2. Where Customer is the data exporter, the supervisory authority shall be the competent supervisory authority that has supervision over the Customer in accordance with Clause 13 of the New Standard Contractual Clauses.

### **Schedule 2 Technical and Organizational Measures**

This Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

SAP will apply and maintain the Technical and Organizational Measures.

To the extent that the provisioning of the Cloud Service comprises New SCC Relevant Transfers, the Technical and Organizational Measures set out in Schedule 2 describe the measures and safeguards which have been taken to fully take into consideration the nature of the personal data and the risks involved. If local laws may affect the compliance with the clauses, this may trigger the application of additional safeguards applied during transmission and to the processing of the personal data in the country of destination (if applicable: encryption of data in transit, encryption of data at rest, anonymization, pseudonymization).

## Schedule 1 : General Order Form

### CUSTOMER

#### Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Customer's full legal name:	Transport for NSW ABN 18 804 239 602

#### Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Customer's service/delivery address:	231 Elizabeth Street Sydney NSW 2000 Australia

#### Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Representatives (clause 23.1)</b>	
Specify an employee who is the Customer's Authorised Representative:	██████████ Program Director – Safety, Environment and Regulation Division

### CONTRACTOR

#### Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Contractor's full legal name:	SAP Australia Pty Ltd (ABN 26 003 682 504)

#### Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Contractor's service/delivery address:	Level 13, 1 Denison St, North Sydney, NSW 2060

### Item 6 Contractor's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Representatives (clause 23.1)</b>	
Specify an employee who is the Contractor's Authorised Representative:	██████████

### Item 7 Head Agreement

This Item 7 must be completed when the Customer Contract is entered into under a Head Agreement.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.1)</b>	
Specify the Head Agreement number:	████
Specify the Head Agreement title:	SAP Cloud Services Agreement
Specify the Term of the Head Agreement: Start Date: End Date:  If the Term of the Head Agreement has expired the Customer must obtain the Contract Authority's approval to enter into a further Customer Contract, and this approval should be attached to this General Order Form.	████████████████████ ████████████████████
<b>Insurance (clause 16.2)</b>	
Specify the insurances required under the Head Agreement:	
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$20,000,000 in respect of each claim for the period of cover.  Specify any higher limit of cover that is required by the Head Agreement:	██████████ ██████████
The default insurance requirement under the Head Agreement is product liability insurance with an indemnity of at least \$20,000,000 for the total aggregate liability for all claims for the period of cover.  Specify any higher limit that is required by the Head Agreement:	██████████ ██████████
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement.  If so, the default insurance requirement is for a limit of cover of €10,000,000 or \$AUD10,000,000 (whichever is higher) in respect of the total aggregate liability for all claims for the period of cover.  Specify any higher limit that is required by the Head Agreement:	████████████████████ ██████████ ██████████  *for clarity, coverage for professional indemnity/ errors and omissions is provided through Contractor's Technology Professional Liability policy

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Workers' compensation insurance in accordance with applicable legislation:	As required by law.
Specify any other type of insurance required under the Head Agreement and the specified amount:	[REDACTED]
<b>Performance Guarantee (clause 17.1)</b>	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	No

### Item 8 Modules that form part of the Customer Contract

#### Formation (clause 3.8(a))

Indicate, by marking with an X, the Modules that apply

Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>	Module 11 – Telecommunications Services	<input type="checkbox"/>
Module 2 – Hardware Maintenance and Support Services	<input type="checkbox"/>	Module 12 – Managed Services	<input type="checkbox"/>
Module 3 – Licensed Software	<input type="checkbox"/>	Module 13 – Systems Integration	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 14 – Hosting Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input type="checkbox"/>	Module 15 – Satellite Services	<input type="checkbox"/>
Module 6 – Contractor Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 7 – Professional Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 8 – Training Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 9 – Data Migration	<input type="checkbox"/>		<input type="checkbox"/>
Module 10 – X as a Service	<input checked="" type="checkbox"/>		

### Item 9 Schedules that form part of the Customer Contract in addition to the General Order Form

#### Formation (clause 3.8(b))

Indicate, by marking with an X, the Schedules that apply

Schedule 1 – General Order Form	Applies	Schedule 7 – Statutory Declaration - Subcontractor	<input type="checkbox"/>
Schedule 2 – Agreement Documents	<input checked="" type="checkbox"/>	Schedule 8 – Deed of Confidentiality	<input type="checkbox"/>
Schedule 3 – Service Level Agreement	<input checked="" type="checkbox"/>	Schedule 9 – Performance Guarantee	<input type="checkbox"/>
Schedule 4 – Variation Procedures	<input checked="" type="checkbox"/>	Schedule 10 – Financial Security	<input type="checkbox"/>
Schedule 5 – Escrow Agreement	<input type="checkbox"/>	Schedule 11 – Dispute Resolution Procedures	<input checked="" type="checkbox"/>
Schedule 6 – Deed Poll – Approved Agents	<input type="checkbox"/>	Schedule 12 – Project Implementation and Payment Plan	<input type="checkbox"/>
		Schedule 13 – Additional Conditions	<input checked="" type="checkbox"/>

### Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contract Period (Clause 2.4)</b>	
Specify the Commencement Date if it is not the date when the Customer and the Contractor sign the Customer Contract:	<p>Commencement Date: 30 January 2023</p> <p>Contract Period: From and including the Commencement Date to and including 29 January 2026, subject to any extension of the Contract Period in accordance with the terms of the Contract Period in which case the Contract Period shall include any and all Renewal Terms.</p> <p>For the purposes of this Order Form, "<b>Subscription Term</b>" means the Contract Period including any extensions of the Contract Period.</p>
Specify the end of the Contract Period:	The last day of the Contract Period as specified above, or if the Customer Contract is extended in accordance with its terms the last day of the last Renewal Term.
Specify any period of extension of the Contract Period in days/weeks/years:	<p>Extensions of the Contract Period: 1 renewal period of 12 months] ("<b>Renewal Term(s)</b>").</p> <p>The parties may renew the Contract Period of this Order Form only by executing a new Order Form on the same terms as this Customer Contract, or amending this Order Form to only reflect the extension of the Contract Period and Total Net Fee for the Renewal Term according to the Additional Conditions.</p> <p>The annual Contract Price for the first Renewal Term (and any subsequent) Renewal Term will be [REDACTED]</p>

### Item 11 Common Details

Formation (clause 3.4)						
Product and/or Service		Price per Unit	Quantity	Extended Price		
SAP Cloud Service	Usage Metric*	Usage Metric Limitation	Annual Fee	Product Start Date	Product End Date	Total Fee in AUD
SAP Business Network Asset Collaboration (BNAC) Bundle <sup>1</sup>			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SAP AnalytCloud BI pred priv CF (usr) <sup>2</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SAP Business Network Asset Collaboration (BNAC) Bundle <sup>1</sup>			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SAP AnalytCloud BI pred priv CF (usr) <sup>2</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cloud Platform Enterprise Agreement <sup>3</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SAP Preferred Success for SAP Ariba <sup>4</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]





<p>CHANGED DURING THE CONTRACT PERIOD (INCLUDING ANY RENEWAL TERM) BY WRITTEN AGREEMENT OF THE PARTIES.</p> <p>ANY ACCESS TO AND/OR USE OF THE CLOUD SERVICE IN EXCESS OF THE APPLICABLE USAGE METRIC LIMITATION SHALL BE SUBJECT TO THE ADDITIONAL FEES IN ACCORDANCE WITH THIS ITEM 11.</p>	<p>Customer Contract.</p> <p>No transition from Software to Cloud Services applies.</p> <p>Is the Customer transitioning from software to a Cloud Service?</p> <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>Is a credit for unused software support applied to the Customer Contract or the separate software order form between the Customer and the Contractor?</p> <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p>
---	---

### Item 12 Delivery Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Delivery (clause 5.1)</b>	
Specify the address of the Site where delivery is to be made:	Not Applicable
Specify any delivery instructions:	Not Applicable
Specify the hours during which delivery may be made to the Site:	Not Applicable

### Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
<p>If the Contract Specifications are the User Documentation leave this Item blank.</p> <p>If the Contract Specifications comprise other documents, list those documents in order of priority:</p>	<p>Module 10 Order Form, and the following Agreement Documents:</p> <ul style="list-style-type: none"> <li>Cloud Service Supplement – SAP Business Network Asset Collaboration Supplement, SAP Analytics Cloud Supplement and Business Technology Platform Supplement ;</li> <li>Service Definition and Technical Specification for the Cloud Service;</li> <li>Support Policy for SAP Cloud Services;</li> <li>Service Level Agreement; and</li> <li>SAP Cloud Security Schedule</li> </ul> <p>as may be amended from time to time in accordance with Module 10, but subject to the termination rights of the Customer as set out in clause 4.6 of Module 10.</p>

### Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clauses 11.1 and 11.2)	
Invoicing (clauses 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	TSS Accounts Payable Manager, Transport for NSW (with a copy to [REDACTED])
Specify address to which invoices should be sent:	<p>a) The Contractor must, wherever possible, submit invoices via the Customer's Ariba system.</p> <p>b) If invoices cannot be submitted via the Customer's Ariba System, invoices must be sent to:</p> <p><b>Soft Copy:</b></p> <p>[REDACTED] The Contractor is advised that this email address is used for the auto-collection of new invoices only.</p> <p>c) For the purposes of invoices submission for payment, the following criteria below apply:</p> <ol style="list-style-type: none"> <li>i. all invoices must be sent as PDF attachments;</li> <li>ii. only one 'PDF' file, containing only one invoice, should be attached; and</li> <li>iii. a valid contract number and purchase order number must be quoted on all invoices.</li> </ol> <p>Any queries or requests for assistance in relation to invoices should be directed to the TSS Procurement Service Desk on 1300 132 136 or <a href="mailto:tss.procurement@transport.nsw.gov.au">tss.procurement@transport.nsw.gov.au</a>.</p>
Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment. If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.	Customer must pay the Contractor within 30 days from the date of the Correctly Rendered Invoice.
Specify when the Contract Price must be paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one occasion then consider using a PIPP under Item 20.	[REDACTED]
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	[REDACTED]

### Item 15 User Documentation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
---	---

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>User Documentation (clause 5.4(b))</b>	
Specify the Price of any additional copies of the User Documentation:	No additional charge.

### Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Management Committee (clause 6.4)</b>	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	Not applicable.
<b>Management Committee (clause 6.6)</b>	
Specify the function to be performed by the management committee:	Not applicable.
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	Not applicable.
<b>Management Committee (clause 6.8)</b>	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	Not applicable.
Specify any other details:	Not applicable.

### Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Performance Reviews (clause 6.10)</b>	
Specify if a service and performance review/s of the Contractor's performance of the Customer Contract is to apply:	Upon request of the Customer, the parties will meet and engage from time to time to discuss any issues associated with this Customer Contract.
Specify any specific time intervals for service and performance reviews:	Frequency of any meetings will be undertaken as agreed by the parties, acting reasonably.

### Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Site Specifications (clause 6.12)</b>	
Specify if a Site Specification is required:	Not Applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Access to Customer's Site (clause 7.1(b))</b>	
Specify any other requirements in relation to the Site access:	Not Applicable
Specify any requirements for the preparation and maintenance of the Site:	Not Applicable

### Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Implementation Planning Study (clause 6.14)</b>	
Specify if the Contractor must provide an implementation planning study:	Not applicable.
Specify the implementation planning study objectives and time for provision of study:	Not applicable.
Date for delivery of the implementation planning study to the Customer:	Not applicable.
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	Not applicable.

### Item 20 Project Implementation and Payment Plan (PIPP) and Staged Implementation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Project Schedule (clause 6.17)</b>	
<b>Invoicing (clause 11.7)</b>	
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	Not applicable.
<b>Staged Implementation (clause 6.20)</b>	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the PIPP together with the period during which the Customer must give written notice to move to the next Stage (if greater than 10 Business Days):	Not applicable.

### Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Liquidated Damages (clauses 6.28 to 6.34)</b>	
Specify if Liquidated Damages (LDs) will apply:	Not Applicable
Specify the Milestones which are LD Obligations:	Not Applicable
Specify the Due Date for completion of each LD Obligation:	Not Applicable
Specify the calculation and amount of LDs for each LD obligation:	Not Applicable
Specify the maximum number of days LDs are to be paid for each LD obligation:	Not Applicable

### Item 22 Customer Supplied Items (CSI) and Customer Assistance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Customer Supplied Items (CSI) (clause 6.36)</b>	
Specify each CSI to be provided by the Customer: 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). [Note: details of any Customer Personnel should be specified in Item 26].	Not Applicable
Specify if any CSI must be covered by support and maintenance contracts including the period of cover, the Contractor's rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor.	Not Applicable
Specify the times when each CSI is to be provided:	Not Applicable
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	Not Applicable
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	Not Applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>If so, specify the verification check process for each CSI:</p> <p>Include:</p> <ul style="list-style-type: none"> <li>a process to manage satisfactory and unsatisfactory verification checks;</li> <li>a process to manage 'reissued' CSI's;</li> <li>a process to manage repeat CSI verification checks;</li> <li>a process to manage 'draft' or 'incomplete' and 'updated' CSI's;</li> <li>a process to manage rejected CSI's;</li> <li>a process to manage previously satisfactory CSI which becomes defective;</li> <li>a list of required verification check forms and/or registers and a corresponding data entry process;</li> <li>a list of Customer and Contractor nominee/s for responsibility to undertake verification checks:</li> </ul>	Not Applicable
Specify any amount payable by the Contractor to the Customer for any item of CSI:	Not Applicable
<b>Customer Assistance (clause 6.41)</b>	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	Not Applicable

### Item 23 Escrow

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Escrow (clause 6.42)</b>	
Specify if an escrow arrangement is required:	Not Applicable
Specify the parties to the escrow arrangement:	Not Applicable
Specify the time for the escrow arrangement to endure:	Not Applicable

### Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Business Contingency (clauses 6.45 to 6.47)</b>	
Specify if a Business Contingency Plan is	Not applicable. However see Box 4 of the Module 10 Order

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
required:	Form.
Specify when the Business Contingency Plan is required:	See Box 4 of the Module 10 Order Form.
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	See Box 4 of the Module 10 Order Form.
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	Not applicable.
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	Not applicable.

### Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Access to Customer's Site (clause 7.4)</b>	
Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.	See Items 25A and 25B below and the DPA.

### Item 25A Transfer of Records outside NSW - Customer Data

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Customer Data (clause 7.5)</b>	
Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract. If yes, Customer to state whether consent is provided to transfer State Records outside the jurisdiction of New South Wales. If consent is granted, Customer to specify: the jurisdiction(s) for which consent is granted the conditions on which such consent is granted. [Note: Clause 7.5 of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.] Example wording for Option B (which is the position agreed in the SuccessFactors agreement) is as follows:	(1) Excluding Business Technology Platform (also called "BTP") and Cloud Platform Enterprise Agreement (also called "CPEA") Cloud Services, the current locations of the data centres for the Cloud Service in this Customer Contract are as follows:  (a) Primary: New South Wales, Australia; and (b) Secondary: New South Wales, Australia.  Except as provided in: (i) the DPA; and/or (ii) the Support Policy to provide the support service for the Cloud Service, the Customer Data will not be transferred from the data centres set out above to any other location  Contractor must not use data centres or subprocessors in any country that is currently the subject of export control embargos under the laws of US/DE.  Does Option A or Option B apply to this Contract? Option A <input checked="" type="checkbox"/> Option B <input type="checkbox"/> <b>OPTION A:</b> If SAP proposes to move the data centre location from the



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><i>[If Customer objects to the proposed location, the parties will come together in good faith to discuss a resolution. Contractor may choose to:</i></p> <p><i>(a) not use the proposed location; or</i></p> <p><i>(b) propose a different location as requested by Customer.</i></p> <p><i>If none of these options are reasonably practicable, and Customer continues to object, either party may choose not to renew at the end of the initial Contract Period or relevant Renewal Term by providing at least 30 days written notice prior to the end of the initial Contract Period or any Renewal Term.</i></p> <p><i>Contractor support for the Cloud Service is provided using Contractor's Global Support model. At the date of this Order Form, the support teams for the Cloud Services are located in Contractor's Global Support Centres in Australia, China, India, Ireland, North America, Philippines, Brazil, Germany and Hungary.</i></p> <p><i>Contractor will give Customer 90 days' notice in the event there is a new country added in which Contractor will be providing support for all customers generally of the Cloud Service. In the event a new country is added and Customer does not consent to such country then Customer will notify Contractor of this and Contractor may then not use such country for any support services provided that Customer agrees that the response times of Support Services may be impaired and fall outside of the support levels set out in the Support Policy. In this circumstance, Contractor will not be in breach of its support times or SLA obligations for support as set out in the Support Policy. The parties will discuss and work together in good faith to resolve the issue of the support times and SLA obligations being impaired.</i></p> <p><i>For Customer requests for English-language technical support for the Cloud Services specified in this Customer Contract that Customer submits via the Contractor Cloud Support Portal or support hotline, (i) Contractor agrees it will not access in China any Customer Data to provide such support, and (ii) if Contractor requires use of support resources inside China and Customer does not consent to such use, Customer accepts that response times of support services for such request may be impaired and fall outside of the support levels set out in the Support Policy referenced in Schedule 1 of this Customer Contract.]</i></p>	<p>above locations, SAP will provide Customer with 90 days prior notice before moving Customer's instance (and the related Customer Data) to a data centre in a different country ("Relocation Notice"), provided that this requirement shall not apply in the event a disaster or other force majeure event requires SAP to host the Cloud Service from another data centre. Within 90 days of the Relocation Notice, Customer may terminate the Agreement by providing not less than 30 days written notice of termination if SAP moves the Customer's instance to a new data centre location in another country (and Customer will not be liable for any fees, costs or liability in respect of such termination other than payment of fees for the Cloud Service up to the effective date of termination).</p> <p><b>OPTION B:</b></p> <p>Not applicable.</p> <p><b>DR Failover</b></p> <p>Does the Cloud Service allow for failover to a secondary data centre for disaster recovery?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If yes, is the disaster recovery failover is to a secondary data centre within Australia?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p>

### Item 25B Transfer of Records outside NSW – Personal Information

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Privacy (clause 15)</b>	
<p>Customer to specify whether consent is provided to transfer Personal Information outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ul style="list-style-type: none"> <li>the jurisdiction(s) for which consent is granted</li> <li>the conditions on which such consent is granted.</li> </ul> <p>[Note: Clause 15.1(h) of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	<p>Consent is provided as per the terms in Item 25A, noting the Customer's termination rights provided for in that item.</p>

### Item 26 Customer's Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Personnel General (clause 8.5)</b>	
<p>Specify the Customer's Personnel who will be available to work with the Contractor and their roles and responsibilities:</p> <p>Also specify the times and duration of their involvement as well as their authority levels:</p>	<p>Not Applicable</p>

### Item 27 Specified Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Specified Personnel (clause 8.8)</b>	
<p>Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:</p>	<p>Not Applicable</p>

### Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Agents and Subcontractors (clause 8.17)</b>	
<p>Specify which subcontractors are required to provide a Statutory Declaration by Subcontractor, substantially in the form of Schedule 7:</p>	<p>Not Applicable</p>

### Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(h))</b>	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	Not Applicable

### Item 30 Contractor's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(g))</b>	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	All laws applicable to the Contractor in the operation of the Contractor's business as it relates to provision of the Cloud Services within the scope of this Customer Contract.
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	Not applicable.

### Item 31 Customer's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Customer Warranties (clause 9.3(h))</b>	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	Not Applicable
Specify any codes, policies, guidelines or standards the Customer is to comply with:	Not Applicable

### Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Part 3 Dictionary (clauses 1.2 to 1.4)</b>	
<b>Acceptance Test Notification Period</b> is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period: If no period is specified, the period is 2 Business Days:	Not applicable.
<b>Acceptance Test Data</b> is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:	Not applicable.
<b>Acceptance Test Period</b> is the period for the performance of any Acceptance Tests	Not applicable.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>for any Deliverable. Specify this period: If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.</p>	
<b>Acceptance (clause 10.1)</b>	
<p>For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing: If not, the Deliverable will be Accepted under clause 10.1(a).</p>	Not applicable.
<p>If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date (AAD) for a Deliverable occurs: If no period is specified, then the period is 2 Business Days.</p>	Not Applicable
<b>Conducting Acceptance Tests (clause 10.3)</b>	
<p>For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:</p>	Not applicable.
<p>Specify the identification of the Deliverables or part of the Deliverables to be tested:</p>	Not applicable.
<p>Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:</p>	Not applicable.
<p>Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use:</p>	Not applicable.
<p>Specify the methodology and process for conducting Acceptance Tests:</p>	Not applicable.
<p>Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:</p>	Not applicable.
<p>Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:</p>	Not applicable.
<p>Specify the Acceptance Test Data required:</p>	Not applicable.
<p>If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:</p>	Not applicable.

### Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Payment (clause 11.3)</b>	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	Not Applicable
Specify any fee that is applicable for payment by credit/debit card	Not Applicable

### Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Existing Material (clauses 13.7 and 13.9)</b>	
Specify any terms and condition applicable for granting a license for Existing Material owned by a third party:	██████████
Specify any fees to be charged for any license to use any of Contractor's Existing Materials:	██████████
<b>Customer Owned New Material (clause 13.10)</b>	
Specify if clause 13.10 applies, and if so, to which items of New Material:	██

### Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Confidentiality (clause 14.1)</b>	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8 – Deed of Confidentiality:	Not Applicable

### Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Insurance (clause 16.7)</b>	
Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$20,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]	██████████
Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover.	██████████



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	

### Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Limitation of Liability (clause 18)</b>	
<p>If the Parties cannot agree the amount that is legally payable under the Customer Contract for the:</p> <ul style="list-style-type: none"> <li>Non-Recurring Service or Product; and/or</li> <li>Short Term Recurring Service</li> </ul> <p>(as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price).</p> <p>Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service.</p> <p><b>(See the definition of Contract Value in Part 3)</b></p>	<p>See alternative cap below.</p>

If Services are being provided under any of the following Modules:

Module 6 – IT Personnel; Module 7 – Professional Services; Module 8 – Data Management; Module 11 – Web Services; Module 16 - Project Management Services; Module 17 - Change Management Services; Module 18 - Knowledge Transfer Services; or Module 20 - Whole of Government Requirements

specify whether the Parties regard the relevant Services as being:

the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring Services for the purpose of the limitation of liability; or

provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability.

**(See definition of Non-Recurring Services and Recurring Services in Part 3)**

See alternative cap below.



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer											
<p>Specify the alternative cap of liability (clause 18.3):</p>	<p>[REDACTED]</p>											
	<p>[REDACTED]</p>											
	<p>[REDACTED]</p>											
	<p>[REDACTED]</p>											
	<p>[REDACTED]</p>											
	<p>[REDACTED]</p>											
	<table border="1"> <tbody> <tr> <td data-bbox="721 1010 889 1108">[REDACTED]</td> <td data-bbox="889 1010 1305 1108">[REDACTED]</td> </tr> <tr> <td data-bbox="721 1108 889 1207">[REDACTED]</td> <td data-bbox="889 1108 1305 1207">[REDACTED]</td> </tr> <tr> <td data-bbox="721 1207 889 1306">[REDACTED]</td> <td data-bbox="889 1207 1305 1306">[REDACTED]</td> </tr> <tr> <td data-bbox="721 1306 889 1404">[REDACTED]</td> <td data-bbox="889 1306 1305 1404">[REDACTED]</td> </tr> <tr> <td data-bbox="721 1404 889 1503">[REDACTED]</td> <td data-bbox="889 1404 1305 1503">[REDACTED]</td> </tr> <tr> <td data-bbox="721 1503 889 1694">[REDACTED]</td> <td data-bbox="889 1503 1305 1694">[REDACTED]</td> </tr> </tbody> </table>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]											
[REDACTED]	[REDACTED]											
[REDACTED]	[REDACTED]											
[REDACTED]	[REDACTED]											
[REDACTED]	[REDACTED]											
[REDACTED]	[REDACTED]											

## Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Reporting (clause 21.1)</b>	
Specify the reports required, (if any), the time for provision and the agreed format.	Not applicable.

## Item 40A Audit

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Alternative Audit Mechanism (clause 23.11)</b>	
<p>If the default audit provisions of clause 23.5-23.8 are to apply, state "Not Applicable".</p> <p>If an alternative audit mechanism is agreed by the Customer and Contractor, specify the terms of such alternate audit including the Contractor's obligations to be audited.</p> <p>Note: Any alternate audit mechanism must address compliance with the Contractor's Customer Data, security and privacy obligations and such other obligations required by the Customer and reasonably agreed by the Contractor.</p>	<p>The parties agree that the following audit right applies as an alternative audit mechanism to that provided in clauses 23.5 to 23.8:</p> <p>In addition, the Customer may reasonably request the Contractor to provide additional information available to the Contractor regarding security of the Cloud Services, and the Contractor must provide the information within a reasonable time following the request provided the information is available to the SAP Australia account team, approved for release to the Contractor's customers, and is not already covered in documentation available for self-service via the SAP Support Portal or SAP Trust Centre or successor location.</p>

## Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Dispute Resolution (clause 24.11)</b>	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7 to 24.8.	■
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	Not Applicable

## Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Termination for Convenience by the Customer (clause 25.4)</b>	
Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3:	a) The Parties hereby agree that the Customer may terminate this Customer Contract for convenience pursuant to clause 25.3 of the Customer Contract only after the first 3 months of the Contract Period, and if the Customer does so, the Customer will continue to







Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>[Redacted]</p> <ul style="list-style-type: none"><li>[Redacted]</li><li>[Redacted]</li></ul> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <ul style="list-style-type: none"><li>[Redacted]</li></ul> <p>[Redacted]</p> <p>[Redacted]</p> <ul style="list-style-type: none"><li>[Redacted]</li></ul> <p>[Redacted]</p>



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<div style="background-color: black; height: 150px; width: 100%;"></div> <ul style="list-style-type: none"> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> </ul> <div style="background-color: black; height: 100px; width: 100%;"></div> <p><b><u>Transfer Right within Eligible Customers</u></b></p> <p>Customer (“<b>Transferor</b>”) may transfer (in whole or in part) the Cloud Services (“<b>Transferring Services</b>”) to another Eligible Customer (“<b>Transferee</b>”) during the Contract Period provided that:</p> <ul style="list-style-type: none"> <li>(a) Customer must notify Contractor 60 days prior to the transfer (unless otherwise agreed between the parties);</li> <li>(b) the parties document the transfer as follows: <ul style="list-style-type: none"> <li>(i) if the Transferee is an existing customer under a Customer Contract under the Head</li> </ul> </li> </ul>

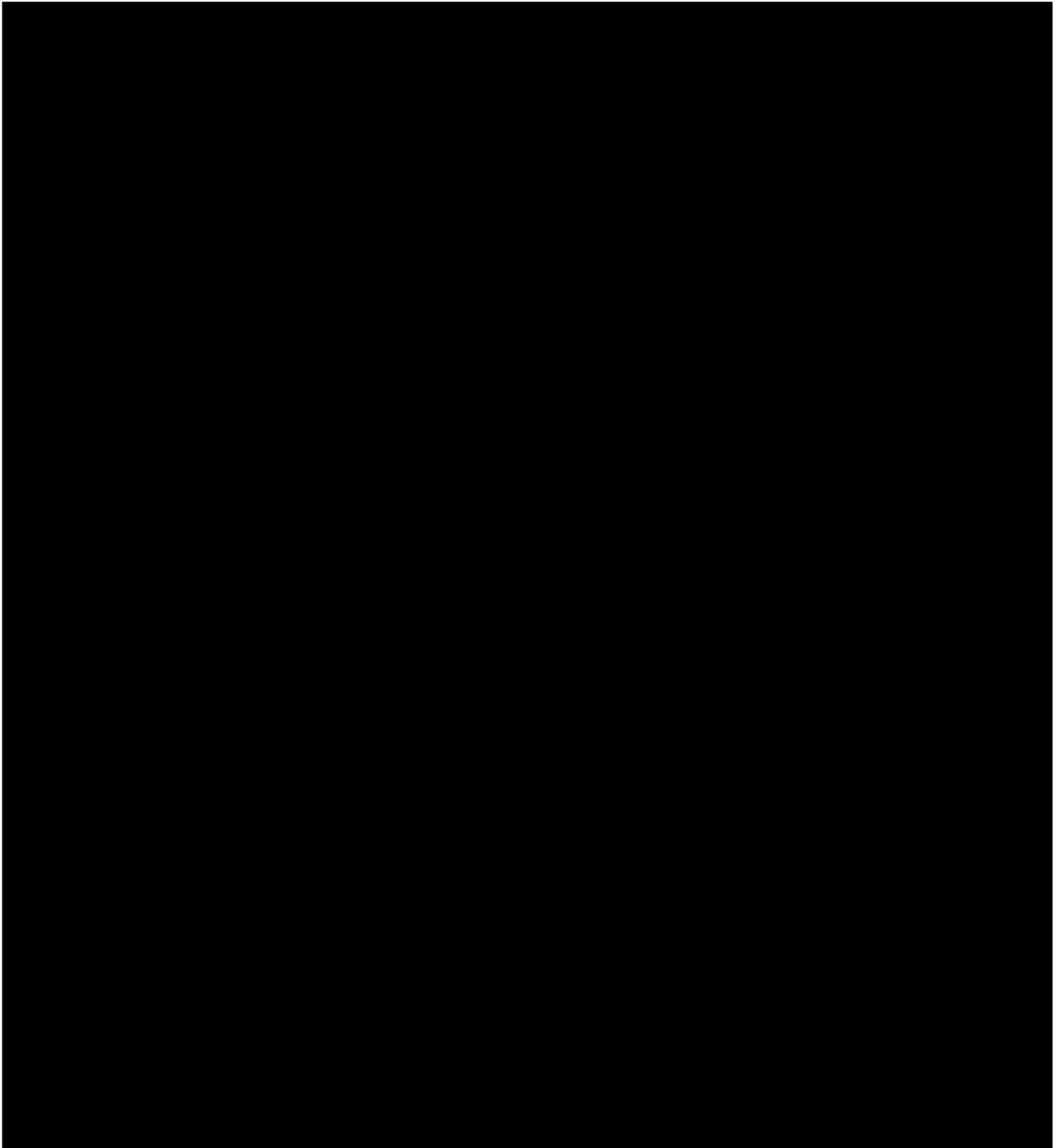
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>Agreement then each of the Transferor and the Transferee will sign an amendment to their respective Customer Contracts to effect the transfer; and</p> <p>(ii) if the Transferee is not an existing Customer under the Head Agreement then the Transferee must enter into a Customer Contract and pay for additional instances as per the price notified by Contractor (that is acceptable to the Customer and at the rates in the Head Agreement, where applicable), and the Transferor will sign an amendment to its Customer Contract to effect the transfer;</p> <p>(c) for clarity, the Transferee cannot elect to continue accessing the Transferring Services from the Transferor's instance of the Cloud Services;</p> <p>(d) after the transfer is completed, the Transferee will be responsible for all payments and obligations under the Customer Contract it has with the Contractor;</p> <p>(e) at the time of the proposed transfer, the Customer must be current with all Prices as they relate to the applicable Customer Contract;</p> <p>(f) if any additional set-up, configuration, deployment, or related services are required for Transferee to continue using the Cloud Service or to transfer the Cloud Service, Transferee must pay the applicable Price for such Cloud Services, in order for the transfer to be effective;</p> <p>(g) if any Customer Data extraction services and/or consulting services for the Transferor or Transferee are required to be provided by Contractor, such services will be carried out under written statements of work with the Transferor and/or the Transferee, at Contractor's applicable Price for such services. If no Prices are provided under the Head Agreement for extraction or consulting services, the Prices under the Professional Services Head Agreement agreed by the Contractor and the Contract Authority will apply;</p> <p>(h) no transfer activity may cause the Transferee or Transferor to be undersubscribed for its use of the Cloud Services; and</p> <p>(i) in no event will a transfer under this section result in a reduction of the Price paid to Contractor under the Transferor's original Customer Contract or a refund of prepaid subscriptions for the Transferring Services.</p> <p>The following Contractor Assignment clause applies if specified in a Contract.</p> <p>Does the following clause apply to this Contract?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p>



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer						
	<p><b><u>Contractor Assignment</u></b></p> <p>Contractor may assign the Agreement to SAP SE or any of SAP SE's affiliates with sufficient financial standing to perform the Contractor's obligations under the Customer Contract.</p> <p><b><u>Governance</u></b></p> <p>On the request of either party, the Customer and Supplier shall carry out governance activities at the proposed frequencies, as set out in the table below, in relation to modifications to the SAP Cloud Service(s) purchased under this Contract due to a major release of an update or upgrade. Unless otherwise agreed by the parties, the following governance activities shall be included and attended to by the nominated representatives of both parties.</p> <table border="1" data-bbox="721 747 1308 1081"> <thead> <tr> <th data-bbox="721 747 889 848">Governance Activity</th> <th data-bbox="889 747 1308 848">Modification Governance</th> </tr> </thead> <tbody> <tr> <td data-bbox="721 848 889 949">Proposed Frequency</td> <td data-bbox="889 848 1308 949">Half-yearly or depending on major releases</td> </tr> <tr> <td data-bbox="721 949 889 1081">Sample Agenda Topic</td> <td data-bbox="889 949 1308 1081">Details of the modification to the Cloud Service, Product Roadmap SAP has publicly released</td> </tr> </tbody> </table>	Governance Activity	Modification Governance	Proposed Frequency	Half-yearly or depending on major releases	Sample Agenda Topic	Details of the modification to the Cloud Service, Product Roadmap SAP has publicly released
Governance Activity	Modification Governance						
Proposed Frequency	Half-yearly or depending on major releases						
Sample Agenda Topic	Details of the modification to the Cloud Service, Product Roadmap SAP has publicly released						

**This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.**

**SIGNED AS AN AGREEMENT**



## Schedule 2 : Agreement Documents

Itemise all documentation (including any supplemental terms and conditions agreed to by the Customer, accepted tenders, offers or quotes from the Contractor, and any letter of acceptance or award issued by the Customer) between the Customer and the Contractor. All such documentation must be itemised in this Schedule 2 and listed below in descending date order (i.e. the latest document is listed first.)

Document	Date of Document
The Cloud Service Supplement: SAP Business Network Asset Collaboration Supplement, SAP Analytics Cloud Supplement and Business Technology Platform Supplement	Version available as at Commencement Date
Support Policy for SAP Cloud Services: Support Policy for SAP Cloud Services which is subject to change by the Contractor	Version available as at Commencement Date
The Service Level Agreement for SAP Cloud Services as set out in the SLA Schedule	Version available as at Commencement Date
Data Processor Agreement attached to the Module 10 Order Form as <b>Exhibit 1</b> (" <b>Data Processor Agreement</b> " or " <b>DPA</b> ")	Version available as at Commencement Date
Service Definition and Technical Specifications	Contractor's current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
SAP Cloud Security Schedule	Version available as at Commencement Date

# Schedule 3

## Service Level Agreement for SAP Cloud Services

### SERVICE LEVEL AGREEMENT FOR SAP CLOUD SERVICES

#### 1. DEFINITIONS

- 1.1. **“Credit”** means [REDACTED]
- 1.2. **“Downtime”** means the Total Minutes in the Month during which the production version of the Cloud Service is not available, except for Excluded Downtimes.
- 1.3. **“Excluded Downtime”** means the Total Minutes in the Month attributable to a Maintenance Window; or any Major Upgrade Window for which the Customer has been notified at least five (5) business days in advance; or unavailability caused by factors outside of SAP’s reasonable control, such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised.
- 1.4. **“Maintenance Window”** means the weekly maintenance windows for the Cloud Service identified in [REDACTED] SAP may update the Maintenance Window from time to time in accordance with the Agreement.
- 1.5. **“Major Upgrade Window”** means the extended upgrade maintenance windows for the Cloud Service identified in [REDACTED] SAP may update the Major Upgrade Window from time to time in accordance with the Agreement.
- 1.6. **“Month”** means a calendar month.
- 1.7. **“Monthly Subscription Fees”** means the monthly (or 1/12 of the annual fee) subscription fees paid for the applicable Cloud Service which did not meet the System Availability SLA.
- 1.8. **“System Availability Percentage”** is calculated and defined as follows:
- $$\left( \frac{\text{Total Minutes in the Month} - \text{Excluded Downtime} - \text{Downtime}}{\text{Total Minutes in the Month} - \text{Excluded Downtime}} \right) * 100$$
- 1.9. **“System Availability SLA”** means a 99.7% System Availability Percentage during each Month for the production version of the Cloud Service.
- 1.10. **“Total Minutes in the Month”** are measured 24 hours at 7 days a week during a Month.
- 1.11. **“UTC”** means Coordinated Universal Time standard being the start time for the applicable Maintenance Window and Major Upgrade Window.

#### 2. SYSTEM AVAILABILITY SLA AND CREDITS

- 2.1. Credit
- If SAP fails to meet the System Availability SLA for a particular Month, Customer may claim a Credit, which Customer may apply to a future invoice relating to the Cloud Service that did not meet the System Availability SLA (subject to Sections 2.1.1 and 2.1.2 below).
- 2.1.1. Claims for a Credit must be made in good faith and through a documented submission of a support case within thirty (30) business days after the end of the relevant Month in which SAP did not meet the System Availability SLA for the Cloud Service.
- 2.1.2. If Customer terminates this Customer Contract for cause or the Customer Contract has expired and there are no further invoices owing, SAP shall pay to Customer all Service Credits due under this Schedule 3 (Service Level Agreement) that SAP has not applied to Customer invoices prior to the effective date of such termination or expiry.
- 2.1.3. Customers who have not subscribed to the Cloud Service directly from SAP must claim the Credit from their applicable SAP partner.
- 2.1.4. In the event Contractor fails to meet any Service Level (i) for four consecutive months, (ii) for five or more months during any twelve months period, or (iii), for the system availability Service Level, at a system availability level of at least 97% for one calendar month, the applicable Service Credits will not be

Customer's sole and exclusive remedy for Contractor's failure to meet the Service Levels and will be in addition to other contractual remedies, but any Service Credits paid will be offset against any damages awarded in the event that Customer successfully pursues any claim arising out of a failure to meet the Service Levels. In addition, Customer may terminate its subscriptions for the affected Cloud Service by providing Contractor with written notice with such termination to take effect within 3 months after the failure. Customer will not be liable for any early termination fee, or other fees, costs or liability in respect of such termination. The Contractor must refund any fees paid for unused periods of the subscription from the date specified in the Contract (or if no date is specified, from the date of the failure).

2.2. System Availability Report

SAP will provide Customer with a monthly report describing the System Availability Percentage for the Cloud Service either by email following a request to Customer's assigned SAP account manager; through the Cloud Service; or through an online portal made available to Customer, if and when such online portal becomes available.

**3. CHANGES TO WINDOWS**

- 3.1. If Customer wishes to be notified of changes to Maintenance Windows and Major Upgrade Windows, it must subscribe to receive notifications [REDACTED]

## Schedule 4: Variation Procedures

### 1. Procedures

Each request or recommendation for a change to the PIPP or any part of the Customer Contract must be submitted in a form substantially similar to the Change Request form attached to this Schedule.

For each draft Change Request submitted:

- (a) the Customer must allocate it with a sequential number;
- (b) the draft Change Request must be logged and its progress documented by recording its status from time to time by the Contractor as follows:
  - (i) requested;
  - (ii) under evaluation;
  - (iii) awaiting authorisation;
  - (iv) cancelled;
  - (v) pending
  - (vi) approved/authorised;
  - (vii) expired;
  - (viii) in progress;
  - (ix) applied;
  - (x) delivered;
  - (xi) accepted.

The Party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):

- (c) request further information;
- (d) provide written notification to the other Party of its approval or rejection of the Change Request.

If the Customer submits a draft Change Request to the Contractor, and the Contractor believes that there is more than 1 Business Day's work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request the Contractor may request that the Customer pays for the work involved to evaluate the draft Change Request. The Customer may then either revise the draft Change Request to require less than 1 Business Day's work to evaluate it, or agree to pay for the Contractor's work to evaluate the Change Request in an amount agreed by the Parties, or in absence of agreement, at the Contractor's then current commercial rates.

If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary a Protected Clause and the Customer approves of the Change Request, the Customer must submit the Change Request to the Contract Authority and the Director General, NSW

Department of Finance and Services, for approval immediately after it has notified the Contractor that it approves the Change Request.

## **2. Status**

A Change Request is binding on the Parties only when both Parties have signed it. Once signed by both parties the Change Request updates the Customer Contract in accordance with the terms of the Change Request. The Contractor must not implement any draft Change Request until the Customer has signed the Change Request form.

### 3. Change Request Form

#### CHANGE REQUEST BRIEF DETAILS

<b>Change Request Number</b>		<i>Insert Change Request Number (supplied by the Customer)</i>
<b>Date of Change Request</b>		<i>Insert date of draft Change Request</i>
<b>Originator of need for Change Request</b>		<i>Customer or Contractor</i>
<b>Proposed Implementation Date of Change</b>		<i>Insert proposed date of implementation</i>
<b>Date of expiry of validity of Change Request</b>		<i>Insert validity expiry date. The Change Request is invalid after this date.</i>
<b>Contractor's estimated time and cost of evaluation</b>		<i>Insert estimated time and cost of evaluation</i>
<b>Amount agreed to be paid to the Contractor for evaluating the draft Change Request, if any (This applies only if the Customer is the Party that originated the need for a Change Request; and the Contractor estimates the cost of evaluating and drafting the Change Request exceeds 2 Business Days)</b>		<i>Insert amount to be paid to the Contractor for evaluating the draft Change Request</i>

#### CHANGE REQUEST HISTORY LOG

Change Request Version History			
Date	Issue Version	Status/Reason for New Issue	Author
<i>Insert date</i>	<i>Insert version</i>	<i>Insert status/reason</i>	<i>Insert author</i>

#### DETAILS OF CHANGE REQUEST

##### Summary

[Insert a summary of the changes, if required]

##### SCOPE

[Insert changes to the scope of Products to be provided and/or any Services, including any extensions to the Contract Period.]



## **EFFECT OF CHANGE ON CONTRACT SPECIFICATION**

[Insert any changes to the Contract Specification]

## **EFFECT OF CHANGE ON PROJECT TIMETABLE**

[Insert changes to the project timetable]

## **New PIPP (annexed)**

[Annex new PIPP if required]

## **EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT**

[Insert new charges and the timing of payment into the new PIPP]

## **CHANGES TO CSI**

[Insert any changes to the CSI]

## **CHANGES TO CUSTOMER PERSONNEL**

[Insert any changes to the Customer's Personnel]

## **CHANGES TO CUSTOMER ASSISTANCE**

[Insert any changes to the Customer's Assistance]

## **PLAN FOR IMPLEMENTING THE CHANGE**

[insert the plan for implementing the change – if any.]

## **THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE**

[Insert the responsibilities of the respective Parties for implementing the change – if any.]

### **Responsibilities of the Contractor**

[Insert the responsibilities of the Contractor for implementing the change – if any.]

### **Responsibilities of the Customer**

[insert the responsibilities of the Customer for implementing the change – if any.]

## **EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE**

[Insert if there will be any effect on the Acceptance Testing of any Deliverable – or alternatively insert None.]

## **EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE**

[Insert if there will be any effect on performance of any Deliverable – or alternatively insert None.]

## **EFFECT ON USERS OF THE SYSTEM/SOLUTION**

[Insert if there will be any effect on users of the system/solution – or alternatively insert None.]

## **EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES**

Changes will be required to the following documents:

[Add any other documents which may be affected.]

## **EFFECT ON TRAINING**

Insert if there will be an effect on training or alternatively insert None.]

## **ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT**

[insert if there are any other matters.]

## **ASSUMPTIONS**

The plan for implementing the changes outlined in this Change Request is based on the assumptions listed below:

[Insert any assumptions. If none then this section will be deleted].

If the assumptions are or become untrue, the Parties will address the effect of this through a subsequent Change Request.

## **LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST**

[Insert a list of the documents that form part of this Change Request]

## **CUSTOMER CONTRACT CLAUSES, SCHEDULES AFFECTED BY THE PROPOSAL ARE AS FOLLOWS:**

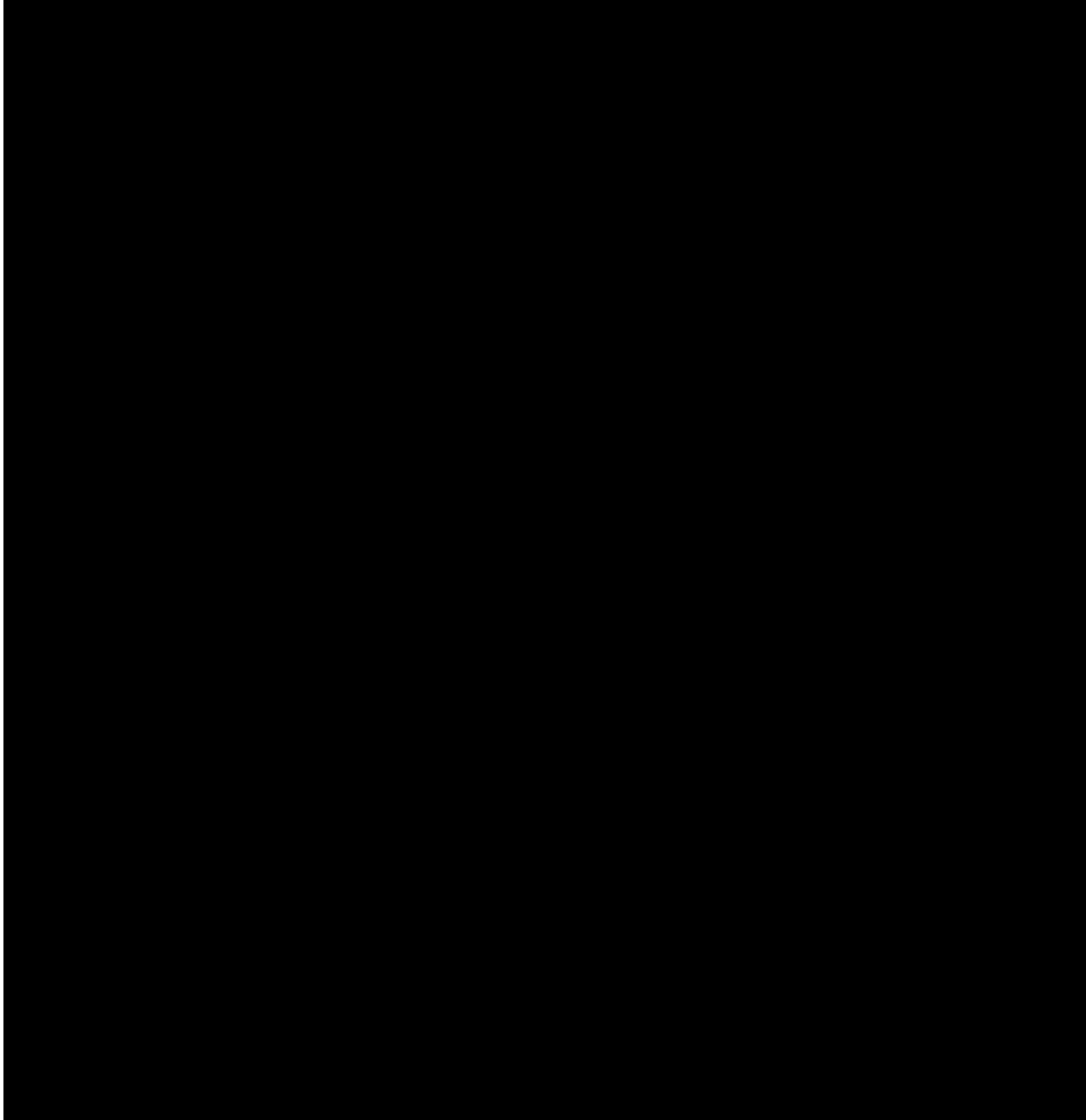
[Insert amendments to clauses in the Customer Contract, relevant Schedules including Service Level Agreement]

Note that variations to any of the Protected Clauses require the Customer to obtain the Contract Authority's and the Director General, NSW Department of Finance and Services approval (clause 26.2))

## **AUTHORISATION**

The Contractor must not commence work on the Change Request until it is signed by both Parties. Once signed by both Parties, the Customer Contract is updated by this Change Request and any provisions of the Customer Contract that conflict with this Change Request are superseded.

**SIGNED AS AN AGREEMENT**



## Schedule 5: Escrow Deed

Not used.

## **Schedule 6: Deed Poll – Approved Agents**

Not Used.

## **Schedule 7: Statutory Declaration – Subcontractor**

Not Used.

## Schedule 8: Deed of Confidentiality

Not Used.

## Schedule 9: Performance Guarantee

Not Used.



## Schedule 10: Financial Security

Not Used.

## Schedule 11: Dispute Resolution Procedures

### 1. Expert Determination

If a Referral Notice is submitted under clause 24.7 of the Customer Contract, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Commercial Disputes Centre of NSW.

The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the technology that is the subject matter of the dispute, unless otherwise agreed. The expert must not be:

- (a) an employee of the Parties;
- (b) a person who has been connected with this Customer Contract or has a conflict of interest, as the case maybe; or
- (c) a person who the Parties have not been able to agree on.

The expert may appoint any person that the expert believes will be able to provide the specialists skills that are necessary to make a determination, including an Australian legal practitioner. The expert must consult with both Parties prior to appointing such person.

When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:

- (d) the issue referred to the expert for determination;
- (e) the expert's fees;
- (f) the procedure for the determination set out in this Schedule; and
- (g) any other matter which is relevant to the engagement.

### 2. Submissions

The procedure for submissions to the expert is as follows:

- (a) The Party that has referred the issue to expert determination must make a submission in respect of the issue, within 30 Business Days after the date of the letter of engagement referred to in clause 1.4.
- (b) The other Party must respond within 30 Business Days after receiving a copy of that submission. That response may include cross-claims.
- (c) The Party referred to in clause 2.1(a) may reply to the response, but must do so within 20 Business Days after receiving the response, and must not raise new matters.
- (d) The other Party may comment on the reply, but must do so within 20 Business Days after receiving the reply, and must not raise new matters.

- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2.1, unless the Customer and the Contractor agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

### 3. Conference

The expert must arrange at least one conference with both Parties. The request must be in writing, setting out the matters to be discussed.

Each Party is entitled to be represented at any preliminary conference before the expert by its legal representatives and other authorised representatives, with information and knowledge of the issues.

The expert is not bound by the rules of evidence and may receive information in any manner the expert sees fit, but must observe the requirements of procedural fairness. Consultation between the expert and a Party must only take place in the presence of the other Party, unless a Party fails to attend a conference or meeting which has been convened by the expert and of which prior notice has been given. Any Party providing information to the expert must provide that information to the other Party.

The Parties agree that such a conference is considered not to be a hearing that would give anything under this Schedule the character of arbitration.

In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off or counter-claim.

### 4. Questions to be determined by the Expert

The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):

- (a) is there an event, act or omission that gives the claimant a right to compensation under the Customer Contract:
  - (i) for damages for breach of the Customer Contract, or
  - (ii) otherwise in law?
- (b) if so:
  - (i) what is the event, act or omission?
  - (ii) on what date did the event, act or omission occur?
  - (iii) what is the legal right which gives rise to the liability to compensation?
  - (iv) is that right extinguished, barred or reduced by any provision of the Customer Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- (c) in the light of the answers to clause 4.1:

- (i) What compensation, if any, is due from one Party to the other and when did it fall due?
- (ii) What interest, if any, is due when the expert determines that compensation?

The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.

The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 for the determination, and bear their own expenses.

If the expert determines that one Party must pay the other an amount exceeding the amount specified in General Order Form (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.

Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Customer Contract:

- (d) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
- (e) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

## 5. Role of Expert

The expert must:

- (a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
- (b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
- (c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
- (d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
- (e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d).

If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.

## 6. Confidentiality

Each Party involved in the expert determination process, including the expert, the Parties, their advisors and representatives shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of the expert determination process, the expert's determination, or any information received or obtained, in the course of the expert determination process, including the existence of that information, except to the extent:

- (a) the Parties have otherwise agreed in writing;
- (b) the information is already in the public domain;
- (c) disclosure is required to a Party's insurers, auditors, accountants or other professional advisers;
- (d) disclosure is required for the purposes of any legal proceedings relating to the dispute or the expert's determination; or
- (e) disclosure is otherwise required by law.

## Schedule 12: PIPP

Not used.

## Schedule 13: Additional Conditions

### 1. Amendments to Part 2: Customer Contract

1.1 The Parties make the following acknowledgements:

- (a) the Customer acknowledges that these additional conditions have been approved by the Contract Authority; and
- (b) the Parties acknowledge and agree that the As a Service in this Customer Contract are Services and are not licensed in accordance with clause 13.5 of the Customer Contract.

1.2 The Parties agree to amend Part 2: Customer Contract by:

- (a) replacing all references to the “NSW Department of Finance and Service” with “New South Wales Department of Customer Service”;
- (b) replacing all references to the “Director General, NSW Department of Finance and Services” with “Secretary, New South Wales Department of Customer Service”;
- (c) inserting the following new clauses 3.11 to 3.12 after clause 3.10:
  - 3.11 Terms included in any Customer Contract under this Head Agreement, whether expressly or by reference (by hyperlink or by any other means), have no effect and are not legally enforceable to the extent they:
    - (a) impose additional costs, charges or liability on the Customer;
    - (b) limit the support, Service Levels, security or privacy requirements applicable to the Customer Contract;
    - (c) contain limits on Contractor’s liability for the Cloud Services,unless they are expressly set out in the Customer Contract (references to Documentation and the inclusion of hyperlinks other than hyperlinks for Maintenance Windows and Major Upgrade Windows as referenced in the SLA are not ‘expressly set out in the Customer Contract’ and any clauses within the scope of clause 3.11 in the Documentation and hyperlinks must be expressly set out in the General Order Form).
  - 3.12 *If the Contractor and Customer wish to include in any Contract a provision that otherwise would have no effect under clause 3.11, it must be explicitly included in the General Order Form and submitted to the Contract Authority for approval. That provision will only have effect if it is approved in writing by the Contract Authority and the Customer.*
  - 3.13 *For clarity, any Contractor obligations to use commercially reasonable efforts do not limit the Contractor’s obligations in the Customer Contract, including clause 7 (as amended in this Schedule 13).*
  - 3.14 *The Parties acknowledge their intention that any Order Form templates included in the Agreement are templates only, and that all Contract Details must be agreed in a Contract. The Contractor and Contract Authority agree that any pre-populated General Order Forms or Module Order Forms attached to the Agreement:*
    - (a) *do not bind Eligible Customers to any populated information;*





- (c) if the Customer terminates or reduces the Customer Contract pursuant to clause 7.6B, the Customer remains responsible for subscription fees up to the effective date of termination.
- 7.7 Unless otherwise specified in Module 10, the Contractor must retain only the Customer Data that the Customer has agreed the Contractor may retain and must only retain that Customer Data for the period of time and in the volumes notified by the Customer from time to time, after which date the Contractor must destroy the Customer Data or return it to the Customer, at the Customer's election.
- 7.8 Where the Customer has agreed in writing that Customer Data may be used for the Contractor's own testing purposes, the Contractor must not use any Customer Data for testing purposes unless that Customer Data has first been masked or de-identified in a manner approved by the Customer. The Parties acknowledge that unless otherwise agreed, no Customer Data will be provided for this purpose.
- 7.9 The Contractor has internal policies and standards to prevent Customer Data loss and support Customer Data availability. At a minimum, regular backups of Customer Data are performed by the Contractor.
- 7.10 Contractor or an Affiliate of the Contractor may create analyses utilizing, in part, de-identified (e.g. anonymised) and aggregated Customer Data and information derived from Customer's use of the Cloud Service. Analyses will anonymize and aggregate information, and will be treated as Cloud Materials. Examples of how analyses may be used include: optimizing resources and support; research and development; automated processes that enable continuous improvement, performance optimization and development of new Contractor products and services; verification of security and data integrity; internal demand planning; and data products such as industry trends and developments, indices, and anonymous benchmarking. The Contractor agrees and acknowledges that it will not use Personal Information or Confidential Information of the Customer for any marketing purposes (including marketing to existing Contractor customers or to prospective customers) and that, except as expressly permitted by the Customer Contract, the Contractor will not disclose any Customer Data to any third party (other than the Contractor's Affiliates and Subcontractors) in any circumstances in connection with analyses. Any disclosure of Customer Data to the Contractor's Subcontractors must be in accordance with the terms of the Customer Contract (including privacy, secrecy and confidentiality terms).

## SECURITY

- 7.11 The Contractor must:
- (a) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised access, use, destruction, loss or alteration of Customer Data and the Customer's other Confidential Information; and
  - (b) notify and keep the Customer notified at all times (by making available on the Contractor's cloud portal) of the Contractor's current safety and security procedures and safeguards in respect of Customer Data and keep the Customer notified of any amendments to such procedures and safeguards that are made from time to time.
- 7.11A The Contractor confirms that it has reviewed the NSW Government Cyber Security Policy. As at the Commencement Date of the Customer Contract the Contractor has indicated its conformance with NSW Government Cyber Security Policy maturity level 1 (lowest level), as set out in Attachment 1 of this Schedule 13, for the following Cloud Services:
- (a) Fieldglass;
  - (b) SAC;
  - (c) SCP; and

(d) Ariba.

7.11B For clarity, the Contractor reserves the right to update its security standards and policies at its sole discretion. If the changes to its security standards and policies materially adversely affect the security of the Cloud Service used by the Customer during the Contract Period, Customer may terminate the affected Cloud Service by providing written notice to Contractor within thirty (30) days after receipt of Contractor's informational notice of the changes to Contractor's security standards and policies. In the event of such a termination, Customer will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of the prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

Any such termination will become effective thirty (30) days after receipt by Contractor of the termination notice from Customer.

7.11C Not Used.

7.11D ISO 27001 Certification. As of the Effective Date, the following Contractor Cloud Services covered under this Customer Contract are certified in accordance with the Information Security Management System Standard ISO 27001:

- Fieldglass
- SAC
- SCP
- Ariba

A copy of the current Certificates for ISO 27001 will be made available to the Customer annually in electronic form only after Customer's prior request through the SAP Trust Center, currently at [REDACTED]

[REDACTED] Thereafter, the aforementioned certification may be renewed or the Contractor will undertake a future equivalent information security certification, that SAP SE deems appropriate for its customer base. If the certification listed above is not maintained or is not replaced with an equivalent certification, the Customer may terminate the Contract by giving 30 days' notice to the Contractor (or an alternative period agreed between the Customer and the Contractor). Any prepaid subscription fees must be refunded to the Customer from the date of termination. This termination right is in addition to, and does not limit, other termination rights applicable to the Customer Contract.

7.11E ISO 9001 Certification. As of the Effective Date, the Contractor's software delivery lifecycle is certified in accordance with ISO 9001 for the following Contractor Cloud Services:

- Fieldglass
- SAC
- SCP
- Ariba
- Enable Now

A copy of the current certificates for ISO 9001 will be made available to the Customer on request. Thereafter, the aforementioned certification may be renewed or the Contractor may undertake a further equivalent information security certification that SAP SE deems appropriate for its customer base.

7.11F The Contractor must, on request, make available to the Customer:

- (a) its service organizational control (SOC) reports relevant to the Cloud Services; and

(b) *disaster recovery plans for the Ariba, and Fieldglass Cloud Services, and*

*the SOC reports may be provided via the Contractor's trust centre and must be made available promptly after completion of the SOC report.*

7.12 *Without prejudice to clause 7.11, the Contractor must comply, and must ensure that its Personnel comply, with the secrecy and security requirements of the Customer as stated in Item 25 of the General Order Form.*

7.13 *The Contractor must notify the Customer in writing as soon as reasonably practicable (and in any event, within such time as required by applicable Privacy Laws) upon becoming aware of a Security Issue. The notification under clause 15(e) must include:*

(a) *details relating to the Security Issue that has occurred, known at the time of notification;*

(b) *the IT infrastructure, Service and/or application affected by the Security Issue;*

(c) *an overview of the performed mitigation actions to restore the security, documented within the incident report form; and*

(d) *all further details as required in connection with an "obligation to notify" under applicable Privacy Laws.*

*The Contractor will otherwise (but without limiting its obligations in respect of security under this clause 7) take such steps as the Contractor considers necessary to remedy the Security Issue. As soon as reasonably practicable after the incident relating to a Security Issue has been closed, a root cause analysis will be performed and delivered to the affected Customer in order to prevent recurrence of the incident. "Security Issue" means a confirmed (1) accidental or unlawful destruction, loss, alteration, or unauthorized third party access to or disclosure of Customer Data, or (2) similar incident involving Customer Data for which the Contractor is required under applicable law to provide notice to the Customer, for which Contractor, after reasonable investigation, has evidence."*

(e) *For the purposes of clause 8.14, the Customer consents to the Contractor subcontracting to its subprocessors, subject to the terms of the Data Processing Agreement. For clarity, and consistent with clause 8.16(b), neither the subcontracting by the Contractor to its subprocessors affect the Contractor's obligations under the Customer Contract (including in respect of security, privacy and confidentiality).*

(f) *deleting and replacing clause 8.15 with the following:*

*"8.15 Where the Customer believes that any Subcontractor is in breach of its obligations to the Contractor, or its performance of obligations or services is unsatisfactory, so that the Contractor is likely to be in breach (other than a minor breach) of the Customer Contract as a result, the Customer may:*

(a) *provide Notice in Writing to the Contractor setting out the details of its concerns;*

(b) *require the Contractor to meet with the Customer within 3 Business Days of the Contractor's receipt of the Notice in Writing to discuss the concerns; and*

(c) *if, following the discussions with the Contractor, the Customer is satisfied that the Contractor will be in breach (other than a minor breach) of the Customer Contract as a result of the performance of the Subcontractor, the Customer may give Notice in Writing that it is withdrawing its consent to allow the Subcontractor to continue to work in connection with the Customer Contract and require the Contractor to procure that the Subcontractor promptly ceases performing any work in connection with the Customer Contract subject to any contrary requirements of the Customer in respect of effecting an orderly transition notified to the Contractor, and in such circumstances, the Contractor agrees that the Customer will have no liability whatsoever to the Contractor for any loss, damage or expense suffered by the Contractor arising out of any*

*termination of, or the continuation of, the relevant subcontract. If the Customer's objection pursuant to this clause remains unresolved for sixty days after it was raised, and Contractor has not received any notice of termination, Customer is deemed to accept the Subcontractor."*

- (g) deleting and replacing clause 10.4 with the following:

*"10.4 To the extent that:*

*(a) Acceptance Test Data is required for the Contractor to complete the Acceptance Tests; and*

*(b) the provision of that Acceptance Test Data is specified as the Customer's responsibility in the Order Documents or the documents setting out the Acceptance Tests,*

*the Customer must provide that Acceptance Test Data to the Contractor:*

*(c) at the times specified in the Order Documents or the documents that set out the Acceptance Tests; or*

*(d) if no times are specified in those documents, at least 14 Business Days prior to the date on which the Acceptance Test Period for the applicable Acceptance Tests commences."*

- (h) Section 11.4 (Payment Withholding) is amended by inserting the following sentence as the last sentence:

*"Without prejudice to the Customer's other rights and remedies, if the Contractor refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Customer Contract, the Customer may withhold the payment associated with that failure until the Contractor performs the relevant obligation in accordance with the Customer Contract."*

- (i) deleting and replacing clause 11.11 with the following:

*"11.11 If the Customer disputes an invoiced amount the Customer must:*

*(a) provide the Contractor with written notice of the dispute, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and*

*(b) pay the undisputed portion of the invoice by the date that payment must be made under the Customer Contract."*

- (j) deleting and replacing clause 13.5(c) with the following:

*"(c) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge to any "Public Service agency" or other "government sector agency" (as defined in the Government Sector Employment Act 2013 (NSW)), any NSW Government agency or statutory body representing the Crown (as referenced in section 13A of the Interpretation Act 1987 (NSW)), any other public authority that is constituted by or under an Act of the State of New South Wales or that exercises public functions, and any "public health organisation" (as defined in the Health Services Act 1997 (NSW));"*

- (k) deleting and replacing clause 13.5(e) with the following new clause:

*"(e) permits the Customer to sublicense any of the rights in clause 13.4, without additional charge, to a contractor that is providing outsourced services to the Customer that include the operation of the New Material, provided that:*

*(i) the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; and*

(ii) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract.”

(l) inserting the following new clause 13.6(e) after the existing 13.6(d):

“(e) if that Existing Material is an Online Service, the right to use and access that Existing Material on the terms and conditions under the relevant Module.”

(m) inserting a new clause 13.8A after the existing clause 13.8:

“13.8A The licenses granted under clauses 13.6(c), 13.6(d), 13.7 and 13.8 are perpetual and irrevocable to the extent required for the Customer to receive the benefit of the Products and the Services in accordance with the terms and conditions of the Customer Contract. For the avoidance of doubt, the Customer is not granted a perpetual licence to any Services provided under Module 10.”

(n) deleting the words “Intellectual Property Rights” and “software” where they appear in clause 13.12(a);

(o) deleting and replacing clause 14.2(d) with the following new clause:

“(d) to its Personnel, Related Companies and their directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the Party’s performance under, the Customer Contract or any Head Agreement in circumstances where such persons have a need to know (and only to the extent that each has a need to know and has been directed and agrees to keep confidential the Confidential Information on terms not inconsistent with this Customer Contract); or”

(p) deleting and replacing clause 15 (Privacy) with the following new clause:

“15. Privacy

15.1 The Contractor must when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under this Customer Contract:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with this Customer Contract only for the purposes of performing its obligations under this Customer Contract;
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws, with respect to Contractor’s provision of the Cloud Service to the Customer, to the extent only that the Privacy Laws can apply to Contractor as a provider of the Cloud Services and (as such) as a processor in respect of Personal Information;
- (c) not do any act or engage in any practice that would breach the Privacy Laws in respect of performing its obligations under this Customer Contract which if done or engaged in by the Customer would be a breach of Privacy Laws;
- (d) not disclose Personal Information to any other person other than any Related Company of Contractor or its Subcontractors (which includes the subprocessors as per the DPA) for the Services (in each case only to the extent necessary to perform the Services) without the prior written consent of the Customer or as expressly required by Statutory Requirements;
- (e) notify the Customer in writing as soon as reasonably practicable (and in any event, within such time as required by applicable Privacy Laws which shall not exceed 72 hours upon confirmation of the applicable Security Breach) upon becoming aware of a Security Breach of the Customer’s Personal Information. The notification under clause 15(e) must include

- (i) details relating to the Security Breach that has occurred, known at the time of notification;
- (ii) the IT infrastructure, Service and/or application affected by the Security Breach;
- (iii) an overview of the performed mitigation actions to restore the security, documented within the incident report form; and
- (iv) all further details as required in connection with an "obligation to notify" under applicable Privacy Laws.

The Contractor will otherwise take such steps as the Contractor considers necessary (but without limiting its obligations in respect of security under the Contract) to remedy the Security Breach. As soon as reasonably practicable after the incident relating to a Security Breach has been closed, a root cause analysis will be performed and delivered to the affected Customer in order to prevent recurrence of the incident. "Security Breach" means a confirmed (1) accidental or unlawful destruction, loss, alteration, or unauthorized third party access to or disclosure of Personal Information, or (2) similar incident involving Personal Information for which the Contractor is required under applicable law to provide notice to the Customer, for which Contractor, after reasonable investigation, has evidence;

- (f) notify any individual that makes a complaint to the Contractor regarding the Contractor's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the NSW Privacy Commissioner;
- (g) at the Customer's request, Contractor will reasonably support Customer in dealing with requests from individuals regarding Contractor's processing of Personal Information, including requests relating to an individual's access and correction rights where the Customer cannot directly respond to the individual's request without Contractor support;
- (h) use reasonable technical and organizational measures to protect the Personal Information from accidental or unlawful destruction, loss, alteration, or unauthorized third party access to or disclosure of Personal Information;
- (i) not allow, or permit access to, or transfer any Personal Information that belongs to the Customer, has been provided by the Customer or has been collected, accessed or used by the Customer with the consent of the Contract Authority, outside of Australia, unless it has first obtained the Contract Authority's approval in writing or it is specified in Item 25B of the General Order Form;
- (j) ensure that any of the Contractor's Personnel who are required to deal with Personal Information for the purposes of the Customer Contract are made aware of the obligations of the Contractor under this clause 9.1 or made aware of the equivalent obligations of Contractor; and
- (k) ensure that any Approved Agent or Subcontractor who may be fulfilling a requirement in relation to this Customer Contract which includes the handling of Personal Information is bound by substantially the same or equivalent obligations as Contractor in this clause 9.1 which are enforceable by the Contractor."

(q) Clause 16.1 is deleted and replaced with:

16.1 The Contractor must hold and maintain, or be an insured under, one or more insurance policies, that provide the following cover:

- [REDACTED]
- [REDACTED]
- [REDACTED]

The Contractor must maintain the coverage required under this clause 16.1 during the Contract Period.

- (r) Clause 16.3 is deleted and replaced with:

16.3



- (s) Clause 18.5(d) is deleted and replaced with the following:

*“(d) a breach of Contractor’s privacy, data protection and security obligations that result in an unauthorized use or disclosure of Personal Information;”*

- (t) Clause 19.1 is amended by removing the words “and hold harmless” in the leading words.

- (u) Clause 19.1(a) (Contractor’s Indemnity - clause 15.1 - Privacy) is deleted;

- (v) Clause 19.2 is deleted and replaced with the following:

*“19.2 The Customer must promptly, and in any event within 5 Business Days of being notified of a claim for which it is seeking an indemnity under clause 19.1(b) or 19.1(c), provide the Contractor with Notice in Writing of the details of the claim. The Customer must permit the Contractor, at the Contractor’s expense, to handle the process for the settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c) (including selecting solicitors and counsel).”*

- (w) deleting and replacing clause 19.5 with the following new clause:

*“19.5 Notwithstanding clause 19.1(c), the Contractor is not required to indemnify the Customer, its officers and employees to the extent that an IP Claim is caused by:*

- a) any open source software that forms part of the Deliverable;*
- b) the combination, operation or use of a Deliverable with any other product, equipment business method, software or data (unless such combination, operation or use is approved by the Contractor in writing by the General Counsel of the Contractor);*
- c) any modification of a Deliverable by any person other than the Contractor or its Personnel unless such modification is approved by the Contractor in writing by the General Counsel of the Contractor;*
- d) the Contractor following the designs, specifications or instructions provided by the Customer or other person on the Customer’s behalf; or*
- e) the continued use of a Deliverable after the Contractor has provided the Customer a new software version, patch or correction, or a replacement part or other correction, that would have overcome the infringement.”*

- (x) deleting clause 19.9 and 19.10 and replacing them with the following new clauses:

*“19.9 Not Used.*

*19.10 For the purposes of clause 19.1(c) an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), sections 96 and 100 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the Circuit Layouts Act 1989 (Cth), constitute an infringement.”*

- (y) deleting clauses 23.4, 23.5 and 23.6 and replacing them with the following new clauses:

#### **“RECORD KEEPING AND AUDIT**

- 23.4 *The Contractor must keep financial records and other information relevant to the performance of the Customer Contract including as are required to allow the Customer to determine the Contractor's compliance with this Customer Contract and the accuracy of its invoices.*
- 23.5 *Subject to clause 23.11, no more than once in any calendar year, the Customer may conduct an audit to enable the Customer to confirm the Contractor's compliance with this Customer Contract by giving the Contractor at least 5 Business Days' prior written notice. Clauses 23.6 to 23.8 apply to an audit conducted by the Customer.*
- 23.6 *The Contractor must give the Customer and its Personnel (including internal and external auditors and advisers) full access at all reasonable times and on reasonable notice:*
- (a) *to data in the possession or control of the Contractor or any of its Subcontractors (other than any data or information containing the Contractor's or its Subcontractor's costs and margins or of a financially sensitive nature); and*
  - (b) *to the Contractor's Personnel,*
- for the purposes of obtaining information in connection with an audit under clauses 23.5 and 23.6.*
- 23.7 *For the purpose of complying with clause 23.6, the Contractor must promptly and efficiently give the Customer and their Personnel any assistance they reasonably require.*
- 23.8 *The Customer and its Personnel must comply with the Contractor's reasonable security requirements.*
- 23.9 *Without limiting the rights of the Customer, if an audit shows that the Contractor has breached or is in breach of this Customer Contract, the Contractor must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Customer.*
- 23.10 *If an audit shows that the Contractor has overcharged the Customer in any invoice, the Contractor must promptly refund any amounts that the Contractor 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.*
- 23.11 *The Contractor and Customer may agree an alternative audit mechanism to that provided in clauses 23.5 to 23.8, such mechanism to be specified in Item 40A of the General Order Form or otherwise as agreed in writing. Any alternate audit mechanism agreed to under this clause 23.11 must address compliance with the Contractor's Customer Data, security and privacy obligations and such other of the Contractor's obligations required by the Customer and reasonably agreed by the Contractor.*

#### **NOTICES**

- 23.12 *Any Notice in Writing must be sent to the receiving Party's Service Address addressed to the Party's nominee for receipt of notices, or if no such position is nominated, it must be addressed to the Authorised Representative of such Party.*
- 23.13 *Any Notice in Writing is regarded as given and received:*
- (a) *if sent by mail; 3 Business Days after it is posted;*
  - (b) *if sent by fax; at 9.00 am on the Business Day following the day when the addressee actually receives it in full and in legible form; and*



(c) *if sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending)."*

(z) deleting and replacing clause 25.4 and replacing it with the following:

"25.4 *If the Customer exercises its right under clause 25.3, the Customer must:*

(a) *if Item 42 of the General Order Form does not state an amount that is payable on termination, indemnify the Contractor against any losses, damages or expenses, which are reasonably and properly incurred by the Contractor to the extent that those losses, damages or expenses were incurred as a direct result of the termination of the Customer Contract in accordance with clause 25.3; or*

(b) *pay any amount that is stated in Item 42 of the General Order Form."*

(aa) Clause 25.7 (Alternative Supply Costs) of the Customer Contract shall not apply to this General Order Form or the Module 10 Order Form.

(bb) inserting the following new clause 25.9:

"25.9 *On termination of this Customer Contract:*

(a) *subject to any obligations arising out of any applicable State security classification or Statutory Requirements or specified in the Order Documents, a Party may retain for quality assurance and risk management purposes any notes and other records created or received in providing the Product or performing the Service provided that any retained notes or records are subject to the confidentiality obligations in accordance with clause 14;*

(b) *except as may be otherwise specified in Module 10 or the Module 10 Order Form, at the Customer's request made within 60 days following termination, the Contractor must provide the Customer with a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by the Contractor. Where it is specifically agreed that the Contractor may satisfy this clause by providing access to a copy of the data, the Contractor must first advise the Customer by 30 days' notice in writing to both the Agency Head and Chief Information Officer of the Customer that such data will be available for download for a specified period (being no less than 60 days in duration) and on expiry of such period, such data will then be deleted;*

(c) *the Contractor must delete or overwrite Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification or written confirmation that the Customer Data has been deleted or overwritten;*

(d) *the Contractor must cease providing the Products and Services (subject to any obligations under Module 10 or as specified in Item 42 of the General Order Form); and*

(e) *the Contractor must comply with any other reasonable direction issued by the Customer where permitted by the Customer Contract (provided that any costs of compliance with a direction may be charged by the Contractor in accordance with the agreed rate card)".*

(cc) inserting the following new clauses immediately after the existing clause 26.17:

**"GOVERNMENT INFORMATION**

26.18 *The Contractor acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Customer Contract on its nominated website established for GIPA Act disclosures. The Contractor irrevocably consents to the Customer acting in accordance with this clause.*

26.19 To the extent that section 121 of the GIPA Act applies, the Contractor 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 Contractor:

- (a) information that relates directly to the performance of Services by the Contractor;
- (b) information collected by the Contractor from members of the public to whom it provides, or offers to supply, Services; and
- (c) information received by the Contractor from the Customer to enable it to provide Services.

26.20 For the purposes of clause 26.19, information does not include:

- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
- (b) information that the Contractor 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
- (c) information that, if disclosed to the Customer, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Customer, whether at present or in the future.

26.21 The Contractor will provide copies of any of the information in clause 26.19, as requested by the Customer, at the Contractor's own expense and in such medium as the Customer may reasonably require."

- (dd) Insert the following new clause into the Customer Contract:

**"THIRD PARTY CLAIMS AGAINST CONTRACTOR**

Where Contractor receives a claim from a third party relating to the Customer Data (except where such claim is relating to Contractor's unauthorised use or disclosure of Confidential Information or Personal Information), Customer agrees that it is liable to Contractor, SAP SE, and their affiliates for any loss or expense which such parties pay, suffer, incur or are liable for where such loss or expense is the result of a claim brought against Contractor by any third party arising from or related to Customer Data."

## 2. Amendments to Part 3: Dictionary

The Parties agree to amend Part 3: Dictionary by:

- (a) replacing all references to the "NSW Department of Finance and Service" with "New South Wales Department of Customer Service";
- (b) replacing all references to the "Director General, NSW Department of Finance and Services" with "Secretary, New South Wales Department of Customer Service";
- (c) replacing the existing definition of "Additional Conditions" with the following new definition:

**"Additional Conditions** means any terms or conditions which vary, or are additional to, the terms and conditions set out in the Customer Contract, which are stated in Item 43 of the General Order Form and which, subject to directions and policies issued by the Board from time to time, require the prior written approval of the Secretary, New South Wales Department of Customer Service as set out in clause 3.2(b) of the Customer Contract (Part 2)."

- (d) adding the following new definition of "Affiliate":

*“Affiliate” means SAP SE and any legal entity in which SAP SE or Contractor, directly or indirectly, holds more than fifty percent (50%) of the entity’s shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.*

(e) deleting the definition of “Agency”;

(f) adding the following new definition for “Board”:

*“Board means the New South Wales Procurement Board established under section 164 of the PWP Act.”*

(g) adding the following new definition for “Business Hours”:

*“Business Hours means 9.00am to 5.00pm on a Business Day.”*

(h) replacing the existing definition of “Confidential Information” with the following new definition:

*“Confidential Information means information that:*

(a) *is by its nature confidential;*

(b) *is communicated by the disclosing party to the confidant as confidential;*

(c) *the confidant knows or ought to know is confidential; or*

(d) *relates to:*

(i) *the Customer Data;*

(ii) *the Products and Services;*

(iii) *the financial, corporate and commercial information of any Party;*

(iv) *the affairs of a third party (provided the information is non-public); or*

(v) *the strategies, practices and procedures of the State and any information in the Contractor’s possession relating to a Government Agency,*

*but excludes any information which the confidant can establish was:*

(vi) *in the public domain, unless it came into the public domain due to a breach of confidentiality by the confidant or another person;*

(vii) *independently developed by the confidant; or*

(viii) *in the possession of the confidant without breach of confidentiality by the confidant or other person.”*

(i) replacing the existing definition of “Contract Authority” with the following new definition:

*“Contract Authority means the head of a Government Agency which may procure goods and services for that agency or for other Government Agencies consistent with any applicable policies and directions of the Procurement Board and the terms of its accreditation (if any) by the Board, and described in Item 2 of the Head Agreement Details.”*

(j) adding the following new definition for “Customer Data”:

*“Customer Data means all data and information relating to the Customer or any other Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any other Government Agency, including Personal Information, in whatever form that information may exist and that is entered into the Services, or Customer-*

*specific data that is derived from Customer's use of the Services (e.g. Customer-specific reports) but not to the extent such derivative work is a component of the Cloud Service itself or furnished by Contractor under this Customer Contract. Customer Data shall not include any component of the Services or material provided by or on behalf of the Contractor."*

- (k) adding the following new definition of "Designated Environment":

*"**Designated Environment** means the hardware platform / operating system combination of the Customer as described in the relevant Module Order Form."*

- (l) adding the following new definition of "Documentation":

*"**Documentation** means Contractor's then-current technical and functional documentation for the Service which is made available to Customer with the Service."*

- (m) replacing the existing definition of "Eligible Customer" with the following new definition:

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

- (n) Inserting the following new definition of "Eligible Non-Government Body":

*"**Eligible Non-Government Body** means an entity that:*

(a) *falls within paragraphs (a) to (e) of the definition of public body in Reg 6 of the Public Works and Procurement Regulation 2019 (NSW);*

(b) *has its primary business operations in New South Wales; and*

- (o) (c) *has been authorised by the NSW Procurement Board to access the Cloud Services Head Agreement in accordance with Reg 6(2) of the Public Works and Procurement Regulation 2019 (NSW). inserting the following new definition for "GIPA Act":*

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

- (p) replacing the existing definition of "Government Agency" with the following new definition:

*"**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 NSW Government agency;*

(c) *any other public authority that is constituted by or under an Act of New South Wales or that exercises public functions (other than a State owned corporation); or*

(d) *any State owned corporation prescribed by the State Owned Corporations Act 1989 as amended from time to time."*

- (q) deleting the definition "Information Privacy Principle or IPP";

- (r) replacing the existing definition of "Material Adverse Event" with the following new definition:

*"**Material Adverse Event** means any matter that:*

(a) *substantially and adversely affects the Contractor's ability to perform any of its material obligations under the relevant Part, which may result from:*

(i) *any material litigation or proceeding against the Contractor;*

- (ii) *the existence of any material breach or default of any agreement, or of any order or award that is binding on the Contractor;*
  - (iii) *matters relating to the commercial, technical or financial capacity of the Contractor or in the knowledge of the Contractor, any Approved Agent, Subcontractor or subcontractor proposed to be engaged in respect of this agreement; or*
  - (iv) *any obligation under another contract the compliance with which may place the Contractor in material breach of the relevant Part; or*
- (b) *the Contractor knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Contract Authority or the Customer as a result of the Contract Authority and/or the Customer's association with the Contractor or Subcontractor."*
- (s) adding the following new definition for "Officer":
 

*"Officer has the same meaning as detailed in section 9 of the Corporations Act 2001 (Cth)."*
- (t) adding the following new definition for "Online Service":
 

*"Online Service means cloud computing services and related Products and Services as described in the Module 10 (As a Service) Order Form and further defined in the Contract Specifications."*
- (u) adding the following new definition for "Open Source Software":
 

*"Open Source Software means software available under a licence which 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>."*
- (v) replacing the existing definition of "Personal Information" with the following new definition:
 

*"Personal Information means information or an opinion about an identified individual (ie. a natural person), or an individual who is reasonably identifiable:*

  - (a) *whether the information or opinion is true or not; and*
  - (b) *whether the information or opinion is recorded in a material form or not."*
- (w) adding the following new definition for "Privacy Laws":
 

*"Privacy Laws means:*

  - (a) *the Privacy Act 1988 (Cth);*
  - (b) *the Privacy and Personal Information Protection Act 1998 (NSW); and*
  - (c) *any legislation (to the extent that such legislation applies to the Customer or the Contractor 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 Contractor is subject to the laws of that jurisdiction),*

*affecting privacy or Personal Information.*

*For any legislation that from time to time comes into force or and Codes of conduct that are compulsory to Customer, the Parties agree that Customer will provide a request to Contractor with a copy of the Code of Conduct and the Parties will meet to discuss the obligations in the code of conduct and Contractor will confirm if it can or cannot comply with the terms in the Code of conduct. If Contractor cannot comply with the code of conduct then there are no remedies available to Customer until renewal of the relevant subscription term."*

- (x) adding the following new definition for "PWP Act":

*"**PWP Act** means the Public Works and Procurement Act 1912 (NSW)."*

- (y) adding the following new definition for "Service Credit":

*"**Service Credit** means the service credits awarded against the Contractor for a failure to meet the Service Levels, as specified in a Service Level Agreement."*

- (z) adding the following new definition for "State Record":

*"**State Record** has the meaning given in section 3 of the State Records Act 1998 (NSW)."*

- (aa) replacing the existing definition of "Statutory Requirements" with the following new definition:

*"**Statutory Requirements** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction relating to the performance of the Party's obligations under the relevant Part and includes industry codes of conduct, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales."; and*

- (bb) replacing the existing definition of "Virus" with the following new definition:

*"**Virus** means a computer program, code, device, product or component that is designed to or may in the ordinary course of its operation, prevent, inhibit or impair the performance of a Deliverable in accordance with the relevant Contract Specifications, but does not include any code, mechanism or device that is included in software by the Contractor for the purpose of managing the licensed use of software."*

**Attachment 1 to Schedule 13**  
NSW Government Cyber Security Policy\*

\*Where Contractor has neither indicated compliance or non-compliance within the NSW Government Cyber Security Policy, the Contractor does not represent any compliance with such clauses.

<b>Policy Number</b>	<b>Policy statement</b>	<b>Applicable to SAP and SAP is compliant</b>	<b>SAP statement</b>
1	<b>Agencies must implement cyber security planning and governance.</b> <b>Agencies must:</b>	Heading only	
1.1	Allocate roles and responsibilities as detailed in this policy.	No	SAP has a structured security organisation under a Chief Security Officer
1.2	Ensure there is a governance committee at the executive level (dedicated or shared) to be accountable for cyber security including risks, plans and meeting the requirements of this policy. Agencies need to consider governance of ICT systems and OT to ensure no gaps in cyber security related to items such as video surveillance, alarms, life safety and building management systems that use automated or remotely controlled or monitored assets including industrial Internet of Things (IoT) devices.	Yes	
1.3	Have an approved cyber security plan to manage the agency's cyber security risks, integrated with business continuity arrangements. This must include consideration of threats, risks and vulnerabilities that impact the protection of the agency's information, ICT assets and services.	Yes	
1.4	Consider cyber security threats when performing risk assessments and include high and critical risks in the agency's overall risk management framework.	Yes	
1.5	Be accountable for the cyber risks of their ICT service providers and ensure the providers comply with the applicable parts of this policy and any other relevant agency security policies. This must include providers notifying the agency quickly of any suspected or actual security incidents and following reasonable direction from the agency arising from incident investigations.	No	SAP will notify Customer of any Personal Data Breach in accordance with clause 3.5 of the Data Processing Agreement
2	<b>Agencies must build and support a cyber security culture across their agency and NSW Government more broadly. Agencies must:</b>	Heading only	
2.1	Implement regular cyber security education for all employees and contractors, and ensure that outsourced ICT service providers understand and implement the cyber security requirements of the contract.	Yes	
2.2	Increase awareness of cyber security risk across all staff including the need to report cyber security risks.	Yes	

Policy Number	Policy statement	Applicable to SAP and SAP is compliant	SAP statement
2.3	Foster a culture where cyber security risk management is an important and valued aspect of decision-making and where cyber security risk management processes are understood and applied.	Yes	
2.4	Ensure that people who have access to sensitive or classified information or systems and those with privileged system access have appropriate security screening, and that access is removed when they no longer need to have access, or their employment is terminated.	Yes	
2.5	Share information on security threats and intelligence with Cyber Security NSW and cooperate across NSW Government to enable management of government-wide cyber risk.	No	SAP will notify Customer of any Personal Data Breach in accordance with clause 3.5 of the Data Processing Agreement
3	<b>Agencies must manage cyber security risks to safeguard and secure their information and systems.</b> <b>Agencies must:</b>	Heading only	
3.1	Implement an Information Security Management System (ISMS) or Cyber Security Framework (CSF), with scope at least covering systems identified as an agency's "crown jewels". The ISMS or CSF should be compliant with, or modelled on, one or more recognised ICT/OT standard (see guideline for more information).	Yes	
3.2	Implement the ACSC Essential 8.	See appendix 1 – "Essential 8 Compliance"	
3.3	Classify information <sup>6</sup> and systems according to their importance (i.e. the impact of loss of confidentiality, integrity or availability), adhere to the requirements of the <i>NSW Government Information Classification Labelling and Handling Guidelines</i> and <ul style="list-style-type: none"> <li>○ assign ownership</li> <li>○ implement controls according to their classification and relevant laws and regulations</li> <li>○ identify the agency's "crown jewels" and report them to Cyber Security NSW as per mandatory requirement 5.4.</li> </ul>	No	SAP has its own data classification system.
3.4	Ensure cyber security requirements are built into procurements and into the early stages of projects and the system development life cycle (SDLC), including agile projects.	Yes	
3.5	Ensure new ICT systems or enhancements include processes for audit trails and activity logging to assess the accuracy and integrity of data including processes for internal fraud detection.	Yes	



Policy Number	Policy statement	Applicable to SAP and SAP is compliant	SAP statement
4	<b>Agencies must improve their resilience including their ability to rapidly detect cyber incidents and respond appropriately. Agencies must:</b>	Heading only	
4.1	Have a current cyber incident response plan that integrates with the agency incident management process and the NSW Government Cyber Incident Response Plan.	No	SAP has a cyber incident response plan
4.2	Test their cyber incident response plan at least every year, and involve their senior business and IT executives, functional area coordinators (if applicable), as well as media and communication teams.	Yes	
4.3	Deploy monitoring processes and tools to allow for adequate incident identification and response.	Yes	
4.4	Report cyber security incidents to Cyber Security NSW according to the NSW Cyber Security Response Plan.	No	SAP will notify Customer of any Personal Data Breach in accordance with clause 3.5 of the Data Processing Agreement
4.5	Participate in whole of government cyber security exercises as required.	No	The Contractor will make available information, reports and certifications to the customer that the customer may use in a cyber security exercise
5	<b>Agencies must report against the requirements outlined in this policy and other cyber security measures. Agencies must:</b>	Heading only	
5.1	Report annually to their cluster CISO, or Cyber Security NSW, their compliance with the mandatory requirements in this policy, in the format provided by Cyber Security NSW. Cluster CISOs must provide all reports to Cyber Security NSW by 31 August.	No	The Contractor will make available information, reports and certifications to the customer that the customer may use for its own reporting
5.2	Report annually to their cluster CISO, or Cyber Security NSW, their maturity against the ACSC Essential 8, in the format provided by Cyber Security NSW. Cluster CISOs must provide all reports to Cyber Security NSW by 31 August.	No	The Contractor will make available information, reports and certifications to the customer that the customer may use for its own reporting

Policy Number	Policy statement	Applicable to SAP and SAP is compliant	SAP statement
5.3	Report annually to their cluster CISO, or Cyber Security NSW, the agency's cyber security risks with a residual rating of high or extreme <sup>7</sup> , in the format provided by Cyber Security NSW by 31 August.	No	The Contractor will make available information, reports and certifications to the customer that the customer may use for its own reporting
5.4	Report annually to their cluster CISO, or Cyber Security NSW, the agency's "crown jewels". Cluster CISOs must provide all reports to Cyber Security NSW by 31 August.	No	The Contractor will make available information, reports and certifications to the customer that the customer may use for its own reporting
5.5	Provide a signed attestation to Cyber Security NSW by 31 August each year and include a copy of your attestation in your annual report, as outlined in section 4. If your agency does not complete an annual report, an attestation must still be completed and signed off by your agency head and submitted to your cluster CISO.	No	The Contractor will make available information, reports and certifications to the customer that the customer may use for its own attestation
<b>4 Compliance Reporting and Attestation</b>			
<p><b>Compliance reporting</b>  Agencies must provide a yearly report to their cluster CISO, or Cyber Security NSW, on their compliance with this policy in a format provided by Cyber Security NSW by 31 August each year. This will largely be a maturity-based assessment on the items listed as mandatory requirements as well as the ACSC Essential 8. It is possible to have a response of "not applicable" with an appropriate explanation that is acceptable to your agency.  The reports will be summarised and provided to the relevant governance bodies including the Cyber Security Senior Officers Group (CSSOG) and the ICT and Digital Leadership Group (IDLG) and used to identify common themes and areas for improvement across NSW Government.</p>		No	The Contractor will make available information, reports and certifications to the customer that the customer may use for its own reporting

Policy Number	Policy statement	Applicable to SAP and SAP is compliant	SAP statement
	<p><b>Annual attestation</b>            Agencies must provide a signed annual attestation to Cyber Security NSW by 31 August each year. This same attestation must be provided in agency annual reports or in department annual reports, if applicable. If your agency does not complete an annual report, an attestation must still be completed and signed off by your agency head and submitted to your cluster CISO. If more than one agency is included in the attestation, a list of all the agencies should be detailed within the attestation itself. The attestation should address the following items:</p> <ul style="list-style-type: none"> <li>• the agency has assessed its cyber security risks</li> <li>• cyber security is appropriately addressed at agency governance forums</li> <li>• the agency has a cyber incident response plan, it is integrated with the security components of business continuity arrangements, and has been tested over the previous 12 months (involving senior business executives)</li> <li>• certification of the agency's Information Security Management System (ISMS) or confirmation of the agency's Cyber Security Framework (CSF)</li> <li>• what the agency is doing to continuously improve the management of cyber security governance and resilience</li> </ul> <p>The template below is a suggestion only and should be updated to reflect the appropriate wording for the agency's situation.</p>	No	The Contractor will make available information, reports and certifications to the customer that the customer may use for its own reporting

#### Appendix 1: Essential 8 Compliance

Control #	Control Description	Maturity Level 1	Compliance with Maturity Level 1
1	<b>Application control to prevent execution of unapproved/malicious programs including .exe, DLL, scripts (e.g. Windows Script Host, PowerShell and HTA) and installers.</b>	<p>Application control is implemented on all workstations to restrict the execution of executables to an approved set.</p> <p>Application control is implemented on all servers to restrict the execution of executables to an approved set.</p>	Yes
2	<b>Configure Microsoft Office macro settings to block macros from the internet, and only allow vetted macros either in 'trusted locations' with limited write access or digitally signed with a trusted certificate.</b>	<p>Microsoft Office macros are allowed to execute, but only after prompting users for approval.</p> <p>Microsoft Office macro security settings cannot be changed by users.</p>	Yes
3	<b>Patch applications e.g. Flash, web browsers, Microsoft Office, Java and PDF viewers. Patch/mitigate computers with 'extreme risk' vulnerabilities within 48 hours. Use the latest version of applications.</b>	<p>Security vulnerabilities in applications and drivers assessed as extreme risk are patched, updated or mitigated within one month of the security vulnerabilities being identified by vendors, independent third parties, system managers or users.</p> <p>Applications that are no longer supported by vendors with patches or updates for security vulnerabilities are updated or replaced with vendor-supported versions</p>	Yes
4	<b>User application hardening. Configure web browsers to block Flash (ideally uninstall it), ads and Java on the internet. Disable unneeded features in Microsoft Office (e.g. OLE), web browsers</b>	Web browsers are configured to block or disable support for Flash content.	Yes

	and PDF viewers.		
5	<b>Restrict administrative privileges to operating systems and applications based on user duties. Regularly revalidate the need for privileges. Don't use privileged accounts for reading email and web browsing.</b>	Privileged access to systems, applications and data repositories is validated when first requested.  Policy security controls are used to prevent privileged users from reading emails, browsing the web and obtaining files via online services.	Yes
6	<b>Multi-factor authentication including for VPNs, RDP, SSH and other remote access, and for all users when they perform a privileged action or access an important (sensitive/high-availability) data repository.</b>	Multi-factor authentication is used to authenticate all users of remote access solutions.  Multi-factor authentication uses at least two of the following authentication factors: passwords, Universal 2nd Factor security keys, physical one-time password tokens, biometrics, smartcards, mobile app one-time password tokens, SMS messages, emails, voice calls or software certificates.	Yes
7	<b>Patch operating systems. Patch/mitigate computers (including network devices) with 'extreme risk' vulnerabilities within 48 hours. Use the latest operating system version. Don't use unsupported versions.</b>	Security vulnerabilities in operating systems and firmware assessed as extreme risk are patched, updated or mitigated within one month of the security vulnerabilities being identified by vendors, independent third parties, system managers or users.  Operating systems for workstations, servers and ICT equipment that are no longer supported by vendors with patches or updates for security vulnerabilities are updated or replaced with vendor-supported versions.	Yes
8	<b>Daily backups of important new/changed data, software and configuration settings, stored disconnected, retained for at least three months. Test restoration initially, annually and when IT infrastructure changes.</b>	Backups of important information, software and configuration settings are performed monthly.  Backups are stored for between one to three months.  Partial restoration of backups is tested on an annual or more frequent basis.	Yes

Certificate Of Completion

