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Digital.NSW ICT Purchasing Framework

ICT Agreement (ICTA)

between

Transport for NSW (ABN 18 804 239 602)

and

VMware Australia Pty Ltd (ABN 77 122 677 089)

Agreement Number: CW2629999

**Provision of Licensed Software, Support Services and other
Services and Deliverables**

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ICT Agreement (ICTA)

Parties

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

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

Background

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

PART A: PRELIMINARIES

1. Definitions and Agreement documents

1.1 Defined terms and interpretation

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

1.2 Agreement documents

This Agreement comprises the following documents:

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

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- (f) any other document expressly incorporated into this Agreement as set out in the Order Form; and
- (g) any Supplier's Documents.

1.3 Order of precedence

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

1.4 Role of the Master ICT Agreement

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

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

1.5 Supplier's Documents

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

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

2. Supplier's acknowledgments

- (a) The Supplier warrants, represents, acknowledges and agrees that it:
- (i) has the expertise to carry out the Supplier's Activities;
 - (ii) has satisfied itself about, and has obtained all information necessary to enable it to understand, the Customer's requirements under this Agreement in so far as they relate to the Supplier's Activities;
 - (iii) has satisfied itself as to the availability and suitability of the Materials, labour and resources necessary to perform its obligations under this Agreement;
 - (iv) has satisfied itself of the nature and extent of the Supplier's Activities and its obligations under this Agreement;
 - (v) did not in any way rely on:
 - A. any information, data, representation, statement or document made by the Customer or its Personnel or provided to the Supplier by the Customer or its Personnel; or
 - B. the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

for the purposes of entering into this Agreement, except to the extent that any such information, data, representation, statement or document forms part of this Agreement;
 - (vi) entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations; and

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- (vii) is aware that the Customer has entered into this Agreement relying upon the warranties given by the Supplier under this Agreement, including in clauses 2(a)(i) to 2(a)(vi), 17.12, 33.2, 33.3 and in the Module Terms.
- (b) The Supplier further acknowledges and agrees that, where this Agreement is entered into under a MICTA, the Customer may appoint or delegate the enforcement of any of its rights from time to time under this Agreement to the Contract Authority.

3. Purchasing Services and/or Deliverables by Order

3.1 Order Form

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

3.2 Electronic execution

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

3.3 Additional Orders

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

3.4 No exclusivity or minimum commitment

The Supplier acknowledges and agrees that:

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

3.5 Additional Conditions

The parties agree to comply with any Additional Conditions.

3.6 Reseller arrangements

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

4. Relationship and governance

4.1 General

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

4.2 Nature of relationship

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

4.3 Governance

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

5. Term

5.1 Initial Term

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

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5.2 Renewal Period

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

PART B: SUPPLIER'S ACTIVITIES

6. Performance of the Supplier's Activities

6.1 General

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

6.2 Customer Supplied Items

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

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

6.3 ICT Accessibility

- (a) The Supplier acknowledges that the Customer is committed to:
 - (i) meeting Accessibility Standard AS EN 301 549 (**Accessibility Standard**); and

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

6.4 Co-operation with the Customer and Other Suppliers

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

6.5 Project management

- (a) The parties must perform their obligations in accordance with any initial project plan that is included in the Order Documents or such other project plan that is approved by the Customer pursuant to this clause 6.5 (**Project Plan**).

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

6.6 Staged implementation

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

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

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6.7 Delays

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

6.8 Extension of time

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

the Customer must grant an extension of time, of a duration reasonably determined by the Customer having regard to the extent to which the Delay was attributable to the relevant breach, failure, acts or omissions.
- (e) Whether or not the Supplier has made, or is entitled to make, a Claim for an extension of time under clause 6.8(a), the Customer may, in its sole discretion, at any time by written notice to the Supplier, unilaterally extend a Date for Delivery or Key Milestone by written notice to the Supplier. For clarity, no extension of time

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granted by the Customer will result in an increase or decrease to the Price, unless separately agreed pursuant to an agreed Change Request.

- (f) Notwithstanding clause 35.1, where:
- (i) any dispute or difference arises between the parties in relation to this clause 6.8 or its subject matter; and
 - (ii) a project management committee or other governance forum, which meets at least monthly, is provided for in the Order Documents,

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

6.9 Delay costs

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

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

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6.10 Site

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

or as otherwise agreed in writing between the parties.
- (c) The Supplier warrants, represents and undertakes that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced supplier in assessing the risks which it is assuming under this Agreement in relation to carrying out the Supplier's Activities at the Site, including visiting and inspecting the Site and its surroundings and making its own assessment of the risks associated with the conditions at the Site and its surroundings.
- (d) Any failure of the Supplier to do any of the matters mentioned in clause 6.10(c) will not relieve the Supplier of its obligations to carry out the Supplier's Activities in accordance with this Agreement.
- (e) The Customer:
 - (i) is not obliged to:
 - A. provide the Supplier with sole access to the Site; or
 - B. carry out any work or provide any facilities or Materials to the Supplier (other than CSI or such other items specified in the Order Form) which may be necessary to enable the Supplier to obtain adequate access to carry out the Supplier's Activities; and
 - (ii) may engage Other Suppliers to work upon, or in the vicinity of, the Site at the same time as the Supplier.
- (f) In carrying out the Supplier's Activities, the Supplier must:
 - (i) minimise disruption or inconvenience to:
 - A. the Customer, occupiers, tenants and potential tenants of the Site in their occupation, use of or attendance upon any part of the Site; and
 - B. others having a right of access to the Site;
 - (ii) comply with all Policies, Codes and Standards of the Customer applicable to access to and attendance at the Site and any additional requirements specified in Item 16 of the Order Form;

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- (iii) at all reasonable times give the Customer's Representative, the Customer and any person authorised by the Customer access to the Supplier's Activities located at, or being carried out at, the Site (as applicable) or any location where the Supplier's Activities are being carried out; and
- (iv) facilitate the Customer's supervision, examination or assessment of the Supplier's Activities at the Site or any location where the Supplier's Activities are being carried out.

7. Transition-In

7.1 Application

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

7.2 Transition-In Plan

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

7.3 Transition-In Services

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

8. Document Deliverables

8.1 General

- (a) The process in this clause 8.1 applies to all Deliverables that comprise written, printed, digital or electronic Materials on which there is writing or other text or symbols, including all Plans (**Documents**) and which are subject to the Customer's approval under this Agreement.
- (b) The Supplier must submit all Document Deliverables to the Customer for approval in accordance with this clause 8 and by the dates specified in this Agreement or the Order Documents.
- (c) Document Deliverables must be submitted to the Customer's Representative, unless otherwise directed by the Customer in writing.

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- (d) The Document Deliverables must:
 - (i) be in English;
 - (ii) be fit for their intended purpose;
 - (iii) be free of Defects;
 - (iv) in relation to any User Documentation, be current, complete, accurate and sufficient to enable the Customer and its Personnel to make full and proper use of the applicable Services and/or Deliverables; and
 - (v) comply with any applicable Specifications and any other requirements in the Order Documents.
- (e) A Document Deliverable will not be deemed approved by the Customer until the Customer notifies the Supplier in writing that it approves the relevant Document Deliverable, except where clause 8.2(f) applies.

8.2 Review

- (a) The Customer may:
 - (i) review any Document Deliverable (including any resubmitted Document Deliverable) prepared and submitted by the Supplier; and
 - (ii) within 15 Business Days of the submission by the Supplier of such Document Deliverable or resubmitted Document Deliverable (or any alternative timeframe set out in the Order Documents or otherwise agreed between the parties in writing):
 - A. approve the Document Deliverable; or
 - B. reject the Document Deliverable if, in its reasonable opinion, the Document Deliverable does not comply with the Specifications and other requirements of this Agreement.
- (b) The Customer will accompany any rejection under clause 8.2(a)(ii)B with a description of why the relevant Document Deliverable does not comply with the Specifications and other requirements of this Agreement.
- (c) A Document Deliverable does not fail to comply with the Specifications and other requirements of this Agreement exclusively because of:
 - (i) any opinion expressed in the Document Deliverable, provided that the opinion expressed is the professional opinion held by the Supplier;
 - (ii) the style, formatting or layout of the Document Deliverable, unless the style, formatting or layout is of a nature that it:
 - A. fails to meet the requirements in clause 8.1(d); or
 - B. affects the readability or useability of the Document Deliverable; or
 - (iii) semantics which do not impact the interpretation of the substantive matters conveyed in the Document Deliverable.

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

8.3 No obligation

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

8.4 User Documentation

- (a) The Supplier must, at its sole cost, provide the User Documentation to the Customer's Representative except where otherwise specified in the Order Form.
- (b) The User Documentation must be supplied in an electronic format and by the time specified in the Order Documents or, where no timeframe is specified, where reasonably required by the Customer.
- (c) Where it is specified in the Order Form that the Customer also requires any User Documentation in a hard copy format (or where otherwise requested by the Customer), the Supplier must provide the Customer's Representative with at least one copy of the User Documentation at no additional charge to the Customer.
- (d) The Supplier must ensure that any User Documentation that is supplied to the Customer's Representative:
 - (i) provides adequate instructions on how to enable the Customer and Customer Users to utilise the Services and Deliverables (as applicable) without reference to the Supplier; and

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- (ii) complies with the same requirements as specified in clause 8.1(d) in relation to Document Deliverables.
- (e) The Supplier must update the User Documentation as is needed for the Customer and Customer Users to be able to use the Services and Deliverables (as applicable) in an efficient and effective manner.

9. Defects

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

and pursuing any other remedy it may have at Law or under this Agreement subject to compliance with the dispute resolution procedure in clause 35.
- (b) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect, the Supplier must notify the Customer in writing within one Business Day of identifying the Defect.
- (c) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect or an instruction is given under clause 9(a)(i), the Supplier must, at no cost to the Customer, correct the Defect:
 - (i) in accordance with all applicable Service Levels, or if no applicable Service Levels apply, within 15 Business Days after the date on which the non-compliance was notified to, or identified by, the Supplier (or such other timeframe as agreed between the parties in writing); and
 - (ii) in a manner which will cause as little inconvenience to the Customer and Customer Users as is reasonably possible.
- (d) The parties acknowledge that where the Defect relates to any Services, the Customer may request that the Supplier, and the Supplier must, supply the affected Services again.
- (e) If multiple Defects are identified, the Customer may request the Supplier to prioritise the rectification of such Defects, and the Supplier must comply with any such request. However, for clarity, any prioritisation must remain consistent with any applicable Service Levels.
- (f) Unless otherwise agreed between the parties in writing, the Warranty Period will be increased by a period of time equivalent to the time that the relevant Services and Deliverables were unavailable or their functionality materially decreased due to a Defect.

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

10. Change Control Procedure

10.1 Change Requests

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

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

10.2 Process for submitting and agreeing to Change Requests

- (a) Each Change Request must be submitted in a form substantially similar to the Change Request Form included at Schedule 5 (or such other form approved by the Customer) and containing the details specified in that Change Request Form or such other details as may be reasonably required by the Customer.
- (b) Where rates and charges for any Change Requests, and/or a pricing methodology, have been specified in the Payment Particulars, then the Prices in the relevant Change Request must not exceed those rates and charges and must be based on any applicable pricing methodology specified in the Payment Particulars. Where no rates, charges or methodology are specified, prices must be based on those costs and expenses reasonably and necessarily incurred by the Supplier to implement the relevant Change Request.

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- (c) The party receiving the draft Change Request Form must notify the other party in writing as to whether it:
 - (i) approves or rejects the Change Request; or
 - (ii) requires further information in relation to any aspect of the Change Request.
- (d) The parties must respond to Change Requests and requests for information regarding Change Requests within seven Business Days of receiving the request or such other timeframe as reasonably agreed between the parties having regard to the nature and substance of the work required by the relevant request.
- (e) Each party will act reasonably in preparing, submitting, reviewing, considering and assessing Change Requests.
- (f) If a Change Request is approved, the:
 - (i) parties must promptly execute the relevant Change Request Form; and
 - (ii) Supplier must perform the Supplier's Activities in accordance with the executed Change Request Form.
- (g) No Change Request is binding on either party or to be carried out by the Supplier until the relevant Change Request Form is executed by both parties in accordance with this clause 10.

10.3 Electronic transactions

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

10.4 Acknowledgements

The parties acknowledge and agree that:

- (a) the Change Control Procedure does not apply to changes to the Core Terms, the Module Terms or any Additional Conditions, which must be effected in accordance with the variation procedure specified in clause 39.6;
- (b) the Customer does not need to follow the Change Control Procedure with respect to:
 - (i) Additional Orders submitted in accordance with clause 3.3; or
 - (ii) the Customer's exercise of its unilateral right to:
 - A. remove from the scope of this Agreement any future Stages pursuant to clause 6.6(c); or
 - B. reduce the scope of this Agreement pursuant to clause 29;

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

11. Personnel

11.1 Nominated Personnel

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

11.2 Replacement of Nominated Personnel

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

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

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11.3 Supplier's Personnel

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

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

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

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

11.4 Deed of Confidentiality and Privacy

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

11.5 Subcontracting

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

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

11.6 Background checks

- (a) The Supplier must:
 - (i) prior to involving any of its Personnel in carrying out the Supplier's Activities, undertake all necessary background checks of those Personnel to ensure that they are fit and proper to provide the Supplier's Activities; and
 - (ii) monitor and assess its Personnel throughout their involvement in the Supplier's Activities to ensure that they remain fit and proper to provide the Supplier's Activities.
- (b) Without limiting the generality of clause 11.6(a), if specified in Item 22 of the Order Form or where not so specified in that Item but reasonably required by the Customer, the Supplier must:

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- (i) carry out any specific background checks of its Personnel as specified in Item 22 of the Order Form or as requested by the Customer, including criminal record and "Working with Children" checks; and
- (ii) provide the results of those checks to the Customer's Representative within the timeframe specified in Item 22 of the Order Form, or if no time is specified, within five Business Days of receipt (or within such other time as reasonably required by the Customer).
- (c) Where the outcome of a background check reveals that any of the Supplier's Personnel are not fit and proper to be involved in the provision of the Supplier's Activities, the Supplier must not use those Personnel with respect to such activities.
- (d) The Supplier acknowledges and agrees that:
 - (i) all background checks will be undertaken at the Supplier's sole cost, unless otherwise agreed by the Customer in writing;
 - (ii) the Customer may provide the results of any background checks to the Contract Authority or any other Government Agency; and
 - (iii) the Supplier is solely responsible for obtaining all necessary consents, in accordance with the Privacy Laws, in connection with the conduct of any background checks and the sharing and use of those background checks as contemplated under this clause 11.6.

11.7 Compliance with employment Laws

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

11.8 Non-solicitation

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

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

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

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

12.2 Policies, Codes and Standards

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

12.3 Policy Changes

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

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

 - (iii) the Supplier's compliance with that Policy Change can, with the Supplier's best efforts, be achieved without the incurrence of material additional cost and expense to the Supplier; or

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- (iv) irrespective of the cost of complying with the Policy Change, the Supplier's compliance with its obligations under clause 12.1 would involve the Supplier complying with that Policy Change in any event,

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

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

12.4 Work health and safety

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

- (a) comply, and must ensure that its Personnel comply, with the WHS Legislation (including any obligation under the WHS Legislation to consult, co-operate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);
- (b) if requested by the Customer's Representative or required by the WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
- (c) notify the Customer's Representative promptly (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Supplier's Activities;
- (d) insofar as the Supplier, in carrying out the Supplier's Activities, is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty;

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- (e) ensure that it does not do anything or fail to do anything that would cause the Customer to be in breach of the WHS Legislation; and
- (f) comply with any additional work health and safety requirements specified in the Order Form or as otherwise reasonably required by the Customer from time to time.

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

- (a) This clause applies where construction work forms part of the Supplier's Activities.
- (b) In this clause 12.5, the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.
- (c) Where the Customer engages the Supplier as the principal contractor:
 - (i) the Customer authorises the Supplier to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;
 - (ii) the Supplier accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - (iii) the Supplier's engagement and authorisation as principal contractor will continue until:
 - A. the Supplier delivers the Supplier's Activities in accordance with this Agreement;
 - B. the Supplier achieves Acceptance in respect of each Deliverable subject to Acceptance Testing under this Agreement; and
 - C. any rectification work that is "construction work" that is carried out during the Warranty Period is completed,

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

12.6 The environment

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

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

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12.7 Conflicts of Interest

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

13. Modern Slavery

13.1 Core Modern Slavery Obligations

- (a) For the purpose of this clause 13 and any Modern Slavery terms in the Module Terms, the definition of "Personnel" is extended to include any other workers (howsoever described) who may be engaged for the purposes of this Agreement, but are not employed by the relevant party including but not limited to independent contractors, secondees, and consultants.
- (b) Each party must:
 - (i) not engage in Modern Slavery;
 - (ii) take Reasonable Steps to ensure that it, its Personnel, and in the case of the Supplier its Related Bodies Corporate, comply with Modern Slavery Laws as applicable;
 - (iii) take Reasonable Steps to ensure that its relevant Personnel include provisions equivalent to the Core Modern Slavery Obligations (including this sub-clause) in any contracts with their suppliers; and
 - (iv) take Reasonable Steps to ensure that its relevant Personnel provide their respective directors, officers, employees and suppliers with at least the minimum level of wages and other entitlements required by law,

(together, the **Core Modern Slavery Obligations**).

13.2 Price

Each party acknowledges and agrees that the Price supports each party to comply with its Core Modern Slavery Obligations.

13.3 Systems and policies

Each party agrees that it will establish, implement, and maintain for the term of this Agreement, appropriate systems and policies as required to meet its Core Modern Slavery Obligations.

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13.4 Disclosure

The Supplier represents, warrants and undertakes that, as at the Commencement Date and on a continuing basis for the term of this Agreement, the Supplier has disclosed:

- (a) to the extent the Supplier is aware, any:
 - (i) actual or reasonably suspected Modern Slavery engaged in; and
 - (ii) notices, investigations, proceedings or claims arising in any jurisdiction in relation to any actual or reasonably suspected breach of Modern Slavery Laws,

by the Supplier, any of the Supplier's Personnel, or the Supplier's Related Bodies Corporate, while performing any contract with the Supplier, whether or not the Modern Slavery arises in the performance of this Agreement; and
- (b) all actions taken to remedy said Modern Slavery or breach of Modern Slavery Laws.

13.5 Information

- (a) For the purpose of this clause 13.5, "Information" may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes Personal Information.
- (b) The Supplier must, subject to any restrictions under any applicable Laws by which it is bound, and without limiting the obligations in this Agreement, provide, and use reasonable endeavours to ensure the Supplier's Personnel and its Related Bodies Corporate provide, to the Customer any Information and other assistance, as reasonably requested by the Customer, to enable the Customer to meet any of its obligations under the Modern Slavery Laws and associated regulatory requirements (for example, any applicable annual reporting requirements and New South Wales Procurement Board Directions), including co-operating in any Modern Slavery audit undertaken by the Customer or the NSW Audit Office and providing reasonable access to the Customer's and/or Audit Office's auditors to interview the Supplier's Personnel.
- (c) The Supplier must notify the Customer in writing as soon as it becomes aware of a material change to any of the Information it has provided to the Customer in relation to Modern Slavery under clause 13.5(b).
- (d) The Supplier may provide any Information or report requested by the Customer in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer the Customer to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Customer.
- (e) The Supplier must, during the Term and for a period of seven years thereafter:
 - (i) maintain; and
 - (ii) upon the Customer's reasonable request, give the Customer access to, and/or copies of,

records in the possession or control of the Supplier to trace, so far as practicable, the supply chains of all Services and Deliverables provided under this Agreement

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and to enable the Customer to assess the Supplier's compliance with this clause 13.

13.6 Response to Modern Slavery incident

- (a) Where the Customer forms the view that there has been a breach of the obligations under this clause 13 that is reasonably capable of being remedied, the Supplier must promptly develop a remediation plan to take Reasonable Steps to remedy the breach in accordance with this Agreement.
- (b) The Supplier must make reasonable efforts to implement this remediation plan.

13.7 Termination

- (a) In addition to any other rights or remedies under this Agreement or at Law, the Customer may terminate this Agreement, upon written notice and with immediate effect if, in the Customer's reasonable view, the Supplier has:
 - (i) failed to notify the Customer as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
 - (ii) failed to take Reasonable Steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls) including a failure to implement a remediation plan; or
 - (iii) otherwise committed a breach of its obligations under this clause 13 and the breach (or breaches) is not remedied within 15 days of the Supplier receiving a notice to remedy.
- (b) Before exercising its termination rights under clause 13.7(a) of this Agreement, the Customer must consult with relevant stakeholders on whether Modern Slavery may arise from such termination and the Reasonable Steps to prevent or mitigate such risk of Modern Slavery.

14. Acceptance Testing

14.1 General

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

14.2 Testing by Supplier

- (a) Before delivery by the Supplier to the Customer of any Deliverable (or any component thereof) that is subject to Acceptance Testing, the Supplier must:
 - (i) carry out the tests in accordance with any Test Plan and to ensure that the Deliverable meets the Acceptance Criteria for the Deliverable;

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

14.3 Testing by the Customer

- (a) The Customer may carry out Acceptance Tests in respect of each Deliverable to which Acceptance Testing applies and the Supplier must provide all reasonable assistance required by the Customer in connection with the Customer's Acceptance Testing.
- (b) If the Customer carries out Acceptance Tests, the Customer must conclude the Acceptance Tests in accordance with any timeframes specified in the Order Documents or, where no timeframes are specified, within a time reasonably determined by the Customer.
- (c) Following completion of the Customer's Acceptance Testing in respect of a Deliverable, the Customer must either:
 - (i) provide to the Supplier an Acceptance Certificate in respect of that Deliverable; or
 - (ii) notify the Supplier that the Acceptance Criteria in respect of that Deliverable have not been met.
- (d) Neither the full or partial Acceptance of any Deliverable nor any exercise by the Customer of any option or other right under this clause 14 will:
 - (i) operate as a sole or exclusive remedy; or
 - (ii) limit or prejudice any rights or remedies of the Customer under this Agreement or at Law.
- (e) Where the Deliverable meets the Acceptance Criteria, the Customer must issue the Acceptance Certificate no later than 10 Business Days from completion of the Acceptance Testing, or within such other timeframe specified in the Order Documents.

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- (f) Where the period referred to in clause 14.3(e) elapses without the Customer either providing an Acceptance Certificate to the Supplier in respect of that Deliverable or notifying the Supplier that the Acceptance Criteria have not been met, the Supplier must submit to the Customer's Representative a written reminder notice identifying the Deliverable in respect of which it requires a decision by the Customer. If the Customer does not take one of the actions referred to in clause 14.3(c) or otherwise communicate with the Supplier in relation to that reminder notice within 15 Business Days of its receipt, then the relevant Deliverable will be deemed to have been Accepted by the Customer.

14.4 Effect of failure to meet Acceptance Criteria

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

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

14.5 Effect of Acceptance Certificate

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

15. Performance

15.1 Performance obligations

The Supplier must:

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

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

15.2 Service standards and Service Levels

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

15.3 Consequences for failing to meet a Service Level

- (a) If the Supplier fails to meet any applicable Service Levels, it will:

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

15.4 Performance reports

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

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

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- (iii) any other matters specified in the Order Form;
- (b) a monthly report of the Supplier's performance against any Service Levels, including any accrued service credits or service rebates;
- (c) the additional reports specified in the Module Terms and Order Form for the time period specified in those documents (which may include, where so specified, access to real-time or near-real time reporting capability); and
- (d) any other reports as reasonably requested by the Customer from time to time, including as may be required by the Customer to enable the Customer to meet its internal or New South Wales Government compliance, regulatory and operational reporting obligations.

15.5 Performance reviews

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

15.6 Notice

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

15.7 Meetings

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

16. Liquidated Damages

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

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

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

17. Intellectual Property

17.1 Ownership of Existing Materials

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

17.2 Licence to use Existing Materials

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

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- (b) Where:
- (i) the Supplier's Existing Material is incorporated into any New Materials; and
 - (ii) clause 17.4(b) applies in respect of those New Materials,
- then the licence granted in clause 17.2(a) will also include, in respect of the Supplier's Existing Materials, an equivalent right and licence to that described in clause 17.4(b), to the extent required to support the exploitation and commercialisation of the Intellectual Property Rights in the relevant New Materials under that clause (but excluding commercial exploitation of the Supplier's Existing Materials independently of the New Materials in which they are incorporated).
- (c) The rights and licences granted by the Supplier to the Customer under clause 17.2(a):
- (i) do not permit the Customer to sell, monetise or commercialise the Supplier's Existing Materials, except as otherwise stated in Item 37 of the Order Form; and
 - (ii) are sub-licensable by the Customer (on the same terms, for the same period and for the same purposes as set out in clause 17.2(a)), without additional charge to any:
 - A. contractor, subcontractor or outsourced service provider (subject to such persons being under reasonable obligations of confidentiality owed to the Customer or another Government Agency) acting on behalf of, or providing products and/or services for the benefit of, the Customer or a Government Agency; or
 - B. Government Agency.
- (d) Unless otherwise specified in Item 37 of the Order Form, the Customer grants to the Supplier, a non-exclusive, non-transferable, revocable, worldwide, royalty-free licence to use the Intellectual Property Rights in the Customer's Existing Materials, to the extent required for the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this Agreement.

17.3 Ownership of New Materials

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

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17.4 Customer licence to use Supplier owned New Materials

- (a) Where the Supplier owns the Intellectual Property Rights in any New Materials, unless otherwise specified in the applicable Module Terms or in Item 37 of the Order Form, the Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate and distribute the Intellectual Property Rights in such New Materials, for any purpose in connection with the:
 - (i) Customer performing its obligations and exercising its rights under this Agreement;
 - (ii) full use of any Services and/or Deliverables in which New Material is incorporated, including installing, operating, upgrading, modifying, supporting, enhancing and maintaining the Deliverables or integrating them with any other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (iii) performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Deliverables and systems that may integrate or interoperate with the Deliverables; or
 - (iv) carrying out, or exercise, of the functions or powers of the Customer, a Government Agency or the Crown, including any statutory requirements concerning State records or auditing.
- (b) Where specified in Item 37 of the Order Form, the licence granted in clause 17.4(a) will also include the right and licence to exploit and commercialise the Intellectual Property Rights in New Materials for the purposes specified in clause 17.4(a) or such other purposes specified in Item 37 of the Order Form.
- (c) The rights and licences granted by the Supplier to the Customer under clauses 17.4(a) and 17.4(b) are sub-licensable by the Customer (on the same terms and for the same purposes as set out in those clauses) to any person, without additional charge, including to any:
 - (i) contractor, subcontractor or outsourced service provider (subject to such persons being under reasonable obligations of confidentiality owed to the Customer or another Government Agency (as applicable)) acting on behalf of, or providing products and/or services for the benefit of, the Customer or a Government Agency; or
 - (ii) Government Agency.

17.5 Licence term

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

17.6 Supplier Licence to use Customer owned New Materials

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

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Property Rights in those New Materials, to the extent required for the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this Agreement.

17.7 Third party Intellectual Property Rights

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

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

17.8 Open Source Software

- (a) The Supplier must not, without the prior written consent of the Customer:
 - (i) develop or enhance any Deliverable using Open Source Software; or
 - (ii) incorporate any Open Source Software into any Deliverable.
- (b) In requesting any consent from the Customer under clause 17.8(a), the Supplier must provide the Customer with:
 - (i) complete and accurate copies of any licence agreement, the terms and conditions of which would apply to the proposed use or incorporation of the Open Source Software into a relevant Deliverable; and
 - (ii) a description of how such use or incorporation may affect the provision of the Supplier's Activities, the Customer's licence rights under this Agreement and the Customer's and Customer Users' uses or other dealings with the relevant Deliverable,

for the Customer's review and consideration.
- (c) Where the Customer provides its consent in relation to the use or incorporation of any Open Source Software under clause 17.8(a) the:
 - (i) Customer must comply with the terms and conditions notified to it in clause 17.8(b)(i) in relation to the use of that Open Source Software: and
 - (ii) Supplier must ensure that the use of that Open Source Software will not:
 - A. result in an obligation to disclose, licence or otherwise make available any part of the Customer Environment, software of the Customer, Customer Data or Confidential Information to any third party; or

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- B. diminish the Supplier's obligations or the Customer's rights under this Agreement.

17.9 Consents and Moral Rights

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

17.10 Prohibited activities

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

17.11 Additional obligations

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

17.12 Warranties and acknowledgements

- (a) The Supplier represents, warrants and undertakes that:
- (i) it has all the Intellectual Property Rights and has procured the necessary Moral Rights consents required to:
 - A. carry out the Supplier's Activities; and
 - B. enable the Customer and each Customer User (or other permitted licensee) to use the requisite Services and/or Deliverables in the manner envisaged by this Agreement; and

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- (ii) its supply of the requisite Services and/or Deliverables to the Customer, and the Customer's, Customer Users' (and other permitted licensees') use of them in the manner envisaged by this Agreement will not infringe any Intellectual Property Rights or Moral Rights.
- (b) The Supplier acknowledges and agrees that the Intellectual Property Rights and licences (as applicable) granted under this Agreement (including this clause 17) do not limit or reduce the Supplier's or its Personnel's obligations under this Agreement with respect to the Customer's Confidential Information, Personal Information and Customer Data.

17.13 Replacement of Deliverables

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

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

18. Escrow

- (a) If specified in Item 38 of the Order Form (or if otherwise agreed between the parties in writing) that any Escrow Materials are to be held in escrow, the Supplier must arrange for:
 - (i) itself, the Customer and an escrow agent approved by the Customer to enter into an escrow agreement in substantially the same form as Schedule 7 (or such other form as may be prescribed by the relevant escrow agent and agreed by the parties in writing); or
 - (ii) the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.
- (b) Any escrow arrangement to which the Customer becomes a party under clause 18(a) must continue in effect for at least the period stated in Item 38 of the Order Form, unless otherwise agreed between the parties in writing.
- (c) The Supplier must consult with, and comply with the reasonable directions of, the Customer in any negotiations with the escrow agent arising under clause 18(a).

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- (d) Any escrow arrangement must be entered into by the timeframe specified in Item 38 of the Order Form, or if no timeframe is specified, as otherwise reasonably required by the Customer.

PART C: DATA AND SECURITY

19. Customer Data

19.1 Obligations in relation to Customer Data

- (a) This clause 19 applies where the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Customer Data in connection with this Agreement.
- (b) The Supplier acknowledges and agrees that it obtains no right, title or interest with respect to any Customer Data, other than a right to use Customer Data for the sole purpose of, and only to the extent required for, the carrying out of the Supplier's Activities in accordance with this Agreement.
- (c) As between the Supplier and Customer, all rights in and in relation to Customer Data remain with the Customer at all times and the Supplier assigns all rights, title and interest in the Customer Data to the Customer on creation. The Supplier agrees to do all things necessary to assign or vest ownership of all rights in Customer Data to the Customer on creation.
- (d) The Supplier must:
 - (i) not use any Customer Data for any purpose other than for the sole purpose of, and only to the extent required for, carrying out the Supplier's Activities in accordance with this Agreement;
 - (ii) not sell, assign, lease or commercially transfer or exploit any Customer Data;
 - (iii) not perform any data analytics on Customer Data, except to the sole extent permitted by this Agreement;
 - (iv) ensure that all of its Personnel who access, or have the ability to access, Customer Data are appropriate to do so, including passing any background or security checks as required by this Agreement;
 - (v) apply to the Customer Data the level of security and (if applicable) encryption that is required under this Agreement;
 - (vi) apply technical and organisational controls which are appropriate to ensure that all Customer Data is at all times protected from any unauthorised access, modification or disclosure and only handled and processed in accordance with the terms of this Agreement and any other security requirements reasonably specified by the Customer; and
 - (vii) ensure that Customer Data is at all times managed in accordance with the *State Records Act 1998* (NSW) (to the extent applicable); and
 - (viii) ensure that its Personnel (including subcontractors) comply with this clause 19.1(d) and manage and safeguard Customer Data in accordance with all other requirements of this Agreement.

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19.2 Security of Customer Data

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

19.3 Location of Customer Data

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

19.4 Backup of Customer Data

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

19.5 Restoration of lost Customer Data

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

- (a) any Customer Data is lost; or

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

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

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

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

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

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

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

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with a certificate of destruction that confirms that this has occurred; or

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

19.8 General

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

20. Privacy

20.1 Protection and use of Personal Information

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

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Terms and subject to the Supplier's and its Personnel's compliance with the Data Location Conditions;

- (v) protect the Personal Information from loss, unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Agreement;
- (vi) if it becomes aware, or has reasonable grounds to suspect that there has been a Security Incident involving Personal Information:
 - A. immediately make all reasonable efforts to contain the Security Incident involving Personal Information;
 - B. comply with clause 22;
 - C. unless otherwise directed by the Customer, comply with the Customer's published data breach policy and any data breach procedures and documentation specified in the Order Form, as well as any other Policies, Codes and Standards relevant to the management, mitigation and response to a Security Incident;
 - D. comply with any reasonable direction (including as to timeframes) from the Customer with respect to a Security Incident involving Personal Information (which may include, for example, activities to support the Customer's response to the incident and compliance with the New South Wales mandatory notification of data breach scheme); and
 - E. take all reasonable steps to prevent such Security Incident involving Personal Information from recurring; and
- (vii) notify the Customer as soon as reasonably possible if the Supplier is approached by any privacy commissioner or other Authority concerning any Personal Information.
- (b) Where the Supplier is required by Law to produce or disclose any information or to develop or provide any response or explanation to an Authority in relation to any incident (including any privacy breach) concerning the handling, management, safekeeping or protection of any Personal Information in connection with this Agreement, it must (to the extent such action is permitted by Law), provide notice to the Customer as soon as reasonably possible of the nature and content of the information to be produced or disclosed and, prior to providing a response to the Authority or disclosing any Personal Information, engage in reasonable consultation with the Customer regarding its proposed response or explanation.

20.2 Data Management and Protection Plan

- (a) Where the Supplier or its Personnel collects, uses, discloses, holds or otherwise processes any Personal Information in connection with this Agreement, the Supplier must, for the duration of those activities, have and maintain (and prepare and implement, if not already in existence) a Data Management and Protection Plan that caters for the handling of that Personal Information.
- (b) The Data Management and Protection Plan must be provided to the Customer's Representative within five Business Days following the Commencement Date or such other time as agreed between the parties in writing.

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- (c) The Data Management and Protection Plan must:
 - (i) set out measures for how the Supplier and its Personnel will:
 - A. comply with the Privacy Laws; and
 - B. protect Personal Information;
 - (ii) be consistent with the Privacy Laws and the security and privacy requirements under this Agreement, provided that, where the Privacy Laws and the security and privacy requirements under this Agreement both address standards in respect of same subject matter, the Data Management and Protection Plan must reflect the higher standard; and
 - (iii) cover such other matters as reasonably required by the Customer.
- (d) The Supplier must review and update the Data Management and Protection Plan annually or at such other times as reasonably required by the Customer to address a Security Incident or breach of this Agreement.
- (e) The Supplier must comply with its latest Data Management and Protection Plan and provide the latest copy of that Plan to the Customer's Representative on request.

20.3 No limitation of obligations

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

21. Security

21.1 Scope of the Supplier's security obligations

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

21.2 Supplier's security obligations

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

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(Security Program), provided that, where clause 21 and the standards or requirements specified in the Order Form both address standards in respect of the same subject matter, the Security Program must reflect the higher standard.

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

21.3 Audits and compliance

- (a) The Supplier must audit its compliance with its Security Program and security obligations under this Agreement in accordance with any timeframes specified in the Order Documents and, where no such timeframes are specified, on an annual basis.

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

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

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

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reasonably demonstrate to the Customer the implementation of such findings and recommendations.

22. Security Incidents

22.1 Notification of Security Incidents

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

22.2 Actions required in relation to a Security Incident

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

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then, the Supplier must:

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

(b) The Supplier must:

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

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

23. Confidentiality

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

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

PART D: FEES AND PAYMENT

24. Payment and invoicing

24.1 Price

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

24.2 Benchmarking

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

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

24.3 Outcome of benchmarking

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

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Payment Particulars to reduce the relevant rates and/or prices to align with the conclusions of the Benchmarking Report.

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

24.4 Invoicing

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

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[library/forms/payroll/opt011.pdf](#) (or such other site or form as advised by the Customer from time to time); and

- (iii) provide any further details in regard to an Invoice that are set out in the Order Form or reasonably required by the Customer.

24.5 Payment

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

24.6 Payment disputes

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

24.7 Set off

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

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

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24.8 Taxes

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

PART E: RISK ALLOCATION AND MANAGEMENT

25. Business contingency and Disaster recovery

25.1 Business contingency

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

25.2 Business Contingency Plan

- (a) If stated in the Order Form that a business contingency plan is required, the Supplier must, within the timeframe stated in the Order Form or as otherwise agreed in writing by the parties, have in place (and prepare and implement, if not already in existence) a Business Contingency Plan for the approval of the Customer (**Business Contingency Plan**).
- (b) The Business Contingency Plan must:
 - (i) specify the procedures and plans to predict, avoid, remedy and mitigate internal or external problems (including any Disasters) that may have an adverse effect on the Supplier's Activities;
 - (ii) comply with the security standards, requirements and certifications required by this Agreement, including under clause 21; and
 - (iii) include any other details specified in the Order Documents or as otherwise reasonably required by the Customer.

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- (c) In developing the Business Contingency Plan, the Supplier must undertake a careful and informed assessment of the likely events and circumstances which may affect the Supplier's ability to carry out its obligations under this Agreement (including those in existence at the Commencement Date or notified by the Customer to the Supplier in writing).
- (d) The Business Contingency Plan must be reviewed and tested by the Supplier in accordance with the timeframes stated in the Order Form, or if no timeframes are stated, at least annually. The Supplier must provide the results of any review or test of its Business Contingency Plan to the Customer upon request.
- (e) If any updates to the Business Contingency Plan are required as a result of any review or test of the Business Contingency Plan, the Supplier must make those updates and re-submit the Business Contingency Plan to the Customer for approval.
- (f) The Supplier must comply with the latest Business Contingency Plan that has been approved by the Customer pursuant to clause 8.
- (g) For clarity, the Business Contingency Plan is a Document Deliverable. Clause 8 therefore applies to the Business Contingency Plan, including any updates to it.

25.3 Disasters

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

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

26. Step-in

26.1 Step-In Rights

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

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

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

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

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party providing part or all of the Supplier's Activities as contemplated in clause 26.1(e)(i), except to the extent contributed to by the Supplier or any of its Personnel.

- (i) If the Customer exercises its Step-In Rights for 60 days or more (or such other period as specified in Item 48 of the Order Form), then the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 29.1(d).

26.2 Conclusion of Step-In

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

26.3 No prejudice

The parties acknowledge and agree that:

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

27. Insurance

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

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the duration of the Supplier's Activities and for at least seven years thereafter; and

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

28. Performance Guarantee and Financial Security

28.1 Performance Guarantee

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

28.2 Financial Security

- (a) If specified in Item 51 of the Order Form, the Supplier must provide a financial security in the amount stated in the Order Form and in substantially the same form as the document in Schedule 9 or such other document reasonably acceptable to the Customer (**Financial Security**). The Financial Security must be provided to the Customer within 15 Business Days following the Commencement Date or at such other time as specified in Item 51 of the Order Form.
- (b) If the Prices payable for the Supplier's Activities are increased pursuant to this Agreement (including due to a Change Request approved under clause 10), the Customer may, acting reasonably, direct the Supplier to provide additional security in an amount that is proportionate to the increase in Price, and the Supplier must promptly comply with such a direction.

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- (c) Subject to its rights to have recourse to the Financial Security, the Customer must release the Financial Security on the sooner of:
 - (i) one year from the date of issue of the Acceptance Certificate for the last Deliverable under the Order Form, or if no Acceptance Tests were required, one year following the termination or expiry of this Agreement (or such other period specified in the Order Documents);
 - (ii) the date the Customer and the Supplier agree in writing to release the issuer of the Financial Security; and
 - (iii) the date the Customer notifies the issuer of the Financial Security in writing that the Financial Security is no longer required.

28.3 Costs

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

29. Termination

29.1 Termination for cause by the Customer

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

- (a) if the Supplier breaches a term of this Agreement which is:
 - (i) not capable of remedy; or
 - (ii) capable of remedy, but the Supplier fails to remedy it within 30 days of receiving a notice to do so;
- (b) if an Insolvency Event occurs in respect of the Supplier, to the extent there is no prohibition at Law in respect of such termination;
- (c) if the Supplier or any parent company of the Supplier involved in the performance of the Supplier's Activities undergoes a Change in Control or Other Changes, without the Customer's prior written consent; or
- (d) in any of those circumstances specified in clauses 12.7(b), 13.7, 14.4(a)(iii), 14.4(c)(iii), 26.1(i) and 36.4 or as otherwise set out in this Agreement, including the Additional Conditions,

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

29.2 Termination for convenience by the Customer

- (a) Without prejudice to the Customer's other rights, the Customer may for its sole convenience, and for any reason, by written notice to the Supplier immediately terminate this Agreement or reduce its scope, effective from the time stated in the Customer's notice, or if no such time is stated, at the time notice is given to the Supplier.

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- (b) If the Customer terminates this Agreement or reduces its scope under clause 29.2(a), the Supplier:
- (i) must take all reasonably practicable steps to mitigate the costs referred to in clause 29.2(b)(ii); and
 - (ii) will be entitled to payment of the following amounts, subject to substantiation by the Supplier, being:
 - A. for:
 - 1) work carried out prior to the time of termination or reduction in scope; and
 - 2) third party costs and disbursements duly incurred, with the authorisation of the Customer, but only to the extent referable to the period prior to the effective time of termination,

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

but in no case will the total amount payable to the Supplier be more than the total Price that would have been payable by the Customer had this Agreement not been terminated.
- (c) The amount to which the Supplier is entitled under this clause 29.2 will be a limitation on the Customer's liability to the Supplier arising out of, or in connection with, the termination or reduction in scope of this Agreement and the Supplier may not make any Claim against the Customer with respect to this, other than for the amount payable under this clause 29.2.

29.3 Consequences of reduction of scope

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

29.4 Termination for cause by the Supplier

- (a) The Supplier may immediately terminate this Agreement by written notice to the Customer if:
- (i) the Customer has not paid an amount due and payable by it under this Agreement and the:
 - A. amount has been properly invoiced in a Correctly Rendered Invoice and is not the subject of any unresolved dispute under clause 24.6;

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- B. Supplier has issued a notice to the Customer, stating that the amount is overdue and that the Supplier intends to terminate unless the amount is paid; and
 - C. Customer does not pay the amount within 90 days of the date it receives the Supplier's notice under clause 29.4(a)(i)B; or
- (ii) the Customer has:
- A. breached this Agreement in a manner which results in the Supplier being in breach of a Law; or
 - B. intentionally and wilfully:
 - 1) breached clauses 17.10 or 23; or
 - 2) misappropriated the Intellectual Property Rights of the Supplier in its Existing Materials in a manner that is contrary to the Intellectual Property Rights granted or licenced to the Customer under this Agreement,
- and the Customer does not cease the relevant conduct within 60 days of receiving a written notice from the Supplier requesting it to do so.
- (b) This clause 29.4 exhaustively sets out the Supplier's rights to terminate this Agreement.

29.5 Dispute resolution

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

29.6 Survival of rights on termination or reduction in scope

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

30. Suspension

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

all or part of the Supplier's Activities, at any time. Any such suspension will be effective on and from the date specified in the Customer's direction.
- (b) The Supplier must comply with any direction issued by the Customer under clause 30(a).
- (c) If a suspension under this clause 30 is instructed by the Customer as a result of any breach by the Supplier, the Supplier's failure or delay in carrying out any of its

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obligations in accordance with this Agreement or because of any event of the kind described in clause 29.1, such suspension will be without any liability to the Customer and the Supplier will not be entitled to make any Claim against the Customer arising out of, or in connection with, the suspension.

- (d) If a suspension is instructed by the Customer under clause 30(a) other than for the reasons described in clause 30(c), then:
 - (i) unless otherwise agreed by the parties, the Supplier will be entitled to Invoice the Customer the direct, reasonable and substantiated costs (excluding any profit, profit component or overheads) necessarily incurred by the Supplier as a result of implementing the suspension as directed by the Customer, to the extent such costs could not have been reasonably mitigated or avoided;
 - (ii) the Supplier must take all reasonable steps to mitigate those costs incurred by it as a result of such suspension; and
 - (iii) the Supplier will not be entitled to make any Claim against the Customer arising out of or in connection with the suspension other than as described in clause 30(d)(i).

31. Transition-Out Services

31.1 Application of this clause

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

31.2 Transition-Out Plan

- (a) If the Order Form specifies that a Transition-Out Plan must be prepared by the Supplier with respect to the Supplier's Activities, by any date specified in the Order Form or otherwise promptly on request, the Supplier must prepare, and submit to the Customer's Representative for the Customer's approval in accordance with clause 8, a plan setting out how the Supplier will effect:
 - (i) the orderly disablement of the Supplier's Activities; or
 - (ii) where applicable, the transfer of the performance of the Supplier's Activities under this Agreement to the Customer or a third party, including complying with the obligations set out in this clause 31.
- (b) The Supplier must ensure that the Transition-Out Plan sets out:
 - (i) the timeframes within which the Supplier will perform its obligations under the Transition-Out Plan;
 - (ii) any specific transition-out or disengagement obligations specified in the Order Documents; and
 - (iii) any charges, or the basis or methodology for the calculation of charges, which the Customer will pay the Supplier to perform the Services described in the Transition-Out Plan (if not otherwise specified in the Order Documents).

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- (c) The Supplier must:
 - (i) review and update the Transition-Out Plan periodically throughout its engagement under this Agreement or at the Customer's reasonable request; and
 - (ii) make any updates to the Transition-Out Plan that are reasonably requested by the Customer.
- (d) For clarity, the Transition-Out Plan is a Document Deliverable. Clause 8 therefore applies to the Transition-Out Plan, including any updates to it.

31.3 General

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

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

32. Consequences of expiry or termination

32.1 Extracting or retrieving Customer Data

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

32.2 Confidential Information and intellectual property

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

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

the Customer's:

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

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33. Warranties

33.1 Mutual warranties

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

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

33.2 General Supplier warranties

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

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

33.3 Warranties in relation to Supplier's Activities

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

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

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

34. Indemnities and liability**34.1 Indemnities**

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

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

34.2 Third Party IP Claims

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

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

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

34.3 Indemnities not affected by insurance

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

34.4 Status of indemnities

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

34.5 Liability cap

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

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

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

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

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

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

34.6 Exclusions of liability

- (a) In no event will either party's liability to the other party, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for special, indirect, incidental or consequential loss or damage.
- (b) Nothing in clause 34.6(a) will preclude a party from recovering:
 - (i) Loss which may fairly and reasonably be considered to arise naturally, in the usual course of things, from the breach or other act or omission giving rise to the relevant liability; and
 - (ii) any kinds of Loss which the parties expressly agree, in Item 53 of the Order Form, will be treated as Loss of the kind referred to in clause 34.6(b)(i),

and where the Customer is the recovering party:

 - (iii) any Loss against which the Supplier is required to indemnify the Indemnified Entities under clause 34.1, to the extent such Loss relates to monies, amounts or liabilities owed, due, paid or payable, or obligations owed, to a third party; and

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

34.7 Application and contribution

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

34.8 Mitigation

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

35. Dispute resolution

35.1 General

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

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35.2 Escalation

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

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

35.3 Alternative dispute resolution

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

35.4 Acknowledgment

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

35.5 Costs

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

35.6 Continue to perform

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

36. Force Majeure

36.1 Force Majeure Event

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

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

36.2 Notification and diligence

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

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

36.3 Liability not relieved

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

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

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

37. Reports and audits**37.1 Records and reports**

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

37.2 Audits and inspections

- (a) The Customer or its nominee (which may be an advisor, consultant or other third party engaged by the Customer) may conduct audits and inspections of the

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Supplier's and its Personnel's performance of its obligations under this Agreement, including the:

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

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- (ii) overcharged the Customer in any Invoice, the Supplier must promptly refund any amounts that the Supplier has overcharged the Customer, and adjust all of the current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount. Where the overcharging discrepancy identified exceeds 10% of the amount that should have been correctly invoiced, the Supplier must also promptly reimburse the Customer for the reasonable costs (including internal costs) of conducting the audit.
- (g) Subject to clause 37.2(f)(ii), each party must bear its own costs of executing its rights under, or complying with, this clause 37.

37.3 Conduct of audits and inspections

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

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

37.4 Survival

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

38. Proportionate liability

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

PART F: GENERAL PROVISIONS

39. General

39.1 Government information

- (a) The Supplier acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Agreement on its nominated website established for GIPA Act disclosures. The Supplier irrevocably consents to the Customer acting in accordance with this clause 39.

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- (b) To the extent that section 121 of the GIPA Act applies, the Supplier must, upon receipt of a written request by the Customer, provide the Customer with immediate access to the following information contained in records held by the Supplier:
 - (i) information that relates directly to the performance of the Supplier's Activities;
 - (ii) information collected by the Supplier from members of the public to whom it provides, or offers to provide, any aspect of the Supplier's Activities; and
 - (iii) information received by the Supplier from the Customer to enable it to carry out the Supplier's Activities.
- (c) For the purposes of clause 39.1(b), information does not include information that:
 - (i) discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) the Supplier is prohibited from disclosing to the Customer by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (iii) if disclosed to the Customer, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Customer whether at present or in the future.
- (d) The Supplier must provide copies of any of the information referred to in clause 39.1(b), as requested by the Customer, at the Supplier's own expense and in such medium as the Customer may reasonably require.
- (e) Without limiting any other provision of this clause 39.1, the Supplier:
 - (i) authorises the Customer to make information concerning the Supplier available to other Government Agencies or Eligible Customers (including to the relevant head of any Government Agency or Eligible Customer and any responsible Minister of a Government Agency) for any purpose in connection with facilitating the Customer's exercise of its rights under this Agreement or the carrying out, or exercise, of the functions or powers of the Customer, any Government Agency, Eligible Customer or the Crown. Such information may include any information provided by the Supplier to the Customer and any information relating to the Supplier's performance under this Agreement (including any reports provided under clause 15.4);
 - (ii) acknowledges that information about the Supplier from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any officers or associates of the Supplier or a Related Body Corporate may be taken into account by Government Agencies and Eligible Customers considering whether to offer the Supplier future opportunities for working with those entities, for assessing the terms of their own contracts (or proposed contracts) with the Supplier or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;

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- (iii) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
- (iv) releases and indemnifies the Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

39.2 Personal Property Securities Act

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

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

39.3 No use of the Customer's name or logo

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

39.4 Prior work

Except as otherwise agreed between the parties in writing:

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

39.5 Entire agreement

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

39.6 Variation

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

39.7 Survival and merger

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

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- (ii) any other provisions that are expressed to or which by their nature survive termination or expiry.

39.8 Severability

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

39.9 Waiver

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

39.10 Cumulative rights

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

39.11 Further assurances

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

39.12 Assignment, novation and other dealings

- (a) The Supplier must not, in whole or in part, assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so without obtaining the prior written consent of the Customer, which consent may be withheld at the Customer's sole discretion.
- (b) The Supplier acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take an assignment or novation of this Agreement before determining whether or not to give consent to an assignment or novation.
- (c) Subject to clause 39.12(d), the Customer must not, in whole or in part, assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Supplier, which consent may not be unreasonably withheld.
- (d) Notwithstanding clause 39.12(c), the Customer may, at its sole discretion, assign or novate this Agreement in whole or in part:
 - (i) to any other Eligible Customer, by notice in writing to the Supplier; or
 - (ii) for machinery of government changes, including if, by operation of Law, the Customer is reconstituted into a new body or legal entity or the

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functions of the Customer, relevant to this Agreement, are transferred to a different body or legal entity.

- (e) The Supplier agrees to co-operate in good faith and provide all reasonable assistance to the Customer in respect of any such assignment or novation made by the Customer under this clause 39.12.
- (f) The Supplier must (to the extent permitted by Law):
 - (i) notify the Customer if the Supplier or any parent company of the Supplier is about to undergo a Change in Control or Other Changes, as soon as it becomes aware that the Change in Control or Other Changes will or may occur; and
 - (ii) provide the Customer with all information reasonably requested by the Customer in respect of the Change in Control or Other Changes, including in respect of any incoming owner or other person who is to obtain control over the Supplier or any parent company.

39.13 Notices

- (a) A notice, consent or other communication under this Agreement (**Notice**) is only effective if it is in writing and received in full and legible form at the addressee's address or email address.
- (b) For the purposes of this clause 39.13, a party's address and email address is that set out in the Order Form (as applicable), unless the party has notified a changed address, then the notice, consent, approval or other communication must be sent to that address.
- (c) A Notice will be regarded as received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5:00pm on a Business Day it is regarded as received at 9:00am on the following Business Day.
- (d) Unless there is evidence to the contrary:
 - (i) a letter sent by post will be taken to be received on the fifth Business Day after posting (or seventh, if posted to or from a place outside of Australia);
 - (ii) in the case of email:
 - A. production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;
 - B. where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and
 - C. where a delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender must use an alternative method of giving that notice in accordance with this clause 39.13.

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39.14 Construction

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

39.15 Expenses

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

39.16 English language

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

39.17 Governing Law

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

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Executed as an agreement:

Signed for and on behalf of Transport for NSW,
ABN 18 804 239 602 by its delegate in the
presence of:

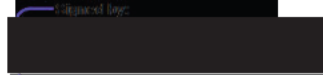


Signature of witness



Name of witness in full

Date 25/7/2025



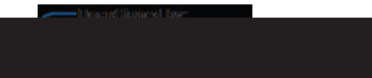
Signature of delegate



Name of delegate in full

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

Executed by VMware Australia Pty Ltd, ABN 77
122 677 089 in accordance with section 127 of the
Corporations Act 2001 (Cth):

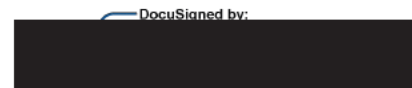


Signature of Director



Name of Director in full

Date Jul-23-2025



Signature of Director



Name of Director in full

Date Jul-24-2025

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Schedule 1 - Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

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

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

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

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

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

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

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

Additional Conditions means any terms or conditions that vary or are additional to the terms and conditions set out in the Core Terms or Module Terms and which are stated or referenced in either or both of:

- (a) Item 11 of the Order Form; and
- (b) where the Cloud Module applies, the relevant Item of the Order Form titled 'Additional Conditions - Cloud Services terms'.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is communicated by the discloser of the information (**Discloser**) to the recipient of the information (**Recipient**) as confidential;
- (c) the Recipient knows or ought to know is confidential; or
- (d) relates to or comprises the:
 - (i) financial, corporate or commercial information of any party;

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- (ii) affairs of a third party; or
- (iii) strategies, practices or procedures of the State of New South Wales or any information in the Supplier's possession relating to a Government Agency,

but excludes information:

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

Conflict of Interest means the Supplier or its Personnel:

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

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

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

Core Modern Slavery Obligations has the meaning given to that term in clause 13.1.

Core Terms means clauses 1 to 39 of this Agreement.

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

Correctly Rendered Invoice means an Invoice which:

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

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- (f) complies with clauses 24.4(a) to 24.4(b) and satisfies any additional criteria relating to Invoices specified in the Order Form.

Critical CSI means any:

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

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

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

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

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

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

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

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

Data Location Conditions means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (h) any contractor to a public authority (but only in respect of things done as such a contractor).

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

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

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

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

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

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

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

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

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

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

Government Agency means any of the following:

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

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

ICT means information and communication technologies.

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

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

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

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

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

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

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

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- (m) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above clauses of this definition.

Intellectual Property Rights means all intellectual property rights, including:

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

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

Invoice means a tax invoice issued under the GST Law.

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

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

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

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

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

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

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

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

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

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

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Modern Slavery:

- (a) means any conduct that constitutes or would constitute any offence listed in Schedule 2 of the *Modern Slavery Act 2018* (NSW), including an offence of attempting or incitement to commit such an offence;
- (b) includes any conduct that constitutes or would constitute an offence under any of the Modern Slavery Laws as amended from time to time, including an offence of attempting or incitement to commit such an offence;
- (c) includes conduct engaged in elsewhere than in New South Wales that, if it occurred in New South Wales, would constitute a modern slavery offence under paragraphs (a) or (b); and
- (d) includes any form of slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and exploitation of children.

Modern Slavery Guidance means the document titled 'NSW Anti-slavery Commissioner's Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains' published by the Office of the NSW Anti-slavery Commissioner as updated, replaced or superseded from time to time.

Modern Slavery Laws means:

- (a) the *Modern Slavery Act 2018* (Cth);
- (b) the *Modern Slavery Act 2018* (NSW);
- (c) Divisions 270 and 271 of the Commonwealth Criminal Code;
- (d) section 176(1A) of the *Public Works and Procurement Act 1912* (NSW);
- (e) section 438ZE of the *Local Government Act 1993* (NSW); and
- (f) any other laws, regulations, codes and international conventions aimed at combatting modern slavery, forced labour or human trafficking, from time to time in force in or ratified by Australia and, where relevant, in or by other jurisdictions in which the parties operate,

each as amended from time to time.

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

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

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

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

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

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

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

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

Open Source Software means software available under a licence which:

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

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

Order Documents means:

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

Order Form means:

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

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

- (a) create a security risk for the Customer or the State of New South Wales; or
- (b) adversely affect the:

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- (i) Supplier's ability to fulfil its obligations under this Agreement; or
- (ii) reputation of the Customer or the State of New South Wales.

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

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

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

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

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

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

Personal Information means:

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

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

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

Plans means any:

- (a) Project Plan;
- (b) Business Contingency Plan;
- (c) Data Management and Protection Plan;
- (d) Test Plan;

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- (e) Transition-In Plan and Transition-Out Plan; and
- (f) any additional plans specified in Item 27 of the Order Form or required to be complied with under this Agreement.

Policies, Codes and Standards means:

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

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

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

Privacy Laws means:

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

affecting privacy or Personal Information, provided that the Supplier ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

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

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

Reasonable Steps means those steps that are reasonable in the circumstances to prevent, identify, mitigate and remedy modern slavery. In assessing whether steps are reasonable, the

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parties may refer to the Modern Slavery Guidance and related information and resources published by the Office of the NSW Anti-slavery Commissioner.

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

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

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

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

Security Incident means any one or more of the following:

- (a) any unauthorised (whether under this Agreement or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of Customer Data or Personal Information within the Supplier's or its Personnel's possession or control (including any data and information stored on the Supplier's equipment or in the facilities used by the Supplier to carry out the Supplier's Activities, or any unauthorised or unlawful access to such equipment or facilities);
- (b) any notifiable data breach under the Privacy Laws;
- (c) any Denial of Service Attack, Virus or other incident that compromises or adversely impacts the security, availability or integrity of Customer Data, the systems and technologies holding such data or the Customer Environment (or which has the intent to do so);
- (d) any security breaches, cyber security incidents or similar events relating to, or affecting Customer Data, Personal Information or the Customer Environment which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under this Agreement, at Law or under any of the Policies, Codes and Standards;
- (e) where there are reasonable grounds to suspect that any breaches or circumstances under paragraphs (a) to (d) have occurred or are likely to have occurred or will occur; or
- (f) any alleged occurrence of any of the above events or circumstances.

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

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

Services means:

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

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

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SME Policies means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1.2 Interpretation

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

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (d) words that are gender neutral or gender specific include each gender;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) the words "such as", "including", "particularly" and similar expressions are not used as, nor are intended to be interpreted as, words of limitation;
- (g) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to the relevant part of this Agreement in which that reference is located;
 - (vi) a reference to a statute or other Law is a reference to that statute or other Law as amended, consolidated or replaced;
 - (vii) a monetary amount is to Australian dollars or such other currency specified in the Order Documents; and
 - (viii) time is to Australian Eastern Standard Time;
- (h) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body; and

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- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of this Agreement.

1.3 Discretion

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

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Schedule 2 - Order Form**PART A: ICTA**

Clause references below are references to clauses in this Agreement.

No	Item	Ref	Description or selection
KEY DETAILS			
1.	Customer	Generally Schedule 1	Transport for NSW ABN 18 804 239 602 a NSW Government agency constituted under the <i>Transport Administration Act 1988</i> (NSW)
2.	Customer's Representative	Generally Schedule 1	Representative's full name:] Harris Lloyd-Levy Role title: Director - Hosting and Networks Phone: [REDACTED] Email: harris.lloyd-levy@transport.nsw.gov.au
3.	MICTA	1.4 Generally Schedule 1	Is this Agreement entered into pursuant to a MICTA? ☐ Yes. ☒ No.
4.	Supplier	Generally Schedule 1	VMware Australia Pty Ltd (ABN 77 122 677 089)
5.	Supplier's Representative	Generally Schedule 1	Representative's full name: [REDACTED] Role title: Account Director Phone: [REDACTED] Email: [REDACTED]
6.	Notices for the Customer	39.13(b)	Customer's address: 231 Elizabeth St, Sydney NSW 2000 Customer's email: ITServiceDelivery_HostingServices@transport.nsw.gov.au
	Notices for the Supplier	39.13(b)	Supplier's address: Level 8, 175 Pitt Street, Sydney NSW 2000 Supplier's email: [REDACTED]
TERM			
7.	Commencement Date	5.1 Schedule 1	27 July 2025

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No	Item	Ref	Description or selection
8.	Initial Term	5.1 Schedule 1	36 months from the Commencement Date.
9.	Renewal Period	5.2 Schedule 1	Not applicable.
	Notice period for renewals	5.2	Not applicable.
ORDERING AND PURCHASING			
10.	Additional Orders	3.3 Schedule 1	The Customer is permitted to place Additional Orders. The Customer and the Supplier may enter into Further Statements of Work in accordance with the Additional Condition in Annexure C (Additional Conditions) of this Order Form enabling Further Statements of Work to be entered into.
11.	Additional Conditions	3.5 Schedule 1	The Additional Conditions are as set out in Annexure C (Additional Conditions) to this Order Form.
12.	Reseller arrangements	3.6	Not applicable – the Supplier is not acting in the capacity of a reseller.
13.	Schedules	Generally Schedule 1	☒ Schedule 1 - Definitions and interpretation ☒ Schedule 2 - Order Form ☒ Schedule 3 - Statement of Work Template ☒ Schedule 4 - Payment Schedule ☒ Schedule 5 - Change Request Form ☒ Schedule 6 - Deed of Confidentiality and Privacy ☐ Schedule 7 - Escrow Deed ☐ Schedule 8 - Performance Guarantee ☐ Schedule 9 - Financial Security
	Modules	1.2(c)	☐ Cloud Module ☒ Services Module ☒ Software Module (Non-Cloud) ☐ Hardware and Other ICT Deliverables Module The relevant terms of the Modules selected above are attached to this Agreement. If not attached to this Agreement, the relevant

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No	Item	Ref	Description or selection
			terms are available at https://www.info.buy.nsw.gov.au/resources/micta-icta .
SUPPLIER'S ACTIVITIES			
14.	Scope	Generally	The Services and the Deliverables which must be provided by the Supplier to the Customer under the terms of this Agreement, including Supplier's Services, are as set out in the Order Documents including, in particular, the relevant Statement of Work.
15.	Requirements - Accessibility requirements	6.3(b)(ii)	The default accessibility requirements apply, unless additional requirements are specified in the Order Documents (in which case, the default accessibility requirements apply in addition to the requirements specified in the Order Documents).
	Requirements - Work health and safety	12.4(f)	The following applies in addition to the default work health and safety (WHS) requirements specified in clauses 12.4 and 12.5: a. The Supplier must have appropriate policies, practices, and procedures to meet statutory obligations to provide a safe workplace under the WHS Legislation. b. When the Supplier or its Personnel physically access any Sites or other facilities of the Customer under or in connection with this Agreement, the Supplier must comply with the following Customer WHS policies and procedures as far as they relate to the Supplier's Activities: i. Transport for NSW Code of Conduct; ii. Transport for NSW Drug and Alcohol Policy; iii. Transport Environment and Sustainability Policy; iv. Transport for NSW Safety and Wellbeing Policy; v. Transport for NSW Return to Work Program; vi. Sydney Trains Return to Work Program; vii. Transport for NSW Injury Management Procedure; viii. Transport Discrimination Free Workplace Policy; ix. Transport Prevention and Management of Bullying and Harassment Policy; x. Transport for NSW Bullying, Harassment and Discrimination Management Procedure; xi. Transport Emergency Preparedness and Response Standard; xii. Transport Health and Safety Reporting Standard; and

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No	Item	Ref	Description or selection
			xiii. any sign-in and sign-out procedures of a Site or Customer's premises as communicated to the Supplier or its Personnel, including those notified to the Supplier's Personnel when accessing or leaving any Site or Customer's premises, provided that with the exception of paragraph xiii, the versions of the above documents that apply will be the versions made available to the Supplier prior to the Commencement Date or updated and provided to the Supplier from time to time after the Commencement Date. When the Supplier or its Personnel physically access any Sites or other facilities of the Customer, the Supplier and its Personnel must comply with any other WHS requirements relevant to the Supplier's Activities as notified by the Customer to the Supplier, including any requirements and associated policies with respect to any work that occurs in or around the Rail Corridor in accordance with the Additional Conditions.
	Principal Contractor	12.5	a. In this row: i. the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation; and ii. Work Area means the limited area at the relevant location in which the Supplier undertakes the relevant construction work (such as the specific room in which the Supplier undertakes construction work). b. Without limiting the Supplier's obligations under any other provision of this Agreement, to the extent that the Services and/or Deliverables involve the provision by the Supplier of construction work: iii. unless otherwise expressly specified by the Customer in a notice in writing to the Supplier, the Customer engages the Supplier as the principal contractor in respect of the workplace in the relevant Work Area and authorises the Supplier to have management and control of such Work Area and to discharge the duties of a principal contractor under the WHS Legislation; iv. the Supplier accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation and perform all such other activities as are necessary to ensure the Customer does not breach its obligations under the WHS Legislation; and v. the Supplier's engagement and authorisation as a principal contractor will continue until the point in time when the relevant Service are completed.

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No	Item	Ref	Description or selection
16.	Site attendance and location	6.10 Schedule 1	Will the Supplier be required to attend the Site to carry out any aspect of the Supplier's Activities (including the supply of any Deliverables)? ☒ Yes ☐ No
	Site Location		The location of the Site(s), including any Site where the Supplier must deliver or supply the Deliverables or Services is as set out in the Order Documents, including the relevant Statement of Work.
	Physical delivery		The specific delivery areas at Sites, Date for Delivery and hours for delivery are set out in the relevant Order Document.
	Requirements for attendance at the Site		The Supplier and its Personnel are permitted to attend the Site only at the times nominated by the Customer from time to time, and subject to such conditions as may be nominated by the Customer from time to time. Without limitation, the Supplier must comply (and must ensure that its Personnel comply) with the requirements set out in Items 17, 22 and 40 of this Order Form.
17.			
18.	Nominated Personnel	11.1 Schedule 1	For the purposes of each Statement of Work, Nominated Personnel of the Supplier are those Personnel specified as Nominated Personnel in the relevant Order Document, and such Nominated

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No	Item	Ref	Description or selection
			Personnel must undertake the role or responsibility assigned to them in the relevant Order Document.
19.	Deed of Confidentiality and Privacy	11.4(a) Schedule 1	If required by the Customer, the Supplier's Personnel engaged to provide Professional Services (excluding Support Services) must sign a Deed of Confidentiality and Privacy in substantially the same form as Schedule 6.
20.			
21.	Subcontractor deed	11.5(j)	Not applicable.
	Additional subcontractor procurement policy requirements	11.5(k)	Not applicable.
22.	Background checks	11.6(b)	Clause 11.6(a) applies.
	Timeframes and time for background checks		Not applicable.
PERFORMANCE AND DELIVERY			
23.	Timeframes and requirements for performance	6.1	The Supplier must comply with the timeframes and requirements for performance set out in the relevant Order Document.
	Specifications	6.1 Schedule 1	The Specifications comprise the following documents: a. the relevant Statement of Work; b. any other relevant Order Document; and c. the Specific Program Documentation ("SPD") identified in applicable Transaction Document(s). The SPDs are typically incorporated by reference. If the applicable version of the Licensed Software is not specifically listed within this Agreement, the SPD for the most recent prior version shall apply. If there is any conflict or inconsistency between the documents listed above, the documents listed higher in the list above will prevail over the document listed lower in the list above to the extent

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No	Item	Ref	Description or selection
			of such conflict or inconsistency, regardless of anything to the contrary in those documents.
24.	Service Levels	15.2 Schedule 1	Service Levels apply to the provision of the Supplier's Activities, as set out in the Maintenance Policy, attached to Annexure A of this Order Form.
25.	Performance reports	15.4(a)	Not applicable.
	Additional performance reporting requirements	15.4(c)	Not applicable.
	Performance reviews	15.5(a)	As specified in Item 26 below.
26.	Meetings	15.7(a)	The Supplier's Representative must meet with the Customer's Representative or the Customer's other Personnel at least once every six (6) months. The Supplier and the Customer will meet quarterly to review performance against contractual obligations of the parties. The Supplier and the Customer will meet monthly, or as requested by the Customer, to review performance against the SLA and other operational matters as required. All meetings to be at mutually agreeable times and at locations requested by the Customer.
27.	Project Plans	6.5(b)	Not applicable, unless otherwise set out in the Order Documents.
	Other Plans	Schedule 1	The Supplier is required to prepare the following Plans, together with any other Plans, to the extent specified in an Order Document.
28.	Stages	6.6(a) Schedule 1	Not applicable, unless otherwise set out in the relevant Order Document.
	Project methodology	6.6(e)	Not applicable, unless otherwise set out in the relevant Order Document.
	Costs of removing any Stage(s)	6.6(d)	Not applicable.
29.	Liquidated Damages	16(a) 16(b) Schedule 1	Not applicable, unless otherwise expressly agreed in writing between the parties in relation to the provision of Services under an particular Statement of Work.

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No	Item	Ref	Description or selection
30.	Governance Framework	4.3	As specified in Item 26 below, and as otherwise agreed by the parties (acting reasonably) from time to time.
31.	Customer Supplied Items	6.2 Schedule 1	There are no Customer Supplied Items, unless expressly agreed in writing between the parties in the relevant Statement of Work. For the avoidance of doubt, the parties agree that clause 6.2(f) of the Core Terms does not apply to any Customer Data provided by the Customer to the Supplier under or in accordance with the terms of this Agreement.
	Date for provision of CSI		Not applicable, unless expressly as set out in the relevant Order Document.
	CSI requirements		Not applicable, unless expressly as set out in the relevant Order Document.
	Supplier's costs for CSI and time for payment		Not applicable, unless expressly as set out in the relevant Order Document.
32.	Transition-In Plan	7.2 Schedule 1	Not applicable.
	Transition-In Services	7.3 Schedule 1	Not applicable.
33.	Transition-Out Services	31.1 Schedule 1	If required by the Customer, the Supplier must provide such Transition-Out Services as reasonably required to enable the Customer to transition to an alternate solution and/or provider. The Supplier will be entitled to charge the Customer additional Prices for the provision of the Transition-Out Services, as agreed by the parties (acting reasonably). For clarity, the Customer may elect to use any remaining 'professional services hours' to offset the Prices payable for the Transition-Out Services.
	Transition-Out Plan	31.2 Schedule 1	Not applicable.
	Transition-Out Period	31.3 Schedule 1	The Transition-Out Period is the period prior to the expiration or termination of the Term during which the Customer requires the Customer to provide the Transition-Out Services.
34.	User Documentation	8.4(a)	The Supplier must (at the Supplier's sole cost) provide the User Documentation specified in the relevant Order Document to the Customer, and such other User Documentation as reasonably required in order for the Customer or Customer Users to use, maintain, secure, operate or otherwise obtain the benefit of any Deliverable or Service.

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No	Item	Ref	Description or selection
	Format for the User Documentation	8.4(c)	Not applicable (i.e. User Documentation is not required in hard copy format), unless expressly agreed otherwise between the parties in the relevant Order Document.
35.	Acceptance Testing	14 Schedule 1	Not applicable.
	Acceptance Testing Procedures	14.1	Not applicable.
	Acceptance Criteria	14.2 Schedule 1	Not applicable.
36.	Warranty Period	9 Schedule 1	The default provisions apply, except that the Warranty Period for Licensed Software is as set out in Additional Condition 2 (see Annexure C to this Order Form).

INTELLECTUAL PROPERTY

37.

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No	Item	Ref	Description or selection
	Ownership of New Materials	17.3	Unless expressly agreed otherwise in writing in the relevant Order Document, the default position applies in all circumstances (i.e. the Intellectual Property Rights in any New Materials created by the Supplier will be owned by the Supplier).
	Licence to use New Materials	17.4 17.5	a. The Supplier grants to the Customer a limited, non-exclusive, worldwide, non-transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate and distribute the Intellectual Property Rights in such New Materials, for any purpose in connection with the: i. Customer performing its obligations and exercising its rights under this Agreement; ii. full use of any Services and/or Deliverables in which New Material is incorporated, including installing, operating, upgrading, modifying, supporting, enhancing and maintaining the Deliverables or integrating them with any other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency; iii. performance of tests and other quality assurance processes in relation to the Deliverables and systems that may integrate or interoperate with the Deliverables; or iv. carrying out, or exercise, of the functions or powers of the Customer, a Government Agency or the Crown, including any statutory requirements concerning State records or auditing. b. The default provisions in clause 17.5 apply.
	Third party Intellectual Property Rights	17.7	The default position in clause 17.7 applies in all circumstances.
38.	Escrow	18	Not applicable.
	Escrow Materials	18 Schedule 1	Not applicable.
DATA AND SECURITY			

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No	Item	Ref	Description or selection
39.			
	Data Location Conditions	19.3(b) Schedule 1	Refer to the row immediately above.
40.			
	Security certifications	21.2(e)	The Supplier must hold and maintain ISO 27001 certification and any other certifications referred to at: https://www.broadcom.com/support/trust-center/compliance

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No	Item	Ref	Description or selection
	Security audits	21.3 Schedule 1	Clause 21.3 (as amended in the Additional Conditions) applies.
41.	Backup of Customer Data	19.4	Not applicable.
	Retention of Customer Data	19.7	Clause 19.7(a) does not apply.
42.	Security Incidents	22.2(a) Schedule 1	Not applicable.
FEES AND PAYMENT			
43.	Payment Particulars	24.1(a)	As set out in Schedule 4 (Payment Schedule) and the relevant Order Document.
	Price model (exception)	24.1(b)	Clause 24.1(b) applies (i.e. the Price and any rates or charges specified in the Payment Particulars are fixed for the Term), unless expressly specified otherwise in the Payment Schedule or the Statement of Work, as applicable.
44.	Benchmarking	24.2	Not applicable.
45.	Invoicing timeframes	24.4(a)	The default timeframes apply, unless expressly specified otherwise in the Payment Schedule or another relevant Order Document, as applicable.
46.	Payment requirements and invoicing	24.5(a)	The Supplier must also satisfy any applicable preconditions for payment, as set out in the Payment Schedule or Statement of Work prior to being entitled to payment by the Customer. The Supplier must submit Correctly Rendered Invoices for payment. The Supplier can submit invoices via the Customer's Ariba system, or by email to tss.invoices@transport.nsw.gov.au. The Supplier is advised that the email address above is used for the auto-collection of new invoices only. Invoices sent to the mailbox must satisfy the criteria below to ensure that they can be processed and paid:

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No	Item	Ref	Description or selection
			a. All invoices must be sent as PDF attachments; b. Only one 'PDF' file, containing only one invoice, should be attached; c. Any supporting documents must be contained within the same attached 'PDF' file as the invoice, with the invoice being the first page and all supporting documents to follow; and d. A valid contract number and/or purchase order number must be quoted on all invoices. The Supplier must address all invoice and payment related queries or requests for assistance to the TSS Procurement Service Desk on 1300 132 136 or tss.procurement@transport.nsw.gov.au.
	Time for payment	24.5(a) Schedule 1	The timeframe for payment set out in section 3.3 of the Payment Schedule applies.
	Purchase order number and Agreement reference number for Correctly Rendered Invoices	Generally	The Supplier must specify the purchase order number (and, to the extent applicable, the Agreement reference number) on each Correctly Rendered Invoice. The Customer will notify the purchase order number (and, to the extent applicable, the Agreement reference number) to be specified on Correctly Rendered Invoices to the Supplier after the Commencement Date.
	Supplier's nominated bank account	24.5(a)(i)	The Supplier will notify the Customer of the Supplier's bank account to which payments will be made during the Customer's standard supplier onboarding process.
RISK ALLOCATION AND MANAGEMENT			
47.	Business Contingency Plan	25.2(a) 25.2(b)(iii) 25.2(d)	The Supplier must maintain its own business contingency plan. However, the Supplier is not required to prepare a Customer-specific Business Contingency Plan, unless expressly agreed otherwise in writing between the parties in the relevant Order Document (in which case, the relevant Business Contingency Plan, and clause 25.2, apply only for the purposes of such Statement of Work).
48.	Step-In Rights	26	Not applicable.
49.	Insurance	27(a)	

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No	Item	Ref	Description or selection
	Cyber security and other insurances	27(a) 27(b)	
50.	Performance Guarantee	28.1	Not applicable.
51.	Financial Security	28.2	Not applicable.
52.	Termination for convenience	29.2(b)(ii)B	Refer to the Additional Conditions.
53.			
	Alternate approach to uncapped liability	34.5(c)	

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No	Item	Ref	Description or selection
	Non-excluded Losses	34.6(b)(ii)	Not applicable.
54.			
55.			

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PART B: Cloud Module – Not used PART C: Services Module

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

No	Item	Mod ref	Description or selection
SCOPE			
56.	Services	1.1	As set out in the Order Documents.
57.	Non-ICT Services	Generally	Not applicable.
58.	Services Period	1.3 Annexure A	The Services Period is the relevant period during which the Supplier must provide the Services under an Order Document.
SUPPORT SERVICES			
59.	Support Services	2.1 2.3	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
	Support Period	2.2 Annexure A	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
60.	Help desk	2.4	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
61.	Software Support Services	3.1 3.2(b) Annexure A	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
	Updates	3.2	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
	New Releases	3.2	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
	Security Corrections	3.2(f)	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
62.	Period to maintain the Software after provision of Updates and New Releases	3.2(g)	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
63.	Support Services for Hardware and	4.1	Not applicable – Support Services are provided under the Software Module (Non-Cloud).

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No	Item	Mod ref	Description or selection
	Other ICT Deliverables	4.2 Annexure A	
64.	Preventative Maintenance	4.3 Annexure A	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
65.	Engineering changes	4.4	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
66.	Remedial Maintenance	4.5 Annexure A	Not applicable – Support Services are provided under the Software Module (Non-Cloud).
DEVELOPMENT SERVICES			
67.	Development Services	5.1 Annexure A	Not applicable, except as otherwise specified in an Order Document.
68.	Software Solution	5.2 Annexure A	Not applicable, except as otherwise specified in an Order Document.
69.	Design Specification	5.3(a) 5.3(b)	Not applicable, except as otherwise specified in an Order Document.
70.	Service Levels or criteria that apply to the Development Services	5.4(d)	Not applicable, except as otherwise specified in an Order Document.
71.	Alternative project delivery methodology	5.5	Not applicable, except as otherwise specified in an Order Document.
SYSTEM INTEGRATION SERVICES			
72.	Systems Integration Services	6.1 Annexure A	Not applicable, except as otherwise specified in an Order Document.
	Scope of Systems Integration Services	6.2	Not applicable, except as otherwise specified in an Order Document.
	SI Plan and SI Specifications	6.3	Not applicable, except as otherwise specified in an Order Document.

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No	Item	Mod ref	Description or selection
DATA SERVICES			
73.	Data Services	7.1 7.2(a) Annexure A	Not applicable, except as otherwise specified in an Order Document.
74.	Backup	7.4	Not applicable, except as otherwise specified in an Order Document.
75.	Data cleansing	7.5	Not applicable, except as otherwise specified in an Order Document.
76.	Data analysis	7.6	Not applicable, except as otherwise specified in an Order Document.
77.	Data migration	7.7	Not applicable, except as otherwise specified in an Order Document.
78.	Data Migration Plan	7.7	Not applicable, except as otherwise specified in an Order Document.
OTHER PROFESSIONAL SERVICES			
79.	Professional Services	8.1 Annexure A	As specified in an Order Document.
	Specifications and standards	8.2	As specified in an Order Document.
80.	Dates for Delivery and timeframes	8.2 8.3	As specified in an Order Document.
MANAGED SERVICES			
81.	Managed Services	9.1 9.2 Annexure A	Not applicable.
	Transition-In Services	9.3	Not applicable.
82.	Procedures Manual	9.4	Not applicable.
83.	Managed Third Party Contracts	9.5 Annexure A	Not applicable.

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No	Item	Mod ref	Description or selection
84.	Assets	9.6 Annexure A	Not applicable.
85.	Transition-Out Services	9.7	Not applicable.
TRAINING SERVICES			
86.	Training Services	10.1	Not applicable – training is provided under the Software Module (Non-Cloud).
	Training Reports	10.2	Not applicable – training is provided under the Software Module (Non-Cloud).
GENERAL			
87.	Additional/ancillary Deliverables and Services	11.1 11.2	Not applicable, except as otherwise specified in an Order Document.
88.	Records	12	Clause 12(b) applies. The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under clause 12 to the Customer's Representative when reasonably required by the Customer, provided that in no circumstances will the Customer be permitted to delay the performance of a Software Audit by the Supplier by exercising its rights under clause 12.
89.	Operating procedures	13(a)(v)	Not applicable as no operating procedures apply (and clause 13(a)(v) of the Services Module therefore does not apply).

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PART D: Software Module (Non-Cloud)

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

No	Item	Mod ref	Description or selection
SCOPE			
90.	Scope	1.1 2.1(a) 9.1	The Supplier must supply Licensed Software and Software Support Services under this Agreement.
	Licensed Software and Software Support Services	1.1 2.1(a) 9.3(a) Annexure A	As set out in the Order Documents. The Supplier must provide the Support Services in accordance with the Supplier's Support Policy and the Maintenance Policy incorporated into Annexure A to this Order Form.
SUPPLY OF LICENSED SOFTWARE			
91.	Dates for Delivery	2.1(b)	The Supplier must provide the Customer: a. the Licensed Software; b. User Documentation; and c. Third Party Components and other Deliverables, in accordance with the timeframes and Dates for Delivery specified in the Order Documents (and if not specified, on and from the Commencement Date).
	Installation	2.1(c) 2.2	The Customer is responsible for installing the Licensed Software. The User Documentation specifies instructions for installation. The Supplier must provide such information and assistance to the Customer as the Customer reasonably requests to assist the Customer to install the Licensed Software.
	Download of Licensed Software	2.1(d)	The Supplier must make the Licensed Software available for download by the Customer and provide the Customer with all access codes for the Customer to download and use the Licensed Software by no later than the Commencement Date.
92.	Data backups by the Customer	2.3(a)	The default positions apply.
	Data backups by the Supplier	2.3(b)	The Supplier is not required to backup data that is loaded into the Licensed Software in accordance with clause 2.3(b).

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No	Item	Mod ref	Description or selection
93.	Licence Period	3.1 Annexure A	The Licence Period is the Term.
	Licensing model	3.2	The licensing model is not a User Licensing Model. The licences are capped and the Customer may use the licences subject to the maximum cap. The Licensing Model and number of licences are as set out in the Payment Schedule or other relevant Order Documents.
	Permitted Users	3.2 Annexure A	Not applicable – a User Licensing Model does not apply.
	Permitted Purposes	3.3 Annexure A	The default position applies.
	Scope of licence	3.3	The default position applies, except that clause 3.3(b)(iii) does not apply.
94.	Updates and New Releases - General	4.1(a)	The Supplier must make available both Updates and New Releases as part of the Support Services.
	Updates	4.2(a) 4.2(c)	The default position applies.
	New Releases	4.2(a) 4.2(c)	The default position applies.
	Security Corrections	4.2(e)	Not applicable (no additional conditions apply).
	Period to maintain the Licensed Software after provision of Updates and New Releases	4.2(f)	Not applicable.
95.	Transfer rights	5.1	
96.	Restrictions	6.1(a)	Not applicable - no additional restrictions apply.

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No	Item	Mod ref	Description or selection
97.	End of Licence Period	6.2(a)	The Customer is obliged to either destroy or return to the Supplier all copies of the Licensed Software at the end of the Term, if no new agreement is entered into in respect of the Licensed Software.
98.	Third Party Components	7.1(b) Annexure A	
	Third party warranties	7.2	
99.	Record keeping	8.1	

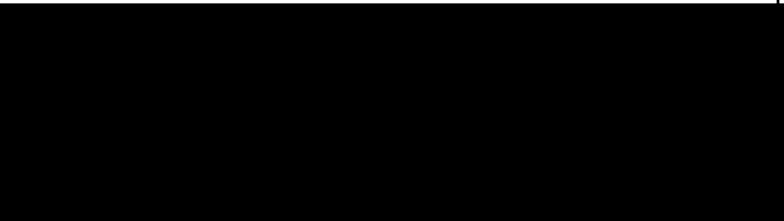
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No	Item	Mod ref	Description or selection
100.	Software Audits	8.2(b) 8.2(c)	Refer to the Item immediately above.
	Results and consequences of Software Audit	8.3(b)	The default provisions in clause 8.3(b) apply (as amended in Annexure C (Additional Conditions) to this Order Form).
SOFTWARE SUPPORT SERVICES			
101.	Support Period	9.2	The Support Period is the Term.
	Software Support Services	9.3(b)	The Supplier must provide Software Support Services in accordance with clause 9.3(b), and the Supplier's Support Policy and the Maintenance Policy incorporated into Annexure A to this Order Form.
102.	Help desk	10	The Supplier must provide the Help Desk Services in accordance with the Supplier's Support Policy and the Maintenance Policy incorporated into Annexure A to this Order Form.
TRAINING			
103.	Training Services	11	The Supplier must provide training Services, comprising: a. free online training, including instructor-led courses with labs, are available to the Customer. It is the Customer's responsibility to utilise these services and set appropriate training plans with its staff; and b. any other training specified in the Order Documents.
	Training Reports	11.2	The Supplier must provide Training Reports to the Customer on request.
GENERAL			
104.	Additional/ancillary Deliverables and Services	12	The Supplier must provide any additional or ancillary Deliverables and/or Services required to be provided under the Order Documents.
105.	Export Laws	13(a)(ii) Annexure A	

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No	Item	Mod ref	Description or selection
106.	Records	14	Clause 14(b) applies. 
107.	Operating procedures	15(a)(iv)	The operating procedures specified in the User Documentation apply.

PART E: Hardware and Other ICT Deliverables Module – Not used

Annexure A to Order Form – Supplier's Documents

The following document The following documents are Supplier's Documents:

- a. the Data Processing Addendum (DPA), attached below;



The term "Broadcom" refers to Broadcom Inc. and/or its subsidiaries.

Data Processing Addendum

1. INTRODUCTION

This Data Processing Addendum ("DPA") forms part of the Agreement between the party identified therein ("Customer") and Broadcom and applies where Broadcom processes Personal Data on behalf of Customer as part of providing Services. All capitalized terms used but not defined in this DPA have the meanings set forth in the Agreement.

In the course of providing Services to Customer pursuant to the Agreement, Broadcom may process Personal Data that is subject to Data Protection Laws. This DPA reflects the parties' agreement with regard to the processing of such Personal Data. For purposes of this DPA, Broadcom is the Processor and Customer is the Controller, or Customer is acting on behalf of a Controller. This DPA does not apply where Broadcom is the Controller.

2. DEFINITIONS

2.1. "Controller" means an entity that determines the purposes and means of the processing of Personal Data.

2.2. "Data Protection Laws" means all data protection and privacy laws applicable to the processing of Personal Data by Broadcom on behalf of Customer when delivering the Services.

2.3. "Personal Data" as used in the DPA means any information relating to an identified or identifiable natural person contained within Customer Data that Broadcom processes on behalf of Customer when delivering the Services.

2.4. "Personal Data Breach" means a breach of security of the Services leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data.

2.5. "Processor" means an entity that processes Personal Data on behalf of a Controller.

2.6. "Services" as used in the DPA means the provision of maintenance and support services, software as a service or any other services by Broadcom to Customer under the Agreement.

2.7. "Sub-Processor" means a Processor engaged by Broadcom that processes Personal Data pursuant to the Agreement. Sub-Processors may include third parties or any Broadcom Affiliate.

3. PROCESSING OPERATIONS

3.1. **Subject Matter.** The subject matter of the processing under the Agreement is Personal Data.

3.2. **Duration.** The duration of the processing under the Agreement is determined by Customer and as set forth in the Agreement.

3.3. **Purpose.** The purpose of the processing under the Agreement is the provision of the Services by Broadcom to Customer as specified in the Agreement.

3.4. **Nature of the Processing.** Broadcom and its Sub-Processors are providing Services and fulfilling contractual obligations to Customer as described in the Agreement. These Services may include the processing of Personal Data by Broadcom and its Sub-Processors.

3.5. **Categories of Data Subjects.** Customer determines the data subjects, which may include Customer's employees, contractors, suppliers, and other third parties.

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- 3.6. **Categories of Data.** Customer controls the categories of Personal Data that are processed through its use and configuration of the Services.
- 3.7. **Compliance with Laws and Instructions.** Broadcom must comply with Data Protection Laws and will process Personal Data in accordance with Customer's documented instructions. Customer agrees that the Agreement (including this DPA) is its complete and final instructions to Broadcom regarding the processing of Personal Data. Broadcom will not re-identify any de-identified Personal Data other than in accordance with Customer's documented instructions. Processing any Personal Data outside the scope of the Agreement requires prior written agreement between Broadcom and Customer and may incur additional fees. Customer may terminate the Agreement upon written notice if Broadcom declines or is unable to accept any reasonable modification to processing instructions that (a) are necessary to enable Customer to comply with Data Protection Laws, and (b) the parties were unable to agree upon after good faith discussions. Broadcom must inform Customer if Broadcom cannot comply with an instruction or in Broadcom's opinion, a Customer instruction infringes applicable Data Protection Laws.
- 3.8. **Customer Obligations.** Customer's use of the Services and processing instructions must comply with Data Protection Laws and Customer is responsible for the accuracy and quality of the Personal Data, and must obtain all rights and authorizations necessary for Broadcom to process Personal Data under the Agreement.
- 3.9. **Confidentiality.** Broadcom shall ensure that Broadcom personnel authorized to process Personal Data have committed themselves to confidentiality requirements at least as protective as those of this DPA or the Agreement governing the applicable engagement with Broadcom for which Processing is performed or are under an appropriate statutory obligation of confidentiality.
- 3.10. **Deletion.** Upon termination of the Agreement or after the end of provision of the Services, Broadcom shall delete or return any Personal Data in accordance with Data Protection Laws and consistent with the terms of the Agreement and the applicable SaaS Listing, unless applicable law requires further storage, in which case Broadcom will implement reasonable measures to prevent any further processing and the terms of this DPA will continue to apply to that retained Personal Data.
- 4. DATA SUBJECT RIGHTS AND DATA PROTECTION IMPACT ASSESSMENTS**
- 4.1. **Data Subject Rights.** If Broadcom receives any requests from individuals wishing to exercise their rights in relation to Personal Data (a "Request"), Broadcom will promptly redirect the Request to Customer. Broadcom will not respond to the Request directly unless authorized by Customer or required by law. Customer may address Requests using the Services. If Customer needs assistance, Customer will request Broadcom's reasonable cooperation, which Broadcom will provide, at Customer's expense.
- 4.2. **Data Protection Impact Assessments.** If required by Data Protection Laws, Broadcom will, at Customer's expense, provide reasonably requested information regarding the Services to enable Customer to carry out data protection impact assessments and prior consultations with data protection authorities.
- 5. SUB-PROCESSING**
- 5.1. **General.** Customer grants Broadcom a general authorization to engage Sub-Processors to process

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Personal Data to provide the Services. Broadcom shall enter into a written agreement with each Sub-Processor that imposes obligations on the Sub-Processor substantially similar to those imposed on Broadcom in this DPA and at a minimum, no less protective than those required by Data Protection Laws. Broadcom shall remain liable to Customer for the performance of its Sub-Processors to the same extent Broadcom would be liable if performing the Services itself.

- 5.2. **Disclosure and Notifications.** The list of Sub-Processors is available at: <https://www.broadcom.com/company/legal/privacy/sub-processors>. Broadcom shall provide notice of new Sub-Processors by updating such list or through email where Customer has signed up for notifications at <https://www.broadcom.com/company/legal/privacy/sub-processors>.
- 5.3. **Objections.** If Customer objects to Broadcom's use of a new Sub-Processor in writing and on reasonable data protection grounds within thirty (30) calendar days of Broadcom's notice, Broadcom will discuss those concerns with Customer in good faith with an aim of achieving resolution.

6. DATA TRANSFERS

- 6.1. **General.** To provide the Services, Broadcom may transfer and process Personal Data to and in locations around the world where Broadcom or its Sub-Processors maintain data processing operations.
- 6.2. **Data Privacy Framework.** Broadcom complies with the EU-U.S. Data Privacy Framework (EU-U.S. DPF) and the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. Data Privacy Framework (Swiss-U.S. DPF) as set forth by the U.S. Department of Commerce and has certified to the U.S. Department of Commerce that it adheres to the relevant Data Privacy Framework Principles.
- 6.3. **Compliance with DPF, SCC, IDT.** Broadcom will process all Personal Data transferred outside the country of origin in accordance with the Data Privacy Framework, Standard Contractual Clauses ("SCC") or the International Data Transfer Addendum ("IDT"), if required by applicable law, including where Personal Data is processed by a Sub-Processor. If the SCC are implemented, adopted, or recognized as a legitimate data transfer mechanism in countries outside the European Economic Area ("EEA"), then Broadcom shall apply the relevant SCC Modules to the transfer of Personal Data originating from such country(ies). In the event that Services are covered by more than one transfer mechanism, the transfer of Personal Data will be subject to a single transfer mechanism in accordance with the following order of precedence: (i) Data Privacy Framework self-certifications; (ii) Standard Contractual Clauses.
- 6.4. **SCC Selections.** SCC Module Two and SCC Module Three, as applicable, apply with the following selections:

Section Reference	Concept	Selection by the Parties
Section I, Clause 7	Docking clause	The option under Clause 7 shall not apply
Section II, Clause 9	Use of sub-processors	Option 2 will apply, and the time period for prior notice of sub-processor changes shall be as set out in Section 5.3 (Objections)
Section II, Clause 11	Redress	The option under Clause 11 shall not apply

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Section IV, Clause 17	Governing law	The laws of Ireland The FADP insofar as the transfers are governed by FADP
Section IV, Clause 18(b)	Choice of forum and jurisdiction	The courts of Ireland
Annex I.A	List of Parties	See the Agreement
Annex I.B	Description of transfer	See Sections 1 (Introduction), 3 (Processing Operations) and 5 (Sub-Processing)
Annex I.C	Competent supervisory authority	Irish Data Protection Commission Federal Data Protection and Information Commissioner insofar as the transfers are governed by the FADP
Annex II	Technical and organizational measures	See Section 8 (Security and Breach) and the documentation referenced in Section 8.1 (Broadcom Obligations)
Additional adaptations insofar as the FADP governs the transfers	The term 'member state' must not be interpreted in such a way as to exclude data subjects in Switzerland from the possibility of suing for their rights in their place of residence (Switzerland) in accordance with Clause 18(c) of the SCC. The references to "GDPR" are to be understood as references to FADP.	

6.5. SCC Module Three Terms. Where SCC Module Three is applicable, the following terms apply:

- 6.5.1. For the purposes of Clause 8.1(a), (b) and (c), Customer hereby informs Broadcom that it acts as Processor under the instructions of the relevant Controller with respect to Personal Data. Customer warrants that its processing instructions as set out in the Agreement, including the DPA, including its authorizations to Broadcom for the appointment of Sub-Processors in accordance with the DPA, have been authorized by the relevant Controller. Customer is solely responsible for conveying any Sub-Processor notifications to the relevant Controller where appropriate.
- 6.5.2. For the purposes of Clause 8.6(c) and (d), Broadcom shall provide notification of a Personal Data Breach to Customer in accordance with the DPA.
- 6.5.3. For the purposes of Clause 8.9, all enquiries from the relevant Controller shall be provided to Broadcom by Customer. If Broadcom receives an enquiry directly from a Controller, it shall forward the enquiry to Customer and Customer shall be solely responsible for responding to any such enquiry from the relevant Controller where appropriate.
- 6.5.4. For the purposes of Clause 10 and subject to the DPA, Broadcom shall notify Customer

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about any request it has received directly from a Data Subject without obligation to handle it but is not obligated to notify the relevant Controller. Customer shall be solely responsible for cooperating with the relevant Controller in fulfilling the relevant obligations to respond to any such request.

6.6. IDT Selections. The IDT applies to the transfers from the United Kingdom, with the following selections:

Reference	Concept	Selection by the Parties
Table 1	Parties	See the Agreement
Table 2	Selected SCC, Modules and Selected Clauses	The information in Section 6.3 (SCC Selections) shall apply
Table 3	Appendix Information	The information in Section 6.3 (SCC Selections) shall apply
Table 4	Ending this Addendum when the Approved Addendum Changes	Neither party may end the IDT, except as set forth in the Agreement

6.7. Conflicts. In the event of a conflict between any term of this DPA and the SCC or IDT, the SCC or IDT shall prevail. The specific procedures related to sub-processing and audits in Sections 5 (Sub-Processing) and 7 (Audits) supplement the related clauses in the SCC or IDT.

7. AUDITS AND INSPECTIONS

7.1. Process. Broadcom shall make available to Customer, upon reasonable written request, information related to the processing of Personal Data of Customer as necessary to demonstrate Broadcom’s compliance with its obligations under this DPA. Broadcom’s security certifications are published at <https://www.broadcom.com/support/saas/compliance-audit-reports>. Broadcom shall allow for audit or inspection requests by Customer or an independent auditor in relation to the processing of Personal Data to verify that Broadcom is in compliance with this DPA if (a) Broadcom has not provided sufficient written evidence of its compliance with the technical and organizational measures, e.g. a certification of compliance with ISO 27001 or other standards; (b) a Personal Data Breach has occurred; (c) an audit or inspection is officially requested by Customer’s data protection authority; or (d) Data Protection Laws provides Customer with a mandatory on-site inspection right; and provided that Customer shall not exercise this right more than once per year unless Data Protection Laws requires more frequent audits or inspections. Any information provided by Broadcom and/or audits performed pursuant to this section are subject to the confidentiality obligations set forth in the Agreement. Such inspections shall be conducted in a manner that does not impact the ongoing safety, security, confidentiality, integrity, availability, continuity and resilience of the inspected facilities, networks and systems, nor otherwise expose or compromise any data processed therein.

7.2. Costs. Customer is responsible for all costs associated with any such audit or inspection, including reimbursement of Broadcom for all reasonable costs of complying with Customer or regulator instructions, unless such audit reveals a material breach by Broadcom of this DPA, then Broadcom

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shall bear its own cost of such an audit. If an audit determines that Broadcom has breached its obligations under this DPA, Broadcom will promptly remedy the breach at its own cost.

8. SECURITY AND BREACH

- 8.1. **Broadcom Obligations.** Broadcom shall implement appropriate technical and organizational measures designed to protect Personal Data ("Security Measures"). Such Security Measures are described in the documentation available under "Information Security" at <https://www.broadcom.com/company/legal/privacy/data-transfers>, provided that the applicability and scope of various standards and controls may differ with respect to the requirements of a specific business unit, service, product or specific engagement. Security Measures are subject to technical progress and development. Broadcom may modify Security Measures from time to time, provided that any modifications do not result in material degradation of the overall security of the Services.
- 8.2. **Customer Obligations.** Customer shall implement appropriate technical and organizational measures in its use and configuration of the Services. Customer is responsible for properly configuring the Services to meet its specific processing and security requirements, which may include the use of encryption technologies.
- 8.3. **Notification of Breach.** Broadcom shall notify Customer without undue delay after becoming aware of any Personal Data Breach. Broadcom will use reasonable efforts to identify the cause of such Personal Data Breach and shall without undue delay: (a) investigate the Personal Data Breach and provide Customer with information about the Personal Data Breach, including any information required by Data Protection Laws to the extent such information is reasonably available; and (b) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Personal Data Breach to the extent the remediation is within Broadcom's reasonable control.

9. RELATIONSHIP WITH AGREEMENT AND UPDATES

- 9.1. **Relationship.** Any claims brought under this DPA will be subject to the terms of the Agreement (including its exclusions and limitations). In the event of any conflict between this DPA and any provisions in the Agreement, the terms of this DPA will prevail.
- 9.2. **Updates.** Broadcom may modify this DPA: (a) if required to do so by a data protection authority or other government or regulatory entity; or (b) to comply with Data Protection Laws. Broadcom may further exchange, adopt, or update its data transfer or compliance mechanisms provided they are recognized by Data Protection Laws. The modified DPA will become effective when published on Broadcom's website.

10. SUPPLEMENTARY MEASURES

In the event of international data transfers from the EEA, Broadcom shall undertake the following safeguards: (i) encryption key management as outlined in the documentation referenced in Section 8 (Security and Breach); (ii) challenge any unjust government requests for Personal Data; and (iii) delete any Personal Data as set forth in Section 3.10 (Deletion).

11. CCPA SUPPLEMENTAL TERMS

To the extent that the California Consumer Privacy Act of 2018, as amended, Cal. Civ. Code § 1798.100 et seq. ("CCPA") applies to Personal Data, the following supplemental terms apply:

- 11.1. Broadcom is acting as Customer's 'service provider' and processing the Personal Data for the limited and specific 'business purpose' of providing the Services purchased pursuant to the Agreement,

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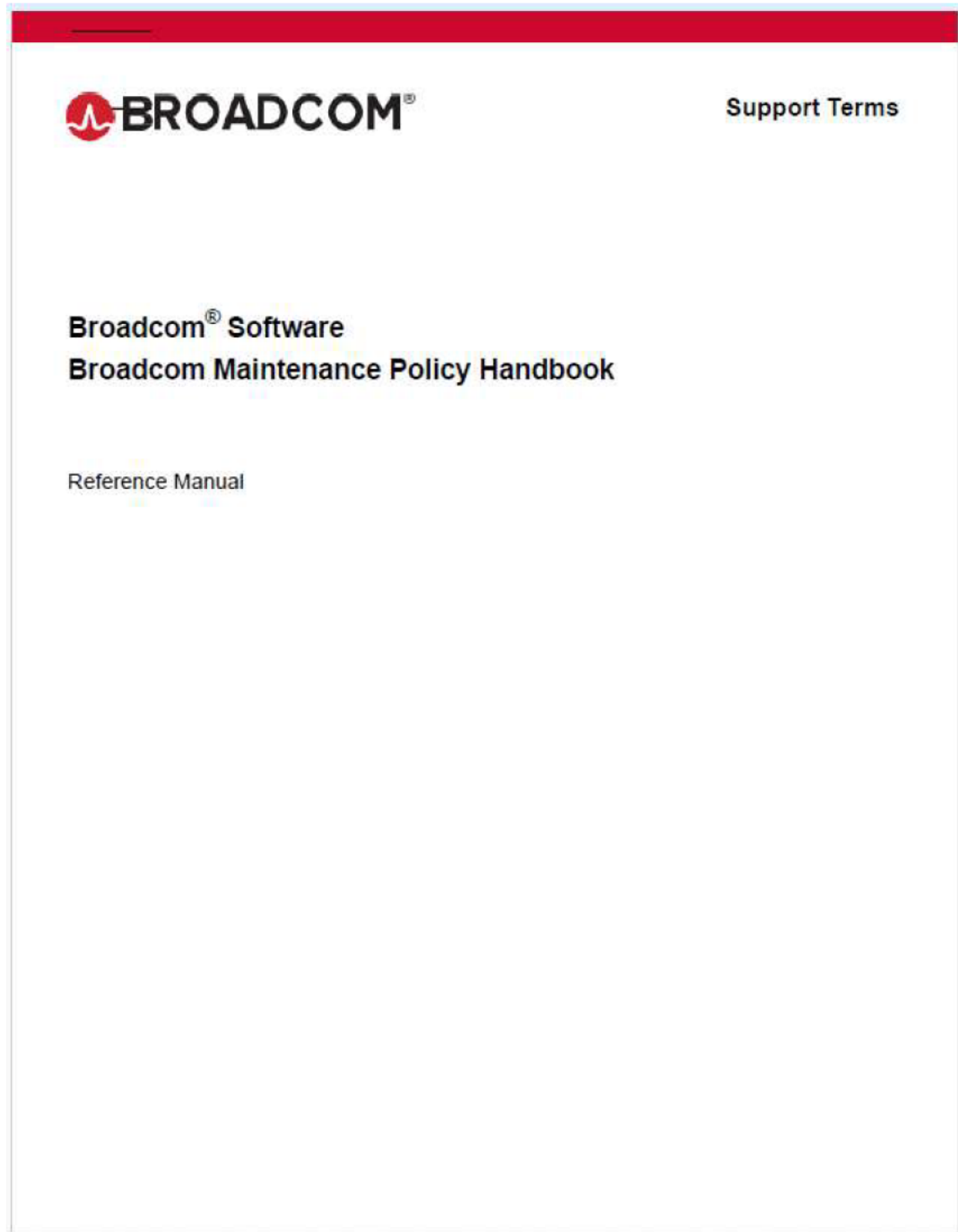
which may be further detailed in the applicable SaaS Listing.

- 11.2. Broadcom will comply with the requirements of CCPA that are applicable to Broadcom as a service provider and will provide the level of privacy protection as further described in the Agreement, including facilitating Customer's responses to, and compliance with, its consumers' requests as detailed in Section 4.1 (Data Subject Rights), and implementing security measures as described in Section 8 (Security and Breach).
- 11.3. To ensure that Broadcom uses Personal Data in a manner consistent with Customer's obligations under the CCPA, Customer may take the reasonable and appropriate steps set forth in Section 7 Audits and Inspections.
- 11.4. Broadcom will notify Customer if Broadcom determines that it can no longer meet its obligations under CCPA.
- 11.5. If Customer reasonably believes that Broadcom is using Personal Data in a manner not authorized by the Agreement or by the CCPA, Customer may take the following reasonable and appropriate steps: (i) notify Broadcom so that the parties may work together in good faith to resolve the matter, or (ii) exercise any other rights provided in the Agreement.
- 11.6. Broadcom will not 'sell' or 'share' Personal Data (as those terms are defined under CCPA).
- 11.7. Broadcom will not retain, use, or disclose Personal Data outside of the direct business relationship between Broadcom and Customer or for commercial or any other purposes other than for the business purpose identified above, except as otherwise permitted by CCPA.
- 11.8. Broadcom will not combine Personal Data with data received from another source or with data collected by Broadcom from its own interactions with customer's consumers, except as permitted by CCPA.

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- b. the Maintenance Policy, attached below:



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Broadcom® Software Reference Manual

Broadcom Maintenance Policy Handbook

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Chapter 1: Guiding Principles

1.1 Purpose

Maintenance is designed to protect and maximize a customer's investment in Broadcom products. This policy handbook sets forth guidelines for engaging with Broadcom and describes Broadcom policies relating to the new purchase and renewal of entry-level maintenance offerings for the following Broadcom offerings:

- On-premises software (both perpetual and subscription licensing including ancillary Broadcom supplied hardware)
- On-demand software (SaaS)

The term "maintenance" refers to deliverables and activities within Broadcom's entry-level maintenance offerings, whether these were obtained as part of the Maintenance Offering associated with a perpetual license or as part of the support associated with a Subscription license.

All policies referred to herein are applicable globally, and to all Broadcom Enterprise Software customers.

Customers with questions related to any aspect of a Broadcom policy should contact their reseller, Broadcom sales representative, or Broadcom customer assistance.

1.2 Out of Scope

This policy does not apply to:

- Software products acquired by Broadcom pursuant to an acquisition of a company or product line are not included until such time as the products from such merger and acquisition are designated by Broadcom to be covered by this policy, by offering standard Broadcom maintenance/support offerings for such products.

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Chapter 2: Policy**2.1 Maintenance Offerings**

This section describes Broadcom's maintenance offerings and the policies related to accessing and using these offerings.

2.1.1 Entry-Level Offerings

Broadcom provides a range of entry-level maintenance offerings for its software, SaaS and hardware products.

2.1.1.1 Software Products (either Perpetual or Subscription Licensed)

Maintenance includes the following deliverables as standard for the maintenance term (if a perpetual license) or subscription term (if a subscription license):

- Essential Support
- Operational Assistance
- Security content updates (for products that require such updates)
- Version upgrades
- Product updates (patches, enhancements, fixes)
- Alternative or replacement products that Broadcom may include as part of maintenance
- Documentation
- Self-Service Support (Customer Support Portal)

An active Maintenance or Subscription Contract is required on an ongoing basis and must be renewed for software products to enable a customer to access content updates for optimal real time functionality.

Broadcom makes available Essential Support during the Maintenance and Subscription terms for all Generally Available Versions and Releases of software that Broadcom has not designated as End of Service ("EOS") or End of Life ("EOL").

Maintenance or Subscription support purchased or renewed for one license entitlement cannot be used to support a different license entitlement. If a customer applies any patches, enhancements, fixes, upgrades or tools to an unsupported license entitlement, this is a breach of Broadcom's intellectual property rights and a material breach of contract.

Maintenance and Subscription support cannot be purchased for less than 12-month term.

2.1.1.2 Broadcom Supplied Hardware

Broadcom's entry-level Hardware Support provides a comprehensive set of support options designed to meet customer hardware needs. All options (Standard, Standard Plus, Advanced, Premium Plus, and Software Support) include the following:

- 24x7 technical support either by phone and online
- Online resources (Customer Support Portal)
- Major, minor and maintenance releases of operating system software
- Hardware replacement services per the purchased Hardware Support option:
 - Standard: Return to Factory (RTF)
 - Standard Plus: Same Day Shipment (SDS)
 - Advanced: Next Business Day Delivery (NBD)

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- **Onsite Advanced:** Next Business Day Delivery with Onsite Technician (NBD Onsite)
- **Premium Plus:** 4 Hour Arrival, 7 Days a Week (24x7x4hrs)
- **Onsite Premium Plus:** 4 Hour Arrival, 7 Days a Week with Onsite Technician (24x7x4hrs Onsite) A corresponding hardware support option must be ordered at time of product purchase. Hardware support options can be purchased using the desired Service Level SKU. Onsite support is not available for all locations, the request will be evaluated at purchase to confirm if the installed location has the onsite support option available.

Broadcom requires that Broadcom sourced equipment of the same product type located at a customer site, and operating under the same operational requirements, (for example, equipment in production, equipment in a lab/test environment, and so on), is covered under the same hardware support level. The level of support being renewed must match the original support contracted. Where Broadcom is supplying or has supplied an integrated solution combining Broadcom sourced hardware and Broadcom software, if either the hardware component or the software component is the subject of a Broadcom support offering then the other component must also be the subject of the appropriate level support offering.

For equipment where the hardware support level already in place at a customer site is not offered as an available option, the available support option closest to the level already under contract must be chosen. All hardware support options are not available for all equipment. Refer to the Hardware Support: [Option Availability by Product document](#). Broadcom will only provide support for hardware product(s) under a hardware support contract as identified by the serial number.

2.1.2 Partner Support

For certain Broadcom products, customers may have obtained Broadcom maintenance from Broadcom Authorized Partners and not directly from Broadcom. The Broadcom partner programs allows some partners with an existing technical support infrastructure and service business model to team up with Broadcom's Global Support Centers (GSCs) to offer technical support to end user Customers (End Users). Such providers must be certified by Broadcom, and are expected to invest in the necessary tools, training and certifications.

2.2 Essential Support Terms and Conditions

The following terms and conditions apply for Essential Support.

2.2.1 Customer Obligations

Eligibility: To remain eligible for Essential Support, you must (i) have a current Maintenance or Subscription agreement, (ii) be using a currently supported version of the Broadcom Offering, and (iii) install the Broadcom Offering in a supported configuration in accordance with the Broadcom supplied Offering documentation. Broadcom cannot provide Essential Support if you do not notify Broadcom of a problem during the maintenance term.

Communications: You agree to receive communications from Broadcom via email, telephone, and other formats, regarding Essential Support (such as communications concerning support coverage, errors or other technical issues, availability of new releases of the Service Offering or components related to the Broadcom Offering, release notes, recommendations and training options).

Technical Data: You shall provide reasonable assistance to Broadcom when receiving Essential Support, which may include providing data from the solution, or such other information as may be reasonably required by Broadcom to provide Essential Support.

Technical Contacts: Your technical contacts must be knowledgeable about the product and your environment, in order to work with Broadcom to analyze and work on support cases. If after reasonable efforts, your technical contacts are unable to diagnose or resolve the errors, they may contact Broadcom for technical support via phone or web. Your technical contacts are responsible for engaging Broadcom Technical Support and monitoring the resolution of all support requests and

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escalated support cases.

Supported Configuration: You shall operate the solution in an environment that solely consists of supported operating systems, hardware platforms, software solutions and applications, firmware levels, databases, devices, device drivers, and Broadcom custom-developed scripts and other configuration elements, as defined in your documentation, or that Broadcom has otherwise approved in writing, as working in conjunction with and/or supporting the Broadcom Offering.

Data and Recovery: With regard to on premise offerings, you are solely responsible for management of your data back-up, data recovery, and disaster recovery measures. Broadcom will not be responsible or held liable for your internal processes and procedures to ensure the protection, loss, confidentiality, or security of your data or information. You will maintain an unmodified copy of all Broadcom Software and all related documentation, archival files and configuration files necessary to reinstall, reconfigure, or reconstruct any lost, altered or damaged solution. Broadcom and its authorized service representatives will not be liable for any claims and liabilities relating to or arising from a failure of a customer to comply with these requirements.

2.2.2 General Inclusions

Essential Support includes:

- Chat, telephone and online access to technical support, where available*.
- Ability to submit new incidents 24x7x365,
- 24x7x365 continuous support for Severity 1 incidents,
- 24x7x365 access to Broadcom Support Portal, and
- Interactive remote diagnostic support.

* Subject to compliance with local legal requirements, and as permitted, telephone calls may be monitored and used by Broadcom Support for training purposes.

Broadcom provides Essential Support to address problems where an offering does not substantially conform to its documentation when used in accordance with its documentation and in a supported configuration. Broadcom reserves the right to decide how a resolution may be delivered and in what time frame. If you report a problem and demonstrate a non-conformance with the offering documentation that can be duplicated by Broadcom and that is not addressed by a software update, Broadcom will aim to resolve such non-conformance. Such resolution may include a workaround or other temporary or permanent fix. In some cases, a workaround is the final resolution. Broadcom does not represent or warrant that all non-conformities of the offering will be corrected. Broadcom reserves the right to incorporate any resolutions provided to you into future versions of the offering, in its sole discretion.

Broadcom shall make available from time to time through the Customer Support Portal, at no charge to you, documentation and other resources as Broadcom determines, as well as succeeding revisions designed to enable you to install, maintain and operate the offering, as made generally available and provided by Broadcom. You will receive access to Broadcom's knowledge base on the Customer Support Portal to enable you to perform technical self-service for commonly known problems and fixes to correct such problems. The knowledge base may include technical bulletins, management tools and such other information as Broadcom provides from time to time, in its sole discretion.

All Essential Support will be provided in accordance with the processes set forth on the Customer Support Portal, including without limitation, the valid submission of cases, priority rules, information and assistance required, escalation paths, workarounds, and such other processes and information as Broadcom requires to perform the Essential Support. Please note that each problem must be represented by a unique support case.

Broadcom is not responsible for any delay or inability to provide Essential Support due to delays you cause or which are caused by network, system or telephone line problems, or by outages, including, but not limited to, power failure or surge, unsuitable physical or operating environment, improper maintenance by you or others, or failure caused by components or technology that Broadcom did not supply, or denials of service or any events outside of Broadcom's reasonable control.

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2.2.3 Support Exclusions

The scope of the Essential Support is expressly included in this Handbook. Any other support is deemed excluded. Without limiting the foregoing, you shall not receive Essential Support:

- For execution of product upgrades, installation, configuration, or implementation of any Broadcom products.
- For offerings not purchased through Broadcom or an authorized reseller.
- For offerings maintained or repaired by anyone other than Broadcom personnel or Broadcom authorized representatives.
- For a problem if you failed to notify Broadcom of the problem during the maintenance term.
- For any third-party products not provided by Broadcom, including but not limited to, installation, configuration and maintenance of third-party products and interoperability of Broadcom offerings with third-party applications, or other services.
- To the extent you obtained non-Broadcom technical support through a third party provider.
- Which in the reasonable opinion of Broadcom is necessitated because the offering: (i) has been subject to deliberate act, accident, neglect or misuse, modification, improper programming, power failure or surge, unsuitable physical or operation environment or other than normal use or causes; (ii) utilizes workarounds, components or technology not provided by Broadcom; (iii) is used in a configuration which does not support such offering; or in an environment that is not approved for use with the offering, or in which Broadcom has not verified that the offering will operate; or where the offering has been tested and is known not to work, or work with limited functionality; or (iv) has not been used and maintained in accordance with the documentation, or deviates from any recommended or required operating procedures.
- In the form of solution training, security solutions enablement, security advisory, managed security or implementation services or the like, and which are available for separate purchase; unless Broadcom deems such work to be necessary to resolve a specific case.

2.2.4 Essential Support Delivery

Methods of support delivery are described in the following sections.

2.2.4.1 Technical Inquiries

24x7 continuous support is available for eligible customers for severity 1 problems only. Lower severity issues are addressed during [normal business hours](#).

2.2.4.2 Non-technical Inquiries

Customers may phone Broadcom during regional business hours or log a non-technical case 24x7 through the [Customer Support Portal](#).

2.2.4.3 How to Report a Problem

- Severity 1 problems may be logged by chat, telephone, or the Customer Support Portal, where available.
- Severity 2, 3, and 4 problems can be logged through the [Customer Support Portal](#).

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2.2.4.4 Support Response Times

While problems of all severities may be logged on a 24x7 basis, case-handling priority is given to severity 1 problems. Lower ranked severities are addressed within regional business hours. Depending on the time of the day a problem is logged therefore, a response may not be provided until the next regional business day.

Problem Severity	Severity Level Definitions	Initial Call Service Level Objective
Severity 1	A problem has occurred where no workaround is immediately available in one of the following situations: (i) your production server or other mission-critical system is down or has had a substantial loss of service; or (ii) a substantial portion of your mission-critical data is at a significant risk of loss or corruption.	30 Minutes
Severity 2	A problem has occurred where a major functionality is severely impaired. Your operations can continue in a restricted fashion, although long-term productivity might be adversely affected.	2 Business Hours
Severity 3	A problem has occurred with a limited adverse effect on your business operations.	4 Business Hours
Severity 4	A problem where your business operations have not been adversely affected.	8 Business Hours

2.2.4.4.1 Assigning Severity Levels

As a designated contact, you are responsible for determining the initial severity level of each problem you log with us. The severity level reflects your assessment of the potential adverse impact to your business and needs to match the definitions described above.

If we determine that the severity level assigned to your case does not align with our definitions, we will re-categorize it to reflect those definitions. As your case progresses, the seriousness of your problem may change and may no longer match the initial severity level you assigned. In such cases, we will also reclassify your case, to reflect our definitions, and will handle your case in accordance with the corrected severity level.

2.2.4.4.2 Continuous Efforts

Eligible customers may request that Broadcom provides "continuous efforts" to work on a severity 1 case. Continuous efforts means that our technical support personnel will provide uninterrupted efforts 24 hours a day including weekends and holidays to address a severity 1 case.

If you request continuous efforts, our ability to provide such continuous efforts will depend on the availability of your designated contact to continue problem resolution. If you do not request continuous efforts, or if your designated contact is not available to help us, work on your case will stop at the end of your regional business hours and resume at the start of the next business day for your region. Continuous efforts will generally be performed in English outside of regional business hours regardless of any specific local language support which may have occurred.

NOTE: Our initial efforts will focus on making your Broadcom offering operational, and there may be temporary degradation in performance while we continue to work to address your problem. Continuous efforts apply to severity 1 problems only.

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2.2.5 Case Handling

If you identify a problem with your offering, you should contact us through the [Customer Support Portal](#), chat, or [phone](#) where available (severity 1 cases only) to open a technical support case as described in [Section 2.2.4, Essential Support Delivery](#) above. Once verified as eligible for technical support, you will need to provide us with all relevant diagnostic information that we may require to replicate or address your problem—such as product or system information, log files, configuration information, error messages, and details about your releases or software version upgrades installed.

You will need to initiate a separate case for each problem, and we will assign a unique case identification number (case number) to each case in our global tracking system.

2.2.5.1 Opening a Case

When you wish to open a case, you are required to provide your Broadcom support ID or serial number. One of our technical support engineers (TSEs) will prompt you for additional information about the problem you are reporting. Broadcom uses this information to categorize your case and route it to the appropriate support staff to address the problem.

Your case will be logged in our technical services case tracking system, at the severity level indicated by you and you will be provided a case number. You will need to use this case number in all future interactions with us about that case.

2.2.5.2 Information Required

- Provide us with the following information when reporting a problem and ensure you have direct access to the systems you need us to troubleshoot:
 - Your identity
 - Your Broadcom support ID (the unique set of letters or numbers assigned at the time of purchase)
 - Company name, contact information, and location
 - Confirmation that you are a designated contact for the Broadcom product in question
 - Name, email address, phone and extension, or pager number
 - A concise summary of the problem you are experiencing:
 - Product information
 - System type and operating system/version
 - Software or hardware serial numbers
 - Network and RDBMS platform
 - System configuration
 - Software revision levels
 - Node ID/Host ID (if applicable)
 - Event and process Information:
 - Logs
 - Traces
 - Screen dumps
 - Severity level: See [Section 2.2.4.4.1, Assigning Severity Levels](#) and assign a severity level for your problem.
- Through the [Broadcom Enterprise Customer Support Portal](#) (severity 2, 3, 4 problems): When you log a case through the Broadcom Enterprise Customer Support Portal, you will need to follow this basic three step workflow:
 - Select a product
 - Provide details
 - Submit the case

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2.2.5.3 Monitoring and Updating a Case

The TSE managing your case will update you on your case's status and maintain a current plan of action. You are able to monitor the status of the case and interact with the assigned TSE through the [Customer Support Portal](#).

If you need to contact technical support regarding an open case, you will need to provide your case number. You may also update your open support case or raise a case concern through [Customer Support Portal](#).

2.2.5.4 Case Closure

We will close a case under the following circumstances:

1. We have provided a solution that addresses your problem
2. You have told us that you no longer need us to work on the problem
3. We both agree to close the case
4. We have repeatedly tried to contact you about your problem and you do not respond
5. We make a good faith determination that the problem is likely not resolvable even with the investment of reasonable time and resources
6. We determine that your product is operating materially in accordance with its documentation.
7. We have explained that we may consider addressing your problem in a future release
8. We feel the problem is not caused by the Broadcom offering
9. A workaround mitigates the problem

If you still need assistance on the same problem after we have closed a case, you may open a new case, which we will cross-reference with your original case.

2.2.6 Support Resources

Broadcom offers extensive support resources.

2.2.6.1 Self-Service Options

- [Customer Support Portal](#): Your online resource for all enterprise technical support-related needs and non-technical inquiries. First-time users will need to create an account. Once logged on you can search our technical support knowledge base, or create, submit, track, manage, and close technical support cases. Learn how to log a [support case](#).
- [Knowledge Base](#): Search our technical support knowledge base to find solutions and perform self-help.
- [Documentation](#): Access product documentation including user guides, release notes, and technical briefs.

2.2.6.2 Communities Forum

[Broadcom Connect Community](#): Use the Broadcom Community forum on a 24x7x365 basis, to meet other customers to collaborate, learn and share best practices, network, and stay up to date on the latest Broadcom products. By joining a group in the Broadcom Community, you have the ability to engage in online conversations with users and stay up to date on current news and events.

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2.2.6.3 Diagnostic Tools

Symantec Diagnostic tool (SymDiag): SymDiag is a multi-product, multi-language diagnostic, and security analysis utility. SymDiag is designed to provide self-help support for Symantec software technical issues, zero-day threat analysis, best practice recommendations, and proactive services to customers. If further assistance is needed, SymDiag lowers customer effort and increases support efficiency by providing automated data gathering and support case submission.

VMware Skyline: Skyline is a self-service private and hybrid cloud offering that proactively identifies potential issues and provides resolution guidance. Skyline will help you avoid problems before they occur and reduce support request time to resolution.

2.2.6.4 Subscriptions

- **Notifications:** Broadcom support alerts are subscription-based, allowing customers to subscribe and unsubscribe at any time to bulletins about any Broadcom offering. Available alerts generally include the following but may vary from product to product:
 - Hot fixes
 - Maintenance packs
 - Major and minor releases
 - New products
 - General support topics: A notification is sent for general topics such as version support policies for products, the introduction of new services, and changes to existing services.
- **Broadcom Service Status:** Subscribe to incident and maintenance notices for your Broadcom cloud service.

2.2.6.5 Language Cover

Broadcom provides technical support in English. We will use commercially reasonable efforts to provide non-English language support during regional business hours, subject to our having available resources. For more information, refer to the list of [global contact numbers](#).

2.3 End-of-Service and End-of-Life Policy

End of Service (EoS) refers to the discontinuation of a version of a Broadcom Offering while End of Life (EoL) refers to the discontinuation of a Broadcom Offering.

Broadcom may, at its sole discretion, decide to retire any Broadcom Offering from time to time. Broadcom has no obligation to provide Support Services for any Broadcom Offering (or a version thereof) after the published date for the End of Life (or the version End of Service).

Broadcom declares EoS and EoL when it determines that it will no longer:

- Sell or renew the offering,
- Provide operational or technical support, or
- Develop and provide new enhancements, features, upgrades, service packs, and fixes for the offering, including:
 - A version or release of the offering.
 - A particular operating system, platform, application, or database for the designated offering.

When a Broadcom Offering has been designated as EoS or EoL, previously published service packs and fixes will continue to be available as part of self-service support for the duration of your remaining agreed-upon Maintenance term or Subscription Support term.

Broadcom will make reasonable efforts to provide you with a minimum of a twelve (12) month notice prior to the EoS or

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EoL date of a Broadcom offering or a specific version or release. These notifications may be made via Support.Broadcom.com product lifecycle page updates, or by product notifications. As available, notifications of a Broadcom offering's status may include upgrade path information. When organizations are running Broadcom offerings that are subject to an EoS or EoL notice, Broadcom strongly encourages these customers to upgrade to a GA version or release, on or prior to the EoS or EoL date. EoL notifications may include information regarding options for migrating to an alternative or replacement offering from Broadcom, if such options are available. An alternate or replacement Broadcom offering may provide similar or, in some cases, enhanced functionality.

2.4 Stabilization

Stabilization refers to the process of ending new enhancements, versions, releases, development, or service packs, but other operational and technical support features remain in effect. The features and functionality of a stabilized offering are frozen at the current version or release level.

Customers will receive notification when a Broadcom offering becomes stabilized. The notification may also include information regarding options for migrating to an alternate or replacement Broadcom offering, if such options are available. An alternate or replacement Broadcom offering may provide similar or, in some cases, enhanced functionality.

2.5 Advanced Support

For customers who require a more advanced level of support, Broadcom provides Advanced Support offerings. The focus is on timely, and accurate issue resolution by placing a product or product family expert at the center of the customer's tailored support experience.

2.5.1 Extended Support

Extended Support gives your organization the flexibility to continue to use Broadcom Software products that reach End of Service (EOS) or End of Life (EOL), and still receive the support you need as you work toward upgrading to a GA version/product. Extended Support may only be purchased for Customer's entire EOS environment. Extended Support may not be available for some Broadcom Offerings, with Broadcom deciding upon the availability of Extended Support from time to time.

2.5.2 Designated Support Engineer (DSE) / Dedicated Technical Support Engineer (DTSE)

For a specific product offering, the Designated Support Engineer or Dedicated Technical Support Engineer provides technical support, delivers case reviews, oversees environment health checks, and provides proactive services such as knowledge sharing, life cycle planning and feature optimization.

2.5.3 Support Account Manager (SAM)

For a specific product division, the Support Account Manager provides you with support experts who become familiar with your teams, use cases, and environment to deliver holistic oversight of your overall support experience including critical support management, assistance, guidance, and recommendations.

2.5.4 Technical Adoption Manager (TAM)

For a specific product division, the Technical Adoption Manager ingrains a solution expert alongside your teams to assist in identifying your business and IT outcomes along with recommendations for technical capabilities and activities needed to support success.

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2.5.5 Resident

For a specific product offering, the Resident solution expert provides support advice, proactive planning, and risk management alongside your teams.

2.6 Hardware Support Requirements and Restrictions

Subject to these support terms, Broadcom will provide technical support for hardware offerings under current maintenance at the service level purchased. Broadcom only provides support for hardware purchased through an official Broadcom channel. Broadcom will not provide support nor make any support contracts available for any equipment purchased through a distribution channel not authorized by Broadcom. Broadcom provides a limited, non-transferable warranty for its hardware products. Broadcom may, in its sole discretion, provide you with diagnostic documentation, spare parts, tools, test equipment, and other material used in performing technical support. All such items remain the sole and exclusive property of Broadcom. Broadcom grants no license, title, or interest in or to such items. You must immediately return such items to Broadcom upon request or, at Broadcom's option, grant immediate access to and facilitate Broadcom's recovery of such items.

2.6.1 Same Service Level Required

Hardware of the same type located at an installed location must be covered by the same service level. You must have both the chassis and all associated components covered under the same maintenance option.

2.6.2 Same Maintenance Term

If hardware is running a subscription of certain software, then the maintenance term for the hardware must be for the same dates as the maintenance term for the software.

2.6.3 Software Updates

You may only upload software updates onto hardware if you have current maintenance for the hardware at the time of installation of the software updates.

2.6.4 Hardware Inspection

Upon prior notice, Broadcom may conduct an onsite, physical, certification inspection before the start of any technical support delivery, under these support terms, to determine whether the hardware is in good operating condition when: (i) maintenance has lapsed for six (6) months or more and you request to reinstate maintenance for the hardware, or (ii) you did not purchase maintenance when you licensed or purchased the hardware and more than twelve (12) months have lapsed. If Broadcom determines after such inspection that the hardware needs repair due to your failure to adequately maintain the hardware, Broadcom will work with your selected reseller to provide you with an estimate for repair. An inspection certification charge will be applied and invoiced by the reseller at Broadcom's then-current rate for consulting services, and travel and other expenses will be additional. Any costs associated with the hardware inspection are non-refundable.

2.6.5 Site and Service Level Validation Approval

Certain maintenance options may not be available at certain installed locations; and service level options may vary between locations or by hardware type. To confirm that Broadcom can provide the maintenance options and service levels at the applicable installed location, a review by Broadcom to determine Broadcom's ability to meet hardware

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delivery times at your location for the hardware and applicable service level (Site Validation Approval) may be required if not already pre-approved by Broadcom prior to the acceptance of a maintenance order or a case. All service level commitments that include guaranteed expedited delivery times must be approved by Broadcom prior to entering into a contract for such service level options.

2.6.6 Installed Location Address Change

You must notify Broadcom in writing of any physical moves of hardware to a new location no less than ten (10) days in advance of the move. You must ensure Broadcom has accurate installed location address information for hardware covered by maintenance. Each change in hardware locations may require a new Site Validation Approval and may result in modifications to the service level available. Failure to provide accurate installed location(s) information may result in additional charges to provide technical support and delayed delivery times.

2.6.7 Hardware Replacement

Defective hardware will be replaced according to the terms of Broadcom's hardware warranty and/or your offering's maintenance service level, as applicable. All defective hardware and parts replaced by Broadcom will become the property of Broadcom.

2.6.8 Hardware Returns

You are responsible for hardware returns according to Broadcom's Return Merchandise Authorization (RMA) policy and process located at <https://support.broadcom.com/external/content/release-announcements/CA-Support-Policies/6933>. Broadcom reserves the right to charge you for any defective hardware that is not received at Broadcom's specified return location within ten (10) business days of your receipt of the replacement hardware. If crossing international borders, proof of shipment is sufficient for proof of return. Your failure to return hardware promptly under these support terms will result in the suspension of technical support by Broadcom. Any suspension, for any reason, will not extend the maintenance term. Prior to returning any hardware to Broadcom, you must completely erase all of your confidential or privacy related information from any storage media. Notwithstanding anything to the contrary, you shall indemnify and hold Broadcom harmless from any claim, loss, cost, expense, demand, or damage, including reasonable attorneys' fees, arising from your non-compliance with this provision.

2.7 Access to Maintenance Benefits

Customers must have current Maintenance or Subscription entitlement in order to access maintenance or support benefits including content updates, software version upgrades and technical support, both by phone and online; and in the case of hardware, hardware replacement/ repair, and operating system upgrades.

If renewal is not completed prior to expiration of the Maintenance or Subscription term, customers have no further entitlement to, and may not access any maintenance or support deliverables beyond the expiration date of the Maintenance or Subscription term.

Customers are reminded that use of Broadcom offerings is pursuant to a signed agreement or if no signed agreement, then the end user agreement published at www.broadcom.com/company/legal/licensing.

View related policies and maintenance documentation at support.broadcom.com.

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Chapter 3: Additional Terms

3.1 Confidential Information

For purposes of these support terms, "confidential information" means the non-public information, provided that such information is: (a) identified or marked as confidential at the time of disclosure, or (b) if the initial disclosure is not in written or other tangible form, the confidential information will be so identified at the time of disclosure and reduced to written or other tangible form, appropriately marked and submitted as soon as reasonably practicable thereafter, but no later than thirty (30) days after disclosure. Confidential information of Broadcom shall include product architecture, product research and development plans, non-public financial data and roadmaps, whether marked as confidential or not. Broadcom or the Customer may use the confidential information that it receives from the other party solely for the purpose of performing activities contemplated under these support terms. The confidential information is otherwise treated as Confidential Information pursuant to the terms of the Agreement under which the Customer is receiving the applicable Maintenance or Subscription Support Offering.

3.2 Export Regulations

Customer acknowledges that the technical support is subject to control under U.S. law, including the Export Administration Regulations and agrees to comply with all applicable import and export laws and regulations. Customer agrees that the technical support (including documentation and technical advice) will not be exported, re-exported, resold or transferred in violation of U.S. law or used for any purpose connected with chemical, biological or nuclear weapons or missile applications, nor be transferred, if customer has knowledge or reason to know that the Broadcom Offering(s) are intended or likely to be used for such purpose.

3.3 Processing Personal Data

You acknowledge and agree that Broadcom will collect and process personal data as part of the provision, and your use, of the technical support pursuant to the Broadcom Global Privacy Statement (www.broadcom.com/company/legal/privacy). To the extent that the processing activities involved in the provision and/or your use of the technical support are subject to the EU Data Protection Legislation, then the relevant product transparency notice(s) and, where applicable, the Data Processing Addendum, made available at www.broadcom.com/company/legal/privacy shall also apply.

3.4 General Terms

Broadcom reserves the right and you consent to Broadcom's use of subcontractors to provide Maintenance, Subscription, and Advanced Support Offerings. Broadcom reserves the right to modify, amend or withdraw any of its technical support and vary this handbook from time to time and without notice prior to the end of the then-current Maintenance or Subscription term, whether located in the Support Portal or within a contract, provided that such change shall not materially diminish the scope of technical support under these support terms. The section headings in these support terms are for convenience of reference only and shall in no way affect interpretation of these support terms.

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Revision History

Maint-HB-RM108; Aug 27, 2024

- [Broadcom Supplied Hardware](#)
- [Extended Support](#)
- [General Terms](#)

Maint-HB-RM107; May 5, 2024

- [General Terms](#)
- [General Inclusions](#)
- [Support Response Times](#)
- [Advanced Support](#)

Maint-HB-RM106; July 7, 2021

- Template updates.

Maint-HB-RM105; April 26, 2021

- [Designated Support Engineer Offering](#)

Maint-HB-RM104; March 5, 2021

- [Advanced Support](#)

Maint-HB-RM103; October 30, 2020

- [Not in Scope](#)
- [Software Products \(Perpetually Licensed and Subscription\)](#)
- [General Support](#)
- [Essential Support Delivery](#)
- [Case Handling](#)
- [Advanced Support](#)

Maint-HB-RM102; August 24, 2020

- [Stabilization](#)

Maint-HB-RM101; July 22, 2020

- [Hardware Support Requirements and Restrictions](#)
- [Hardware Returns](#)

Maint-HB-RM100; July 2, 2020

- Initial document release.

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c. VMware Cloud Foundation (VCF) Specific Program Documentation, attached below:



VMware Cloud Foundation (VCF) Specific Program Documentation ("SPD")

The Broadcom software program(s) ("Broadcom Software") listed below is provided under the following terms and conditions in addition to any terms and conditions referenced on the Broadcom quote, order form, statement of work, or other mutually agreed ordering document (each a "Transaction Document") under the applicable end user agreement or governing contract (collectively, the "Agreement") entered into by Customer and the Broadcom entity ("Broadcom") through which Customer obtained a license for the Broadcom Software. These terms shall be effective from the effective date of such Transaction Document. Capitalized terms have the meanings ascribed to them herein, or, otherwise, in the Agreement.

The version of the SPD published on legaldocs.broadcom.com on the date that Broadcom accepts the Customer's Transaction Document for Broadcom Software applies to the version of Broadcom Software in that Transaction Document. If Customer installs a release of Broadcom Software that Broadcom provides as part of Support services, then the then-current version of the SPD published on legaldocs.broadcom.com on the date Customer installs that release applies to that release of Broadcom Software.

LICENSE TO THIS SOFTWARE REQUIRES CUSTOMERS WHO INSTALL, DEPLOY OR USE VERSIONS 9 OR ABOVE TO PROVIDE BROADCOM WITH A REGULARLY-SCHEDULED VERIFIED REPORT DETAILING CUSTOMER'S INSTALLED BASE AND LICENSE COMPLIANCE FOR THAT VERSION OF SOFTWARE USING THE FORMAT AND PROCESS SPECIFIED BY BROADCOM DESCRIBED HEREIN AS WELL AS IN THE PRODUCT DOCUMENTATION ("COMPLIANCE REPORT"). CUSTOMER'S FAILURE TO TRANSMIT OR UPLOAD A TIMELY, UNALTERED COMPLIANCE REPORT WILL RESULT IN LOSS OF FUNCTIONALITY AND ACCESS TO THE SOFTWARE.

Program Name: *VMware Cloud Foundation (VCF)*

1. DEFINITIONS.

All terms defined in the Broadcom Software Glossary located at legaldocs.broadcom.com apply to this SPD unless specified herein.

"BIOS" means the Basic Input Output System, a set of routines that boots the operating system and sets up the hardware of the Processor.

"Cluster" is a software grouping of Servers running vSphere and/or vSAN for the purpose of resource sharing.

"Cloud Services" means computing infrastructure and platform services (such as compute resources, storage capabilities, databases or virtual machines and other computing infrastructure and platforms services) that a third party makes available for consumption by customers.

"Core" means a single physical computational unit of the Processor.

"Instance" means a single installation of the Software on a physical server or Virtual Machine.

"Internally Developed Application" means a computer application that: i) Customer has created or developed for use by third parties as ancillary to one of Customer's products or services, ii) is deployed on Software but the third party users cannot access the Software or benefit from the Software's features and functionalities directly, iii) is not ancillary to or a part of a product or services that directly or indirectly is related to, or competitive with, the features or functionalities of the Software (including the management, delivery or hosting thereof), and iv) is unrelated to the internal use of the third party users. Examples of Internally Developed Applications include a financial institution building an application for its retail

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banking customers to obtain information about their bank accounts, a grocery chain building an application that operates their in-store point of sale machines, an airline company building an application that operates the self-check in kiosks in airports etc.

"Processor" means a single, physical chip that houses at least one Core that can execute computer programs.

"Server" means a hardware system capable of running the server software. A hardware partition or blade is considered a separate hardware system.

"vSphere Standard Packages" means optional open source packages available independently for use with a given vSphere Kubernetes release.

"TiB" means a unit of physical storage capacity that is equal to 2⁴⁰ bytes.

"Virtual Machine" means a software container that can run its own operating system and execute applications like a physical machine.

"VMware vSphere Supervisor" means those components that support or form part of the features and capabilities for running containerized applications in vSphere, including but not limited to the Supervisor, the vSphere Kubernetes Service, vSphere Kubernetes releases (VKr), vSphere Standard Packages, VCF Plugins and associated CLI Plugins.

2. USE RIGHTS AND LIMITATIONS.

License Metrics

- VMware Cloud Foundation ("VCF") is subscription software licensed on a per Core license metric with a minimum licensing requirement of 16 Cores per Processor.
- Each Core on the Server where Software is installed must be licensed, including Cores deactivated by the BIOS. The required number of Core licenses equals the number of Cores on the Server, subject to the minimum of 16 Core licenses per Processor.
- VCF is sold as a single product; the included components and capabilities can only be utilized on, or for the same physical Cores where the vSphere in VCF Core license is deployed.
- Customer may use VCF on a Server with up to the number of Cores for which Customer has paid the applicable license fees.
- Customer may use its license to VCF as a Migration License (as defined in the Agreement) by using VCF's embedded evaluation mode feature for a maximum period of then-currently supported by Software.
- Customer may perform recovery and/or testing activities in the aggregate for up to 15 days per year per environment, which may be performed using the embedded evaluation mode feature within then-currently supported by Software.

Use Rights and Limitations

- Component Specific License Notes.** The following table describes additional component/capability specific license entitlement rights and limitations of VCF:

#	VCF Component	Metric Entitlement	Entitlement Details
1	vSAN	1 TiB	Customer is entitled to 1 TiB of vSAN capacity for each Core licensed for VCF. vSAN can only be aggregated and utilized across Cores where the vSphere in VCF is deployed.
2	VCF Operations VCF Automation	1 Core	Any VCF Operations, VCF Automation and VCF Operations for Networks ("VCF O/A Capabilities") contained in VCF may only be used to manage VCF Cores only.

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#	VCF Component	Metric Entitlement	Entitlement Details
3	VCF Operations for Networks	1 Core	- Notwithstanding the foregoing, Customer is entitled to use any VCF O/A Capabilities, then-currently supported by Software, to manage the use of equivalent number of Cores as the number of Cores licensed for VCF on-prem for use on Azure VMware Solution, Google Cloud VMware Engine, and/or Oracle Cloud VMware Solution ("MaaS Offerings") at no additional cost until the earlier of the expiration or termination of the subscription term or the date that the MaaS Offering adopts VCF O/A Capabilities as part of its integrated solution. - Specific to VMware Cloud on AWS, Customer is entitled to use only the VCF Operations Logs Capabilities, then-currently supported by Software, for logs generated by VMware Cloud on AWS at no additional cost until the earlier of the expiration or termination of the subscription term or the date that VMware Cloud on AWS adopts VCF Operations Logs Capabilities as part of its integrated solution. The quantity of VMware Cloud on AWS cores that use VCF Operations Logs Capabilities in VCF cannot exceed the VCF cores purchased.
4	vCenter Server	1 Instance	vCenter Server may be used to provide centralized management capabilities to any licensed VMware by Broadcom infrastructure environments with an active subscription to Support and Subscription Services.

- **Support Entitlements.** All VCF purchases from May 8th, 2024 onward will include Broadcom Maintenance Support, regardless of subsequent product downgrading.
- **VCF Legacy Perpetual License Upgrade Restrictions.** VCF perpetual licenses are entitled to only upgrade through the 5.x version release. VCF perpetual licenses are not entitled to upgrade to the next major release. If customers want to access the next major release, they will need to purchase a new VCF subscription offer.
- **VCF Legacy Per Core Upgrade Restrictions.** Licenses to VCF obtained as a result of upgrading from a per Core legacy VMware offering (including VCF+/-S (all editions) and VCF Cloud Packs+/-S (Advanced and Enterprise edition)), wherein such legacy offerings were purchased prior to February 4, 2024, ("Qualified Legacy Offerings") are entitled to the existing features and capabilities that came in the Qualified Legacy Offerings prior to its upgrade to VCF, except for the Enterprise edition, and subject to the following additional restrictions: Such Customers with Qualified Legacy Offerings are entitled to use vSAN either
 - i) on the original metric (per Core) or,
 - ii) 1 TiB for each Core license to use for vSAN storage clusters until the earlier of the expiration of their VCF subscription or their upgrade to version 9 or later.
- **vSAN Cluster Expansion or Renewal Exception with VCF.** If the total number of vSAN TiB license entitlements from VCF and/or vSAN subscriptions purchased for the hosts added to, or renewed in, the vSAN Cluster using license entitlements from legacy offers licensed on a per CPU or per Core license metric are greater than, or equal to, the total number of Processors in the vSAN Cluster, Customer has permission to use any excess entitlements, then-currently supported by Software, from the included vSAN capacity (1 TiB per 1 Core) in VCF subscription and/or vSAN subscription purchase to apply to the entire vSAN Cluster, consisting of existing and new or renewed hosts, for the sole reason to enable vSAN Cluster expansion or renewal. At the time that the legacy offers' Support and Subscription agreement expire, Customer must purchase VCF and/or vSAN subscriptions and apply the vSAN license entitlements for the hosts in the vSAN Cluster that were previously using the license entitlements from the legacy offers.
- **iSCSI Support.** Customer may only use the iSCSI Support feature in vSAN with physical, non-virtualized Servers. The iSCSI Support feature supports Microsoft clustering with shared disks. Initiators can be either from virtual machines or physical servers. For guest initiators in virtual machines, those virtual machines can be residing on:
 - The same vSAN Cluster that provides this iSCSI Support feature; or
 - An external vSAN or vSphere Cluster.
 The iSCSI Support is limited to a maximum of 128 sessions per Server, a maximum of 128 targets per Cluster, and a maximum of 1024 logical unit numbers (LUNs) per cluster. Raw device mapping (RDMs) for Microsoft Windows Server Failover Clustering (W3FC) using iSCSI target service is not officially supported on vSAN.
- **License Portability Entitlement.** Except for licenses obtained through a Value-Added OEM or through a Broadcom cloud provider program (e.g. VMware Cloud Service Provider, Metal-as-a-Service) ("Cloud Provider Programs"), a customer may use or deploy the Software on any Cloud Services, provided that the customer ports the entire VCF set of components to the Cloud Service. In the event a Customer uses or deploys any Software on a Cloud Service from a third party vendor under a Cloud

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Provider Program, that Customer agrees to receive Support (as defined in the Agreement) from that partner in lieu of Broadcom.

- **Export restrictions and restrictions on use of NSX Software.** VMware NSX Software is of United States Origin and contains some features (including features which support network infrastructure) which result in the application of stricter export control classifications pursuant to the United States Export Administration Regulations (EAR). For some uses of the VMware NSX Software, such as for use by "More Sensitive" Government End Users as defined in Part 772 of the EAR, there may be restrictions or prohibitions applicable to Customer's proposed use of the Software if that use is in or for certain Group D:1 countries (which include China or Russia) where VMware's Bulk Export License may not be used. Customer is responsible for ensuring that Customer's proposed use of the VMware NSX Software is not in violation of applicable United States or local law.
- **Hosting Rights and Restrictions.** Customer may use the Software to deliver its Internally Developed Application(s) to a third party via an internal or external network. Except as expressly provided in this paragraph, the use of the Software for any other types of hosting or for the benefit of any third party in any manner is strictly prohibited.
- **VMware vSphere Kubernetes Service Support Policy.**
 - VMware vSphere Kubernetes Service components have a shorter support [life cycle period](#) compared to the lifecycle period generally applicable to the VCF Software.
 - Support for vSphere Standard Packages is limited to the installation and upgrade of the packages.
- **Support Services.** Software includes Support Services that may only be used for the Software, and its components, licensed hereunder and may not be used for any other software, including former offers of components of Software that Customer may have licensed separately.

Compliance Reporting for Software Versions.

- **Mandatory Compliance Reporting.** Customer who install, use or deploy Software must provide Broadcom with a Compliance Report (as defined above) for that version of Software 180 days from the date that the license is registered and every 180 days thereafter by ensuring that the Compliance Report files generated by the Software are either transmitted by the Software or uploaded by Customer in accordance with the product Documentation.
- **Failure to Report.** Customer's failure to transmit or upload a timely, unaltered Compliance Report, in accordance with the Documentation will result in features and functionalities of the management plane of the Software will be degraded and/or blocked in addition to support entitlements for this Software being suspended (including access to Updates or Upgrades).
- **Assumption of Risk of Failure to Report.** Customer assumes any and all risks associated with the loss of any and all functionality and patch access when caused by Customer's failure to provide timely, unaltered Compliance Reports.

3. THIRD PARTY INFORMATION AND TERMS.

Any required third-party software license terms are incorporated by this reference and are set forth in online documentation at techdocs.broadcom.com or legaldocs.broadcom.com.

- **VMware Tools.** VMware Tools is a suite of utilities and drivers that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine in conjunction with a vSphere hypervisor. Customer may not use VMware Tools with any other hypervisor. Customer may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. Customer is liable for compliance by those third parties with the terms and conditions of the Framework Agreement.

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- d. VMware Live Recovery Specific Program Documentation, attached below:


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VMware Live Recovery

Specific Program Documentation (“SPD”) and SaaS Listing

The Broadcom software program(s) (“Broadcom Software”) listed below is provided under the following terms and conditions in addition to any terms and conditions referenced on the Broadcom quote, order form, statement of work, or other mutually agreed ordering document (each a “Transaction Document”) under the applicable end user agreement or governing contract (collectively, the “Agreement”) entered into by Customer and the Broadcom entity (“Broadcom”) through which Customer obtained a license for the Broadcom Software. These terms shall be effective from the effective date of such Transaction Document. Capitalized terms have the meanings ascribed to them herein, or, otherwise, in the Agreement.

The version of the SPD published on legaldocs.broadcom.com on the date that Broadcom accepts the Customer’s Transaction Document for Broadcom Software applies to the version of Broadcom Software in that Transaction Document. If Customer installs a release of Broadcom Software that Broadcom provides as part of Support services, then the then-current version of the SPD published on legaldocs.broadcom.com on the date Customer installs that release applies to that release of Broadcom Software.

Program Name: VMware Live Recovery

1. DEFINITIONS.

All terms defined in the Broadcom Software Glossary located at legaldocs.broadcom.com apply to this SPD unless specified herein.

“Cloud Services” means computing infrastructure and platform services (such as compute resources, storage capabilities, databases or virtual machines and other computing infrastructure and platforms services) that a third party makes available for consumption by customers.

“Internally Developed Application” means: i) a computer applications that Customer has created or developed and (ii) a third-party computer application(s) that is ancillary to Customer’s application-based service, and (b) cannot be accessed directly by end users of Customer’s application-based service.

“Server” means a hardware system capable of running the server software. A hardware partition or blade is considered a separate hardware system.

“TiB” means a unit of physical storage capacity that is equal to 2⁴⁰ bytes.

2. USE RIGHTS AND LIMITATIONS.

Overview

- VMware Live Recovery delivers powerful cyber and data resiliency for VMware Cloud Foundation. Customers can protect applications and data from modern ransomware and other disasters across VMware Cloud Foundation environments on-premises and in public clouds with flexible licensing for changing business needs and threats.
- VMware Live Recovery offers ransomware recovery and disaster recovery leveraging two technology stacks:
 - VMware Live Cyber Recovery (formerly known as VMware Cloud Disaster Recovery), which is a SaaS product.

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- o VMware Live Site Recovery (formerly known as VMware Site Recovery Manager), which is an on-premises product.

- This document serves as the SPD for VMware Live Cyber Recovery, and as the SaaS Listing for VMware Live Site Recovery.

License Metrics

- VMware Live Recovery is licensed per protected Virtual Machine (VM). VMware Live Recovery is recommended for purchase with a minimum 3-year term. Pricing includes production support.
- For the use of VMware Live Cyber Recovery, additional protected capacity measured in terabyte (TiB) is required. Protected capacity is defined as the sum of the logical (used) storage size of all protected virtual machines and all incremental cloud backups (snapshots) on VMware Live Cyber Recovery. A minimum purchase of 10 TiB per subscription region is required.
- Egress data charges incurred during typical use of the service for replication to the cloud and fallback to the original protected site are covered by the VMware Live Recovery prices. VMware reserves the right to bill you for additional charges corresponding to excessive egress data transfers.

Use Rights and Limitations

- **Feature restrictions.** To facilitate quick recovery of protected virtual machines to a VMware Cloud on AWS SDDC, VMware Live Cyber Recovery automatically creates one or more Network File System (NFS) datastores and attaches them to the SDDC. These datastores facilitate the immediate recovery of protected virtual machines, with virtual disk backups continuing to reside on the Scale-out Cloud File System (SCFS). Virtual machines in the SDDC can immediately power on by directly accessing these datastores either while virtual disk backup data is copied to the VMware vSAN™ datastore on the SDDC (referred to as "Live Mount"), or for an extended period during production failover (referred to as "Running on the Cloud Filesystem"). Virtual Machines running on the SCFS are permitted to use the NFS share in this manner for a maximum of 30 days, after which time all failed-over virtual machine storage must be copied to the VMware vSAN datastore on the SDDC. These NFS datastores are created exclusively for the purpose of exposing the virtual machine backups to the SDDC to facilitate disaster recovery and must never be used as general purpose storage. Customer is not permitted to use the vSphere Client, vSphere APIs, or any method other than the interfaces provided by VMware Live Recovery to create and power on virtual machines directly on these NFS datastores except through capabilities and workflows exposed in the service. If this restriction is not adhered to, VMware will not guarantee support for the affected instances of the service.

The use of Carbon Black or Carbon Black Cloud feature, products and/or technology in conjunction with VMware Live Cyber Recovery is limited to use within the Isolated Recovery Environment and Ransomware Recovery workflow. Any use of Carbon Black products or technologies in a production setting is strictly prohibited unless those Carbon Black products are properly licensed.

- **Limits on SDDC resources for Recovery.** You must separately purchase the VMware Cloud on AWS hosts needed for disaster recovery or ransomware recovery as these are not included with a purchase of VMware Live Recovery. This applies to hosts that are continuously powered on (pilot light hosts) as well as hosts that are powered on just-in-time to facilitate recovery. You may purchase 1 year commit subscriptions for these hosts. Any host usage not covered by active commit subscriptions - including any hosts powered on just-in-time - will be metered and charged in arrears on a monthly basis. Availability of just-in-time host capacity is not guaranteed, and will be considered on a best efforts basis. For further details on VMware Cloud on AWS terms, please refer to the [SaaS Listing](#) for that service.
- **PCI Compliance.** VMware Live Cyber Recovery is certified as a PCI DSS Level 1 Service Provider, the highest level of assessment available. The compliance assessment was conducted by Crowe LLP, an independent Qualified Security Assessor (QSA). After initial deployment of the service, Customer must affirmatively take steps to configure its environment to meet Customer's responsibilities as described in the Shared Responsibility Model, at:

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<https://vmc.techzone.vmware.com/resource/vmware-cloud-disaster-recovery-shared-responsibility-model>

Customer must ensure that the VMware Cloud on AWS SDDC used with the VMware Live Cyber Recovery service for recovering Customer's VMs is PCI hardened, which may require disabling several VMware Cloud on AWS SDDC add-on capabilities to maintain compliance, including VMware HCX®. VMware will provide a customer-facing website, listing compliant offerings, that Customer can reference to ensure that Customer disables non-compliant VMC add-ons to maintain PCI compliance for Customer's VMC on AWS environment. In addition, once a VMware Cloud on AWS SDDC is configured for PCI compliance, the networking and security configuration can be managed by Customer directly via the VMware NSX® Manager™ deployed in the SDDC, rather than by the VMware Cloud Console.

For more details, refer to the documentation at docs.vmware.com. See the following for VMware Cloud on AWS Regions that are available for deployment of PCI compliant SDDCs: <https://docs.vmware.com/en/VMware-Cloud-on-AWS/services/com.vmware.vmc-aws.getting-started/GUID-19FB8A08-B1DA-4A6F-88A3-50ED445CFFCF.html>

Before deploying any other VMware service in Customer's instance of VMware Live Cyber Recovery, Customer should review the interoperability and compliance information for that other service. See <https://cloud.vmware.com/trust-center/compliance> for the most current information on compliant offerings. Customer is responsible for ensuring that any additional service deployed in its VMware Live Cyber Recovery instance meets Customer's compliance and security requirements.

- **Data Retention and Deletion.** Customer data is stored up to 90 days after the subscription term end date and will be deleted permanently and not recoverable.
- **Excess Consumption.** Customers are allowed to use the service up to their purchased quantity. If Customer uses the service in excess of the purchased quantity, Customer must purchase additional quantities to cover excessive usage. A customer will be considered non-compliant if they do not meet this requirement. For offline VMware Live Site Recovery deployments, the protected VMs entitled using the license key generated from Broadcom Support portal will count towards the purchased VMware Live Recovery subscriptions.
- **Restrictions on Use with Public Cloud Services.** Customer must not (and must not allow Customer's Third-Party Agents to) use or deploy the Software on, or with, any Cloud Services.
- **Hosting Rights and Restrictions.** Customer may use the Software to deliver Internally Developed Applications as a service to a third party via an internal or external network. Except as expressly provided in this paragraph and the License Agreement, the use of the Software for any other types of hosting or for the benefit of any third party in any manner is strictly prohibited unless Customer is an authorized participant in a VMware program that is governed by a separate set of terms and conditions which authorizes such activity.

3. SERVICE LEVEL AGREEMENT.

This Service Level Agreement ("SLA") is only applicable to VMware Live Cyber Recovery ("Service Offering"). For clarity, the VMware Live Site Recovery component of VMware Live Recovery is not subject to this SLA and does not have any service level commitments (as it is an on-premises product).

Availability

Broadcom will use commercially reasonable efforts to ensure that the Service Offering is available during a given billing month equal to the "Availability Commitment" specified in the table below.

Service	Availability Commitment
VMware Live Cyber Recovery component of VMware Live Recovery	99.9%

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VMware Live Recovery

Specific Program Documentation

If the Availability of the Service Offering is less than the Availability Commitment, then you may request an SLA Credit. Availability in a given billing month is calculated according to the following formula:

"Availability" = ([total minutes in a billing month – total minutes Unavailable] / total minutes in a billing month) x 100

Disaster Recovery Failover

Broadcom will use commercially reasonable efforts to ensure that a Disaster Recovery Failover ("DR Failover") will meet the specified Recovery Time Objective ("RTO") specified in the table below. "RTO" means the period of time beginning when the customer initiates a failover of a vSphere workload protected by VMware Live Recovery (specifically VMware Live Cyber Recovery) to the time when that workload starts powering on in a recovery SDDC.

Service	Recovery Time Objective
DR Failover	< 2 hours

SLA Events

The Service Offering will be considered "Unavailable", subject to the Service Level Agreement Limitations set forth below, if Broadcom's monitoring tools determine one of the following events (each, an "SLA Event") has occurred.

The total minutes that the Service Offering is Unavailable for a particular SLA Event is measured from the time that Broadcom validates the SLA Event has occurred, as defined below, until the time that VMware resolves the SLA Event such that the Service Offering is Available to you.

If two or more SLA Events occur simultaneously, the SLA Event with the longest duration will be used to determine the total minutes Unavailable.

Each of the following will be considered an SLA Event for the Service Offering:

- Your VMware Live Cyber Recovery orchestrator user interface is inaccessible for ten consecutive minutes.
- Your retained cloud backups in VMware Live Cyber Recovery are inaccessible for ten consecutive minutes.
- You are unable to create or modify protection groups and disaster recovery (DR) plans in VMware Live Cyber Recovery for ten consecutive minutes.
- You are unable to initiate a DR plan as a test or failover in VMware Live Cyber Recovery for ten consecutive minutes.
- You are unable to initiate deployment of a recovery SDDC using VMware Live Cyber Recovery for ten consecutive minutes, even though VMware Cloud on AWS host capacity is available in the region.
- None of your recovered virtual machines running directly off the Scale-Out Cloud File System ("SCFS") can access the virtual disk storage on the SCFS for ten consecutive minutes.

Availability of the Service Offering is dependent on and subject to availability of the underlying services on which the Service Offering is hosted. Availability of the underlying services is not covered by the service availability metrics set forth in this Service Level Agreement. If the underlying services are unavailable, and therefore the Service Offering is unavailable, your sole recourse pursuant to the Agreement is to VMware.

Requirements

To be eligible to receive any SLA Credits for an SLA Event, you must meet the following requirements:

- You must ensure that your environment meets all pre-requisites for deployment and use of the Service Offering as explained in the technical documentation, including but not limited to outbound network connectivity from your protected site and the configuration of an unexpired and properly scoped API token within the user interface of the Service Offering.

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VMware Live Recovery

Specific Program Documentation

- You must not modify the settings of the SDDC used for recovery of your virtual machines in a manner that disrupts the functionality of the Service Offering (e.g., changing the firewall configuration to interrupt access from the SDDC to the SCFS or Orchestrator components, attempting to unmount the Network File System ("NFS") datastores provisioned by the Service Offering, etc.). Please refer to this documentation page for guidance related to this: <https://docs.vmware.com/en/VMware-Live-Recovery/services/vmware-live-cyber-recovery/GUID-4D3F8766-220A-473D-844E-45F188B16B11.html>
- You must not use the vSphere Client, vSphere APIs, or any method other than the interfaces provided by the Service Offering to create and power on virtual machines directly on the NFS datastore created by the Service Offering on the recovery SDDC.
- There must be sufficient capacity on the recovery SDDC and recovery cluster(s) to support starting a virtual machine.

SLA Credits

Monthly Uptime Percentage	SLA Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	10%
Less than 99.0%	30%
Recovery Time Objective for DR Failover	SLA Credit Percentage
< 2 hours	100%

Each "SLA Credit" is an amount equal to the specified percentage of the per-TiB and the per-virtual machine charges (net of any discounts) charged for the billing month in which the SLA event occurred, as specified in the following table:

Note: To calculate the SLA Credits amount, VMware Cloud on AWS host charges are not considered. You may be able to separately claim SLA Credits for VMware Cloud on AWS subject to the terms and conditions in the VMware Cloud on AWS Service Level Agreement available at:

<https://www.vmware.com/content/dam/digitalmarketing/vmware/en/pdf/support/vmw-cloud-aws-service-level-agreement.pdf>

Service Level Agreement Limitations

The following will be excluded from any time-based calculations related to the Service Offering being Unavailable:

- .scheduled maintenance where you have been notified at least 24 hours in advance,
- .recurring or zero-impact maintenance that is generally applicable to all customers,
- .your misuse of the service offering or a service component,
- .force majeure events, denial of service attacks, viruses, or hacking attacks for which there is no commercially reasonable known solution, or any other events that are not within our control or that could not have been avoided with commercially reasonable care,
- .acts or orders of government,
- .packet loss, network or internet problems beyond Broadcom's border router supporting our public internet connectivity, or
- .bugs in code or services for which there is no commercially reasonable known fix (even if there is a known workaround).

RTO:

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VMware Live Recovery

Specific Program Documentation

The following will be excluded from any calculations related to the RTO:

- .time associated with customer's manual action or execution of custom script,
- .time associated with any customization defined by the customer, such as IP customization,
- .time required to boot up virtual machines, or
- .any wait time for availability of VMware Cloud on AWS host capacity.

Eligibility:

You will not be eligible to receive an SLA Credit if:

- . you are delinquent on any payments for the Service Offering, or
- . the SLA Event was due to your failure to meet your security responsibilities as set forth in the Agreement.

Broadcom's monitoring tools, data, and records will be the sole source of information used to track and validate Availability. Upon request, Broadcom will provide to you, within 45 days after a confirmed SLA Event, a copy of the Availability report that Broadcom makes generally available to customers.

Service Level Agreement Claims

To request an SLA Credit, you must file a support request at <https://my.vmware.com> within thirty (30) days after the suspected SLA Event or the alleged RTO failure. Broadcom will review the request and issue an SLA Credit when Broadcom validates the SLA Event or RTO failure based on Broadcom's data and records.

SLA Credits will be issued to the person or entity that Broadcom invoices for the Service Offering, as a separate credit memo that can be applied towards a future invoice for the Service Offering. If your subscription term for the Service Offering expires or is terminated prior to the issuance of a Service Credit, the Service Credit will become void as of the date of the expiration or termination.

The Service Credits specified in this SLA are your sole and exclusive remedies for any SLA Events or any failure to meet the RTO occurring during your subscription term for the Service Offering or for any other claim in connection with this SLA.

4. THIRD PARTY INFORMATION AND TERMS.

Any required third-party software license terms are incorporated by this reference and are set forth in online documentation at techdocs.broadcom.com or legaldocs.broadcom.com.

- **VMware Tools.** VMware Tools is a suite of utilities and drivers that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine in conjunction with a vSphere hypervisor. Customer may not use VMware Tools with any other hypervisor. Customer may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. Customer is liable for compliance by those third parties with the terms and conditions of the Framework Agreement.

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- e. VMware Avi Load Balancer Specific Program Documentation, attached below:


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VMware Avi Load Balancer Specific Program Documentation ("SPD")

The Broadcom software program(s) ("Broadcom Software" or "Software") listed below is provided under the following terms and conditions in addition to any terms and conditions referenced on the Broadcom quote, order form, statement of work, or other mutually agreed ordering document (each a "Transaction Document") under the applicable end user agreement or governing contract (collectively, the "Agreement") entered into by Customer and the Broadcom entity ("Broadcom") through which Customer obtained a license for the Broadcom Software. These terms shall be effective from the effective date of such Transaction Document. Capitalized terms have the meanings ascribed to them herein, or, otherwise, in the Agreement (including the VMware Licensing Glossary).

Program Name: VMware Avi Load Balancer

1. DEFINITIONS.

All terms defined in the VMware Licensing Glossary located at <https://www.broadcom.com/company/legal/licensing> apply to this SPD unless specified herein.

"Service Engine" means the data plane component of the Software that performs load balancing and client-and server-facing network interactions.

"Service Unit" means a unit of measure that is dependent on the environment in which the Service Engine of the Software is deployed as defined in this SPD.

2. USE RIGHTS AND LIMITATIONS.

(a) **Use in both On-Premises and Cloud Services Modalities.** The Software is offered as an on-premises software with optional cloud-based features. This SPD governs Customer's use of the on-premises version of the Software. Customer is subject to the terms of the VMware Avi Load Balancer SaaS Listing (i.e. not this SPD) if Customer deploys the optional cloud-based features. Regardless of how Customer deploys the offering, each deployment will separately require the appropriate number of Service Units to cover the respective deployments and remain subject to Customer's maximum licensed capacity.

(b) **Use Rights and Limitations On-Premises.**

- Customer may deploy the Software for up to the number of Service Units for which Customer has paid the applicable license fees solely during the term of the license purchased.
- When the Service Engine is deployed in a virtual environment, each licensed Service Unit can service a single Core.
- When the Service Engine is deployed in a Bare Metal environment where the entire Node is used as a single, unbreakable/undivided Service Engine, each Service Unit can service four Cores of the Processor, and each Processor must have a minimum of five (5) Service Units licensed.
- For bandwidth-limited deployments, Customer may use the Software according to the following: (a) for Service Engines limited to 25 Mbps bandwidth, Customer only need to purchase a license for two (2) Service Units for every five (5) Service Engines; and (b) for Service Engines limited to 200M bandwidth Customer only need to purchase a license for seven (7) Service Units for every ten (10) Service Engines.
- Upon expiration or termination of Customer's license to Software, Customer must destroy all copies of the Software and Documentation and certify such destruction to Broadcom.

The Software is licensed as Subscription Software. Customer may deploy and use the Software and Support solely during the Subscription term.

VMware Avi Load Balancer, November 2024.

Specific Program Documentation ("SPD")

VMware Avi Load Balancer

At the end of the Subscription term, Customer may have the option to renew the Subscription licenses. If Customer does not renew, the Subscription licenses shall expire at the end of the Subscription term. Upon expiration or termination of Customer's licenses to the Software, Customer must uninstall, destroy, and cease use of any copies of Software and Documentation and certify destruction of any copies thereof to Broadcom. Broadcom may, at its discretion, retire Software and/or Support from time to time.

3. THIRD PARTY INFORMATION AND TERMS.

Any required third-party software license terms are incorporated by this reference and are set forth in online documentation at techdocs.broadcom.com or legaldocs.broadcom.com

VMware Avi Load Balancer, November 2024.

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- f. VMware vDefend Firewall Specific Program Documentation, attached below:


BROADCOM®

VMware vDefend Firewall Specific Program Documentation ("SPD")

The Broadcom software program(s) ("Broadcom Software" or "Software") listed below is provided under the following terms and conditions in addition to any terms and conditions referenced on the Broadcom quote, order form, statement of work, or other mutually agreed ordering document (each a "Transaction Document") under the applicable end user agreement or governing contract (collectively, the "Agreement") entered into by Customer and the Broadcom entity ("Broadcom") through which Customer obtained a license for the Broadcom Software. These terms shall be effective from the effective date of such Transaction Document. Capitalized terms have the meanings ascribed to them herein, or, otherwise, in the Agreement (including the VMware Licensing Glossary).

Program Name: ALL VMWARE PRODUCTS LISTED IN THE TABLE BELOW

1. DEFINITIONS.

All terms defined in the VMware Licensing Glossary located at <https://www.broadcom.com/company/legal/licensing> apply to this SPD unless specified herein.

"Authorized Users" means Customer, its employees and independent contractors and/or Customer Affiliates that access and use Software provided that they are bound by terms and conditions no less restrictive than those contained in the Agreement and solely to the extent that they are acting on behalf of Customer or Customer Affiliates.

"Container Security with Antrea" means an environment where Antrea is deployed in a container cluster.

"Distributed Firewall" means an environment where VMware vDefend Distributed Firewall is enabled to cover a virtualized host.

"DPU" is a data processing unit. This means a single, physical chip that houses at least one Physical Core that can execute computer programs and is incorporated into a SmartNIC.

"Gateway Firewall" – means an environment where the VMware vDefend Gateway Firewall is enabled either on a virtual or Bare Metal environment.

"SmartNIC" is a hardware component that converts data packages to signals spread throughout a network. It is a programmable extension of an interface card (NIC).

"Software Gateway Instance" is a virtual network function that delivers network services and provides optimized data paths to applications, network branches and data centers.

"Tool Box" means certain software tools that VMware may provide to Customer from time to time for support purposes.

"VMware vDefend Firewall as a Bare Metal Agent" means an environment where an agent covers a bare metal host.

"VMware vDefend Firewall on DPU" means a customer is running VMware vDefend Firewall as a Distributed Firewall or Gateway Firewall AND those features are offloaded onto the DPU of a host.

2. USE RIGHTS AND LIMITATIONS.

There are three editions of the VMware Firewall available for license: VMware vDefend Firewall, VMware vDefend Firewall with Advanced Threat Prevention (ATP), and VMware vDefend Advanced Threat Prevention Add-on.

VMware vDefend Firewall. May 2024

Specific Program Documentation ("SPD")

VMware vDefend Firewall

Each edition of VMware Firewall includes entitlements to use different functionality and inclusions. For the edition of the Broadcom Software Customer has purchased licenses for, Customer may only use the functionality for that edition as specified at <http://kb.vmware.com/s/article/88137>.

If the Transaction Document indicates that Customer has received a license for any of the below Broadcom Software, Customer use of such Broadcom Software is subject to the applicable following limitations:

Broadcom Software	License Use, Meter, and Model; Additional Limitation(s) for Broadcom Software
VMware vDefend Firewall	Customer may use the Broadcom Software for applicable number of Cores as outlined on the section Deployment Specific Purchase Requirements.
VMware vDefend Firewall with Advanced Threat Prevention (ATP)	Customer may use the Broadcom Software for applicable number of Cores as outlined on the section Deployment Specific Purchase Requirements. Customer license includes a Cloud Service feature for user interface and analysis and storage of network traffic and artifacts for the same duration as Customer's Subscription term.
VMware vDefend Advanced Threat Prevention Add-on	Customer may use the Broadcom Software for applicable number of Cores as outlined on the section Deployment Specific Purchase Requirements. Customer license includes a Cloud Service for user interface and analysis and storage of network traffic and artifacts for the same duration as Customer's Subscription term.

Deployment Specific Purchase Requirements. Customer will have entitlement to the license of the Broadcom Software referenced in Customer's Transaction Document. If multiple types of deployment are shared on the same host, each deployment will independently require the appropriate number of licenses. Each edition of VMware vDefend Firewall can be deployed in the following types of deployment.

- When deploying VMware Firewall as a Distributed Firewall, Customer must purchase one (1) Core of VMware Firewall to deploy one (1) Core of Distributed Firewall.
- When deploying VMware Firewall as a Gateway Firewall, Customer must purchase four (4) Cores of VMware Firewall to deploy one (1) Core of Gateway Firewall.
- When deploying VMware Firewall for Container Security with Antrea, Customer must purchase one (1) Core of VMware Firewall to deploy one (1) Core of Container Security with Antrea.
- When deploying VMware Firewall as an agent for Bare Metal workloads, Customer must purchase one (1) Core of VMware Firewall for every four (4) Cores of Bare Metal.
- When deploying VMware Firewall on a DPU, in addition to the entitlement required to deploy as a Distributed Firewall or Gateway Firewall, the Customer must purchase four (4) Cores of VMware Firewall to secure one (1) DPU.

VMware vDefend Firewall, May 2024

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VMware vDefend Firewall

- When deploying VMware Firewall to monitor of Desktop environments as outlined by VMware Firewall for Desktop, Customer may deploy 2.5 Concurrent Users for every (1) Core of VMware Firewall Customer purchases.

VMware Firewall for Desktop. Customer may use the Broadcom Software for up to the number of Concurrent Users or Authorized Users for which Customer has paid the applicable license fees when only used in Clusters running (i) virtual desktop virtual machines, including those desktops from VMware Horizon and/or third party solutions, (ii) a Terminal Services Session or remote desktop services host for the purpose of hosting session based desktops or remoting applications, and (iii) associated desktop management and monitoring tools. For each Cluster that is running the Broadcom Software, Customer must purchase a license for every Concurrent User or Authorized User using the Broadcom Software in the Cluster.

Customer may use the Broadcom Software to monitor up to the number of Cores for which Customer has paid the applicable license fees. The Broadcom Software is licensed as Subscription Software. Customer may use the Broadcom Software solely during the Subscription Term. Upon expiration or termination of Customer's licenses to the Subscription Software, Customer must promptly cease use of the Broadcom Software and Documentation.

APIs and Third Party Applications. Customer may use the APIs included with the Broadcom Software only to integrate the Broadcom Software with Customer's cloud management, network management and billing systems. Any use of the APIs or other portions of the Broadcom Software for other services (including but not limited to protocols, traffic engineering, L4-L7) must be certified for use in writing by VMware and will be subject to Customer's payment of additional fees. Customer may not use the Broadcom Software, including the APIs, with any third party applications written specifically for the Broadcom Software unless otherwise authorized in writing by VMware, which authorization may be conditioned on the payment of additional fees to VMware for such use.

Threat Intelligence Data Collection. Certain Software offerings may collect data relating to malicious or potentially malicious code, attacks, and activities on Customer's network ("Threat Intelligence Data"). Threat Intelligence Data is collected by VMware for analysis and possible inclusion in a threat intelligence feed utilized by certain VMware vDefend Firewall offerings. Prior to inclusion in any threat intelligence feed, Threat Intelligence Data will be: (i) reduced to a unique file hash or to queries or general behavioral descriptions that can be used to identify the same or similar malicious or potentially malicious code in Customer's and other customers' systems; and/or (ii) anonymized and made un-attributable to any customer or individual. VMware may distribute Threat Intelligence Data at its discretion as part of its threat intelligence data feed or in published reports or research. By using a Threat Intelligence Data feed, Customer is deemed to have agreed that Threat Intelligence Data is not Customer Data, and VMware may retain, use, copy, modify, distribute, and display the Threat Intelligence Data for its business purposes, including without limitation for developing, enhancing, and supporting products and services, and for use in its threat intelligence feed or in published reports or research. The information provided via any threat intelligence feed is provided on an "AS-IS" and "AS-AVAILABLE" basis only.

VMware Security Intelligence Data. VMware Security Intelligence collects data relating to traffic flows, activities on Customer's network, and VMware system configuration and state ("VMware Security Intelligence Data"). VMware may use VMware Security Intelligence Data for analysis, verification, and enhancement of our products, including but not limited to enhancements to visualization, automated suggestions, and recommendation of network security policies and related configurations of VMware offerings for Customer and for other customers. VMware Security Intelligence Data will be: (i) transformed to mask any information or general behavioral descriptions that can be used to identify any of Customer's systems or other customers' systems; or (ii) anonymized and made un-attributable to any customer or individual. VMware may distribute VMware Security Intelligence Data at its discretion as part of other products or in published reports or research. By using VMware Security Intelligence, Customer agrees that VMware Security Intelligence Data is not Customer Data. The recommendations and suggestion provided by VMware Security Intelligence are provided on an "AS-IS" and "AS-AVAILABLE" basis only without any indemnification, support, or warranty of any kind, express or implied.

Tool Box. Customer may internally use the Tool Box only to obtain support from VMware pursuant to the Services Terms. The Tool Box shall be deemed "Broadcom Software" for the purposes of the Agreement.

VMware vDefend Firewall, May 2024

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Specific Program Documentation ("SPD")

VMware vDefend Firewall

The Software is licensed as Subscription Software. Customer may use the Software and Support solely during the Subscription term. Customer must pay for all the Software Customer use.

At the end of the Subscription term, Customer may have the option to renew the Subscription licenses. If Customer does not renew, the Subscription licenses shall expire at the end of the Subscription term. Upon expiration or termination of Customer's licenses to the Software, Customer must cease use of the Software, Documentation and Support and certify cessation of use to VMware. VMware may, at its discretion, retire Software and/or Support from time to time.

3.

THIRD PARTY INFORMATION AND TERMS.

Any required third-party software license terms are incorporated by this reference and are set forth in online documentation at techdocs.broadcom.com or legaldocs.broadcom.com.

VMware vDefend Firewall. May 2024

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g. Extended Support Specific Program Documentation, attached below:

**BROADCOM®**

Support Terms

**Extended Support
Specific Program Documentation**

The Broadcom program stated below ("**Extended Support**") is provided under the following terms and conditions in addition to any terms and conditions referenced on the Broadcom quote, order form, statement of work, or other mutually agreed ordering document (each a "**Transaction Document**") under the applicable end-user agreement or governing contract (collectively, the "**Agreement**") entered into by Customer and the Broadcom entity ("**Broadcom**") through which Customer obtained a license for the applicable Broadcom Software. These terms shall be effective from the effective date of such Transaction Document. Capitalized terms have the meanings ascribed to them herein, or otherwise in the Agreement.

Program Name: Extended Support

1. Support Terms

In order to obtain Extended Support for specified Broadcom Software, you must be and remain an active Broadcom Software Maintenance/Subscription support customer for the duration of the term for which you acquire Extended Support, as specified on the Transaction Document. Broadcom Software Maintenance support is provided in accordance with the Broadcom Software Maintenance Policy Handbook, which is available at support.broadcom.com and is hereby incorporated by reference. The scope of Extended Support is detailed below and should not be assumed to be the same in every regard as Broadcom Standard Support would be for a product that was GA.

2. Applicability of Extended Support

Extended Support is offered for certain designated Broadcom software product versions or releases which have been officially retired and have reached their end of service ("**EOS**") or end of life ("**EOL**"). You are only eligible to receive Extended Support if you remain current on all applicable licensing and support fees due and payable to Broadcom and are otherwise compliant with your contractual obligations to Broadcom.

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Extended Support SPD April 17, 2024

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Extended Support

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3. Scope of Extended Support

In addition to the support provided as part of Broadcom Software Maintenance, Extended Support consists of technical support for certain designated Broadcom software versions and releases installed at designated installation sites for which Extended Support has been purchased (Covered Programs). Extended Support will be provided for the Covered Programs telephonically, online, and through email. Extended Support provides specific deliverables including the following:

- Direct access to technical support through Support Online or telephone.
- 24x7x365 support for production environment Severity 1 issues.
- Access to published fixes and solutions.
- Assistance with developing workarounds to problems as a permanent solution.
- Dump analysis to assist in diagnosing the reported incident.
- At Broadcom's sole discretion, new bug fixes for high-impact problems.
- Broadcom will advise on reasonable vulnerability mitigation steps, such as configuration changes. However, some issues may only be mitigated with an upgrade.

4. Exclusions

- Support for altered or modified versions of the Covered Programs.
- Development and distribution of additional service packs for the Covered Programs.
- Support or review of enhancement requests related to the Covered Programs.
- Porting of code from any Broadcom generally available ("GA") software product version or release down to the version or release of any of the Covered Programs.
- Certification of Covered Programs with any of the following:
 - New versions or releases of Broadcom software products that interfaced with the Covered Programs at the time Extended Support was purchased
 - New third-party software product releases, operating systems, and/or hardware
- Support for Covered Programs running in an operating or hardware environment that Broadcom did not certify when the Covered Programs were GA.
- Support in operating environments utilizing third-party software or hardware where support for the third-party software or hardware is no longer commercially available, and a problem with the Covered Program is suspected to be within, or as a result of, the third-party software or hardware.

5. Additional Terms for Extended Support

- A. You will not offer employment to, or otherwise seek to induce any Broadcom employee providing or connected to Broadcom Extended Support to leave Broadcom's employment during the term of Extended Support and a period of six (6) months thereafter, without prior written permission from Broadcom. This term does not preclude you hiring, without inducement, a Broadcom employee responding to generally advertised positions.
- B. Covered Programs must be maintained at the version, release, or service pack levels designated on the Transaction Document.
- C. Broadcom reserves the right to select and assign support engineers and other support resources as it deems appropriate in the fulfillment of this specific program document. In addition, Broadcom shall be entitled to utilize employees or sub-contractors to act as support engineers and your consent shall not be required for the appointment of a sub-contractor to perform Extended Support.
- D. Renewal of Extended Support shall be subject to the agreement of the parties, and Broadcom makes no commitment that it will renew such Extended Support at the end of the current period. If Extended Support will be renewed, any fees for such renewal will be as agreed in writing between the parties at the time of such renewal.

Broadcom

Extended Support SPD April 17, 2024

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h. Broadcom Software Adoption Services Specific Program Documentation, attached below:

Specific Program Documentation ("SPD")

Broadcom Software Adoption Services

1. Introduction

This SPD for Broadcom Software Adoption Services ("BSAS") together with an Order Form(s) comprises the total agreement for the information technology services assistance ("Services") set forth on each such Order Form(s). Any conflict between or among the provisions of this SPD, a Transaction Document, or the Master Services Agreement or Agreement ("Agreement" thereafter) shall be resolved according to the following order of precedence: (1) Transaction Document; (2) this SPD; (3) Agreement.

2. Term

Services performed under Order Form(s) pursuant to this BSAS shall be agreed upon and performed during the Term specified in the Transaction Document.

3. Fees: Payment

The minimum amount payable for Services under this BSAS is as specified in the Transaction Document (the "BSAS Amount"). Broadcom shall invoice, and Customer agrees to pay the BSAS Amount upon execution of the Transaction Document.

4. Order Forms; Estimates

(a) Customer agrees to request, and Broadcom agrees to provide, the Services as agreed upon in each Order Form. Broadcom will work with Customer to prepare an Order Form for each project. Each Order Form does not require signature of either party however has to be electronically confirmed of receipt by Customer to Broadcom prior to the commencement of the Services.

(b) Each Order Form shall include the estimated hours and/or fees for the Services to be allocated from the BSAS Amount in accordance with the Rate Schedule below ("Rate Schedule"). Broadcom makes no representation or warranty that the Services described in the Order Form will be completed within the estimated hours or fees set forth therein. The hours and associated fees are based on the information supplied to Broadcom by Customer and if there is a variation in this information, then the estimated effort and fees for the Services may change.

(c) In the event that the total amount for Order Form(s) exceeds the BSAS Amount, Broadcom will invoice, and Customer agrees to pay Broadcom, monthly, for such additional Services at the rates provided in the Rate Schedule until expiration of the Term. Failure to utilize the entire BSAS Amount on or before the expiration of the Term shall result in the forfeiture of any remaining unused portion of such amount and Customer will not receive a refund of any unused portion of the BSAS Amount.

5. Expenses

In the event Customer requests Broadcom to perform Services on site, Customer shall be responsible for all travel and out of pocket expenses associated with the performance of the Services in accordance with Broadcom's then current expense policy. Each Order Form shall include an estimate for travel and living expenses associated with the performance of the Services thereunder and will be invoiced in arrears as occurred unless otherwise stated in the Order Form.

6. Taxes

Customer agrees that Customer is responsible for all tariffs, duties or taxes ("Taxes") levied on the Services. In the event Broadcom is legally required to collect Taxes, such Taxes will be stated separately on the invoices for Services to the Customer.

7. Termination

In the event of any termination of the Agreement, the Transaction Document and Order Form(s) forming this agreement, all fees shall remain due and payable and Customer shall not be entitled to any refund of the BSAS Amount.

References in the Supplier's Documents to 'Broadcom' or similar are deemed to be references to the Supplier.

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Annexure B to Order Form – Statement of Work

As at the Commencement Date, there is no Statement of Work. However, any Statement of Work entered into by the parties under this Agreement during the Term will be deemed to form part of this Annexure B.

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Annexure C to Order Form - Additional Conditions

1. Amendments to Core Terms

The following amendments are made to the Core Terms.

No	Item	Ref	Description or selection
Amendments to Schedule 1			
1.			
2.			
3.			

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No	Item	Ref	Description or selection
Amendments to Core Terms			
4.			

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No	Item	Ref	Description or selection
5.			
6.			
7.			

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No	Item	Ref	Description or selection
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No	Item	Ref	Description or selection
10.			

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No	Item	Ref	Description or selection
11.			
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No	Item	Ref	Description or selection
14.			
15.			
16.			

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No	Item	Ref	Description or selection
17.			
18.			

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No	Item	Ref	Description or selection
19.			

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No	Item	Ref	Description or selection
20.			
21.			
22.			

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2. Licensed Software Warranties

- (a) **Software Warranty and Duration.** The Supplier warrants that the Licensed Software will operate materially in accordance with the applicable specifications set forth within the User Documentation for a period of ninety (90) days after delivery of the Licensed Software.
- (b) **Remedy.** If the Supplier has breached the warranty set forth in Additional Condition 2(a), without limiting any of the Customer's other rights or remedies, the Supplier must, in consultation with the Customer, either (i) use reasonable efforts consistent with industry standards to cure the defect, or (ii) replace the Licensed Software(s) with one that materially complies with the User Documentation, or (iii) terminate the licence and provide a pro-rata refund of the licence fees paid and/or Support fees to the Customer or Supplier Partner (wherefrom the non-compliant Licensed Software was procured). If option (iii) applies, the pro-rata refund shall be calculated on the number of months left remaining on the Term of the Order Form.
- (c) **Warranty Exclusions.** The remedies in Additional Condition 2(b) do not apply in circumstances where: (i) the relevant error or defect reported cannot reasonably be reproduced by the Supplier (ii) the error or defect is caused by the Licensed Software being modified or the not being used in accordance with User Documentation; or (iii) the breach is caused in whole or in part by any non-Supplier product(s) or services.

3. Data Transfers

- (a) **No limitation.** Nothing in this Additional Condition 3 limits any of the Supplier's obligations under this Agreement or places any obligation on the Customer.
- (b) **Data Privacy Framework.** The Supplier must comply with the EU-U.S. Data Privacy Framework (EU-U.S. DPF) and the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. Data Privacy Framework (Swiss U.S. DPF) as set forth by the U.S. Department of Commerce and has certified to the U.S. Department of Commerce that it adheres to the relevant Data Privacy Framework Principles.
- (c) **Compliance with DPF, SCC, IDT.** The Supplier must process all Personal Information transferred outside the country of origin in accordance with the Data Privacy Framework, Standard Contractual Clauses ("SCC") or the International Data Transfer Addendum ("IDT"), if required by applicable law, including where Personal Information is processed by a Sub-Processor. If the SCC are implemented, adopted, or recognised as a legitimate data transfer mechanism in countries outside the European Economic Area ("EEA"), then the Supplier must apply the relevant SCC Modules to the transfer of Personal Information originating from such country(ies). In the event that Services are covered by more than one transfer mechanism, the transfer of Personal Information will be subject to a single transfer mechanism in accordance with the following order of precedence: (i) Data Privacy Framework self certifications; (ii) Standard Contractual Clauses. "Sub-Processor" means a Processor engaged by the Supplier that processes Personal Information pursuant to this Agreement. Sub-Processors may include third parties or any Related Body Corporate of the Supplier.

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- (d) **SCC Selections.** SCC Module Two and SCC Module Three, as applicable, apply with the following selections:

Section Reference	Concept	Selection by the Parties
Section I, Clause 7	Docking clause	The option under Clause 7 shall not apply
Section II, Clause 9	Use of sub-processors	Option 2 will apply, and the time period for prior notice of sub-processor changes shall be as set out in Section 5.3 (Objections)
Section II, Clause 11	Redress	The option under Clause 11 shall not apply
Annex I.A	List of Parties	See the Agreement
Annex I.B	Description of transfer	See Sections 1 (Introduction), 3 (Processing Operations) and 5 (Sub-Processing)
Annex I.C	Competent supervisory authority	Irish Data Protection Commission Federal Data Protection and Information Commissioner insofar as the transfers are governed by the FADP
Annex II	Technical and organizational measures	See Section 8 (Security and Breach) and the documentation referenced in Section 8.1 (Supplier Obligations)
Additional adaptations insofar as the FADP governs the transfers	The term 'member state' must not be interpreted in such a way as to exclude data subjects in Switzerland from the possibility of suing for their rights in their place of residence (Switzerland) in accordance with Clause 18(c) of the SCC. The references to "GDPR" are to be understood as references to FADP.	

- (e) **SCC Module Three Terms.**

Where SCC Module Three is applicable, the following terms apply:

- (i) The Customer hereby informs the Supplier that the Supplier acts as Processor under the instructions of the relevant Controller with respect to Personal Information. The Customer warrants that its processing instructions as set out in this Agreement, including its authorisations to the Supplier for the appointment of Sub-Processors have been authorised by the relevant Controller. The Customer is solely responsible for conveying any Sub-Processor notifications to the relevant Controller where appropriate.

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- (ii) All enquiries from the relevant Controller shall be provided to the Supplier by the Customer. If the Supplier receives an enquiry directly from a Controller, it shall forward the enquiry to the Customer and the Customer shall be solely responsible for responding to any such enquiry from the relevant Controller where appropriate.
- (iii) The Supplier must notify the Customer about any request it has received directly from a Data Subject without obligation to handle it but is not obligated to notify the relevant Controller. The Customer will be solely responsible for cooperating with the relevant Controller in fulfilling the relevant obligations to respond to any such request.

(f) Sub-Processors

The Customer grants the Supplier a general authorization to engage Sub-Processors to process Personal Information to provide the Services. The Supplier must enter into a written agreement with each Sub-Processor that imposes obligations on the Sub-Processor substantially similar to those imposed on the Supplier in this Agreement and at a minimum, no less protective than those required by Privacy Laws or applicable data protection laws. The Supplier remains liable to the Customer for the acts and omissions of its Sub-Processors to the same extent Supplier would be liable for such acts and omissions itself.

(g) Disclosure and Notifications.

The list of Sub-Processors is available at: <https://www.broadcom.com/company/legal/privacy/sub-processors>. The Supplier must provide notice of new Sub-Processors by updating such list or through email where the Customer has signed up for notifications at <https://www.broadcom.com/company/legal/privacy/sub-processors>.

(h) Objections.

If the Customer objects to the Supplier's use of a new Sub-Processor in writing and on reasonable data protection grounds within thirty (30) calendar days of the Supplier's notice, the Supplier will discuss those concerns with Customer in good faith with an aim of achieving resolution.

4. Additional Orders and Further Statements of Work

4.1. Item 10 and clause 3.3

- (a) This Additional Condition 4 applies where it is specified in Item 10 of the Order Form that the Customer and the Supplier may enter into Additional Orders.
- (b) The parties acknowledge and agree that where this Additional Condition 4 applies, the Customer may from time to time require the Supplier to:
 - (i) increase the volume or quantum of Services and/or Deliverables, by following the process set out in clause 3.3 of the Core Terms; or
 - (ii) carry out additional Services and/or provided additional Deliverables, including providing:
 - (A) an increased volume or quantum of Services and/or Deliverables; or

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- (B) providing new, additional, different or alternative services and deliverables that relate to this Agreement and that are within the scope of the Modules selected in the Order Form,

by following the process set out in Additional Condition 4.2 below.

4.2. Further Statements of Work

- (a) If at any time during the Term, the Customer requires the Supplier to carry out additional Services or provide additional Deliverables as contemplated by Additional Condition 4.1, the Customer may, in its sole discretion, submit a written notice to the Supplier:

- (i) attaching a draft Further Statement of Work; or
- (ii) requesting the Supplier to prepare and submit to the Customer a draft Further Statement of Work,

in each case substantially in the form of Schedule 3, or such other template reasonably required by the Customer.

- (b) On receipt of a written notice from the Customer under Additional Condition 4.2(a), the Supplier must, acting reasonably and in good faith, work with the Customer to promptly negotiate and finalise the terms and conditions of the Further Statement of Work.
- (c) No Further Statement of Work will be binding on the Customer or the Supplier unless it has been executed by an authorised representative of each party.
- (d) The Customer may, for any reason and in its sole discretion, elect to discontinue discussions to progress any draft Further Statement of Work and elect to not enter into any Further Statement of Work.
- (e) Each Further Statement of Work entered into between the Customer and the Supplier constitutes a binding Further Statement of Work, under which the Supplier must provide the Services set out or referred to in that Further Statement of Work.
- (f) If the parties agree to a draft Further Statement of Work, the parties will sign the agreed Further Statement of Work.
- (g) Except to the extent agreed by the parties in writing, any additional Services or Deliverables under a Further Statement of Work must be supplied for the same rates and charges specified in the Initial Statement of Work or the Payment Schedule (as applicable).
- (h) The parties agree that each time the Customer and the Supplier enter into a Further Statement of Work that Further Statement of Work forms part of this Agreement, and will not constitute a separate contractual relationship between the parties.
- (i) No Further Statement of Work may be entered into under this Agreement, after the termination or expiration of this Agreement.

4.3. No minimum commitment

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

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4.4. Term of Further Statements of Work

The parties acknowledge and agree that:

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

4.5. Termination of Statements of Work

The parties acknowledge and agree that in circumstances where:

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

4.6. Definitions and interpretation

- (a) Where this Additional Condition 4 applies, the following words and phrases have the following meanings when used in this Agreement:
 - (i) **Further Statement of Work** means any further Statement of Work entered into in accordance with this Additional Condition 4.
 - (ii) **Further Statement of Work Term** means the term of a Further Statement of Work, as set out in that Statement of Work.
 - (iii) **Initial Statement of Work** means the Statement of Work (if any) set out or referred to in Annexure B to Schedule 2.
- (b) Where this Additional Condition 4 applies, the following rules of interpretation apply to this Agreement unless the contrary intention appears:
 - (i) references in this Agreement to an 'Additional Order' are deemed to include a reference to each Further Statement of Work;
 - (ii) references in this Agreement to 'Statement of Work' are deemed to include a reference to the Initial Statement of Work (if any) and/or each relevant Further Statement of Work (as applicable);
 - (iii) each Further Statement of Work is deemed to be incorporated into the Order Form; and
 - (iv) unless expressly amended by the relevant Further Statement of Work, each Item in the Order Form applies to each Further Statement of Work.

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5. Benefit for, and use by, the Transport Portfolio

5.1. The Supplier acknowledges and agrees that:

- (a) the Deliverables and the Services are provided to, and for the benefit of the Customer and the Transport Portfolio. The Customer and each member of the Transport Portfolio may make use of the Deliverables and Services in accordance with this Agreement. The Deliverables and Services from the Supplier's Activities may be leveraged and used by other entities in the Transport Portfolio at no additional cost to the Customer or the Transport Portfolio;
- (b) any obligation of the Supplier under this Agreement to perform an act or supply any Deliverable, Service or other item or activity is an obligation to perform that act or supply that Deliverable, Service, item or activity for the benefit of the Customer and each member of the Transport Portfolio;
- (c) the provision of the Services and Deliverables may impact a member of the Transport Portfolio, even though that member of the Transport Portfolio is not a party to this Agreement;
- (d) in entering into and obtaining the benefits, rights and remedies under this Agreement, including the benefit of the Supplier's obligations and any indemnity given by the Supplier, the Customer acts on its own behalf and as trustee for each member of the Transport Portfolio, and that such benefits, rights and remedies may be fully and effectively enforced by the Customer on behalf of each member of the Transport Portfolio; and
- (e) any obligation of the Customer under this Agreement may be performed by the Customer or any member of the Transport Portfolio.

5.2. The Supplier:

- (a) acknowledges that any Claim it makes arising out of or relating to this Agreement must be made against the Customer and not against any other member of the Transport Portfolio;
- (b) must not make a Claim against any member of the Transport Portfolio (other than the Customer) arising out of or relating to this Agreement; and
- (c) agrees that Losses suffered by a member of the Transport Portfolio arising from a breach of this Agreement, or other act or omission (including negligence) by the Supplier are deemed to be the Losses of, and recoverable by, the Customer for the purposes of this Agreement, as if those Losses were suffered by the Customer itself.

5.3. The Customer holds the benefit of the Supplier's obligations under this Agreement as principal and on trust for each member of the Transport Portfolio.

5.4. In addition to and without limiting the rights granted under any other provision in this Agreement, the Customer and each member of the Transport Portfolio are entitled to use the Deliverables, Services and other items or activities for all purposes necessary to enable the Customer and each member of the Transport Portfolio to carry out their respective business, functions and operations, including to administer, update or process its own data or the data of the Transport Portfolio.

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- 5.5. The Customer is entitled to exercise all rights, powers, authorities, discretions or remedies conferred on the Customer by this Agreement or any law as if the Customer were the sole beneficiary of the undertakings, promises, representations, indemnities and warranties made and obligations owed by the Supplier under this Agreement.
- 5.6. In this Agreement, **Transport Portfolio** means Transport for NSW, Sydney Trains, NSW Trains, Sydney Metro, State Transit Authority of NSW, Sydney Ferries, Transport Asset Manager of NSW and any other entity that currently forms, or may in the future form, part of the New South Wales Government's transport portfolio.

6. Document Deliverables in English Language

- 6.1. New clauses 8.1(d(2)) and 8.1(d(3)) are inserted into the Core Terms after clause 8.1(d) as follows:
 - '(d(2)) The Supplier must ensure that any Document Deliverable that is translated to the English language from another language is competently translated, in accordance with Best Industry Practice, and in a manner that enables the Document Deliverable to be utilised as intended by the Customer.
 - (d(3)) Without limiting the Supplier's obligations under this Agreement (including under clauses 8.1(d)(i) and 8.1(d(2))), if:
 - (i) a Document Deliverable is provided to the Customer in a language other than English; or
 - (ii) the Supplier breaches its obligations under clause 8.1(d(2)) in relation to a Document Deliverable,
 - (iii) the Customer may, in its sole discretion, engage a third party to translate the Document Deliverable to the English language and at the Customer's request, the Supplier must reimburse the Customer for the costs and expenses incurred by the Customer in relation such.'

7. Indemnity procedure

- 7.1. The Customer must promptly provide the Supplier with written notice of any Claim or Loss for which the Customer is seeking an indemnity under clause 34.1.
- 7.2. Unless there is any government policy that prohibits the Supplier from handling the process for the settlement of the Claim, the Customer will not unreasonably refuse a written request to permit the Supplier, at the Supplier's expense, to handle the process for the settlement of any third party Claim the subject of the indemnity in clause 34.1(c) and, as permitted by law, to control and direct any litigation that may follow such Claim (including selecting solicitors and counsel), subject to the Supplier agreeing that it must:
 - (a) comply at all times with any reasonable government policy relevant to the conduct of the Claim;
 - (b) consult with the Customer and keep the Customer fully informed of the status of the Claim (including any negotiations or litigation);

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- (c) have regard for the Customer's interests and reputation (and not take or omit to take any action the result of which would bring the Customer or any of the Indemnified Entities into disrepute); and
- (d) obtain the Customer's prior written approval before entering into any settlement in respect of the Claim, such approval not to be unreasonably delayed, conditioned, or withheld.

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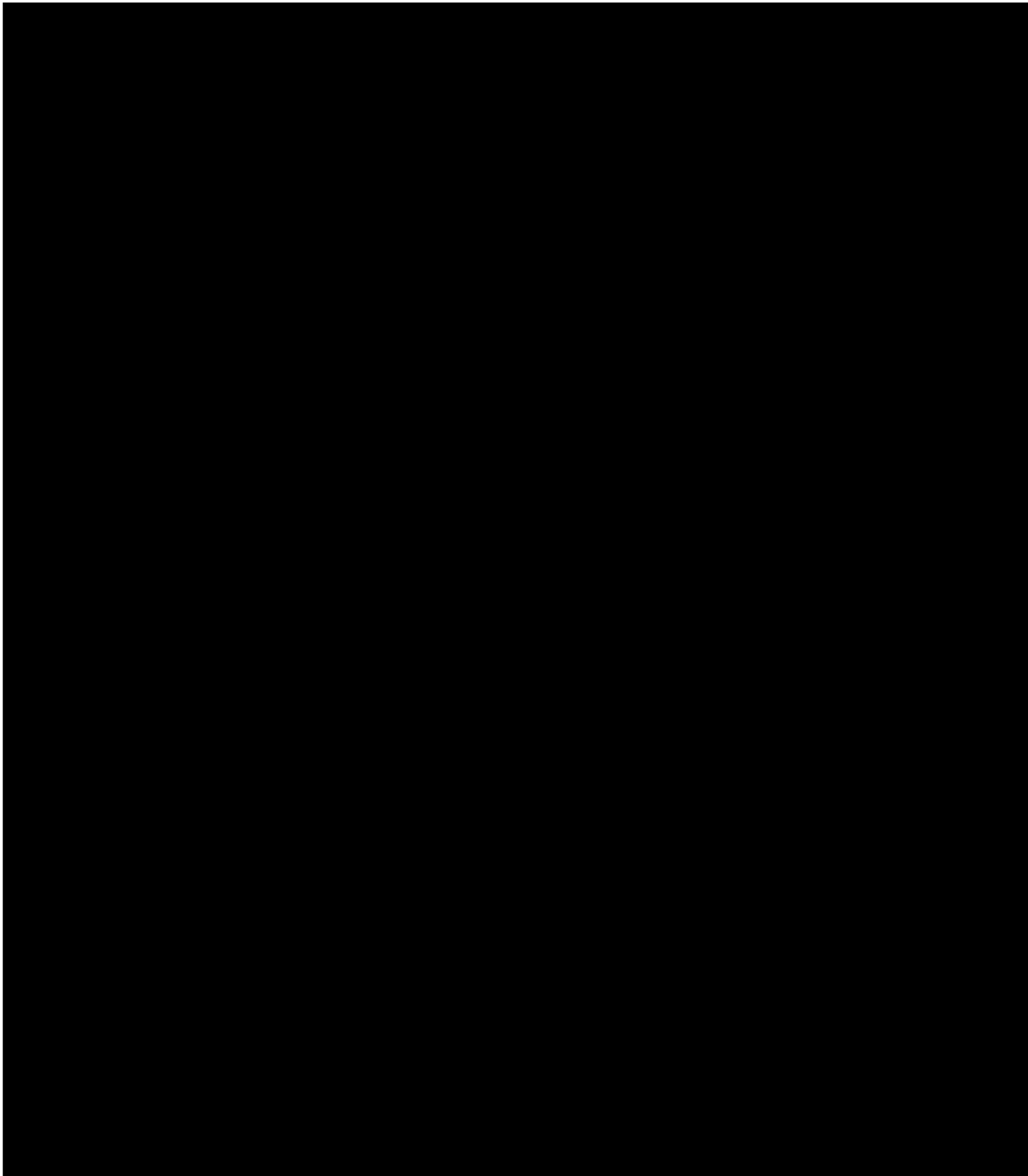
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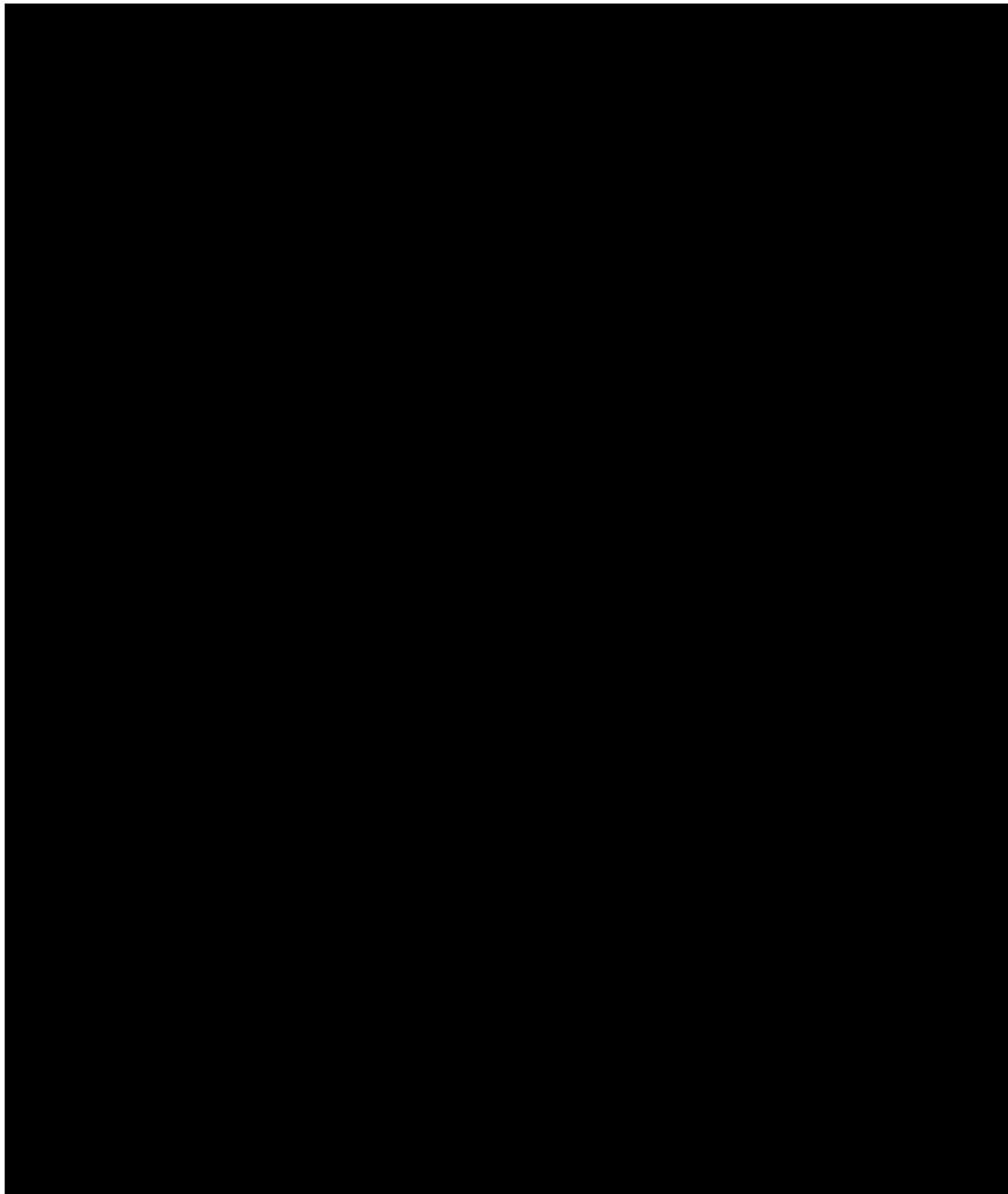
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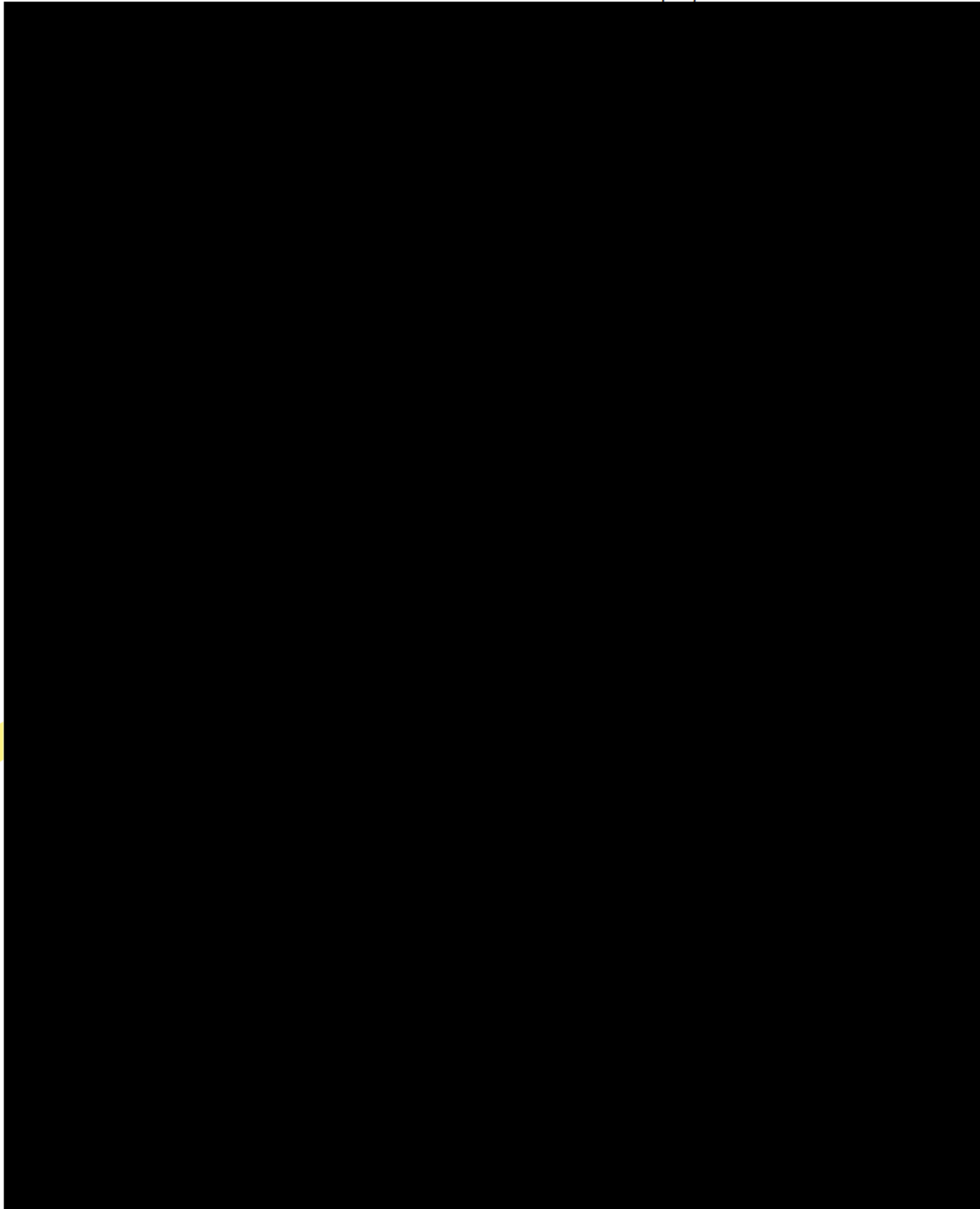
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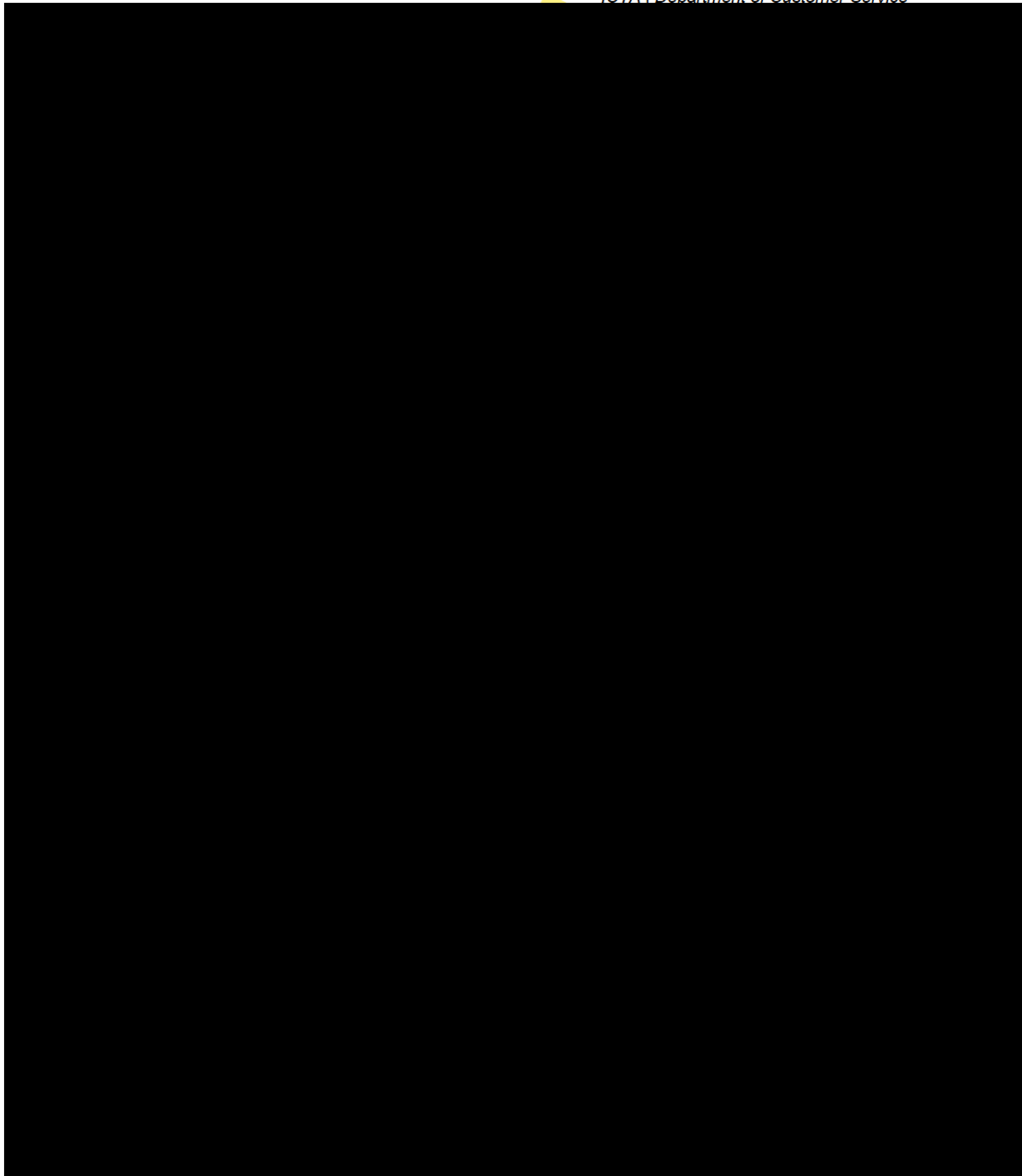
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this plan to support SME's, local economies, industry and communities?	sustainable procurement. Together we aim to make a positive impact on regional and remote communities (including Aboriginal communities) through meaningful SME participation in this project.
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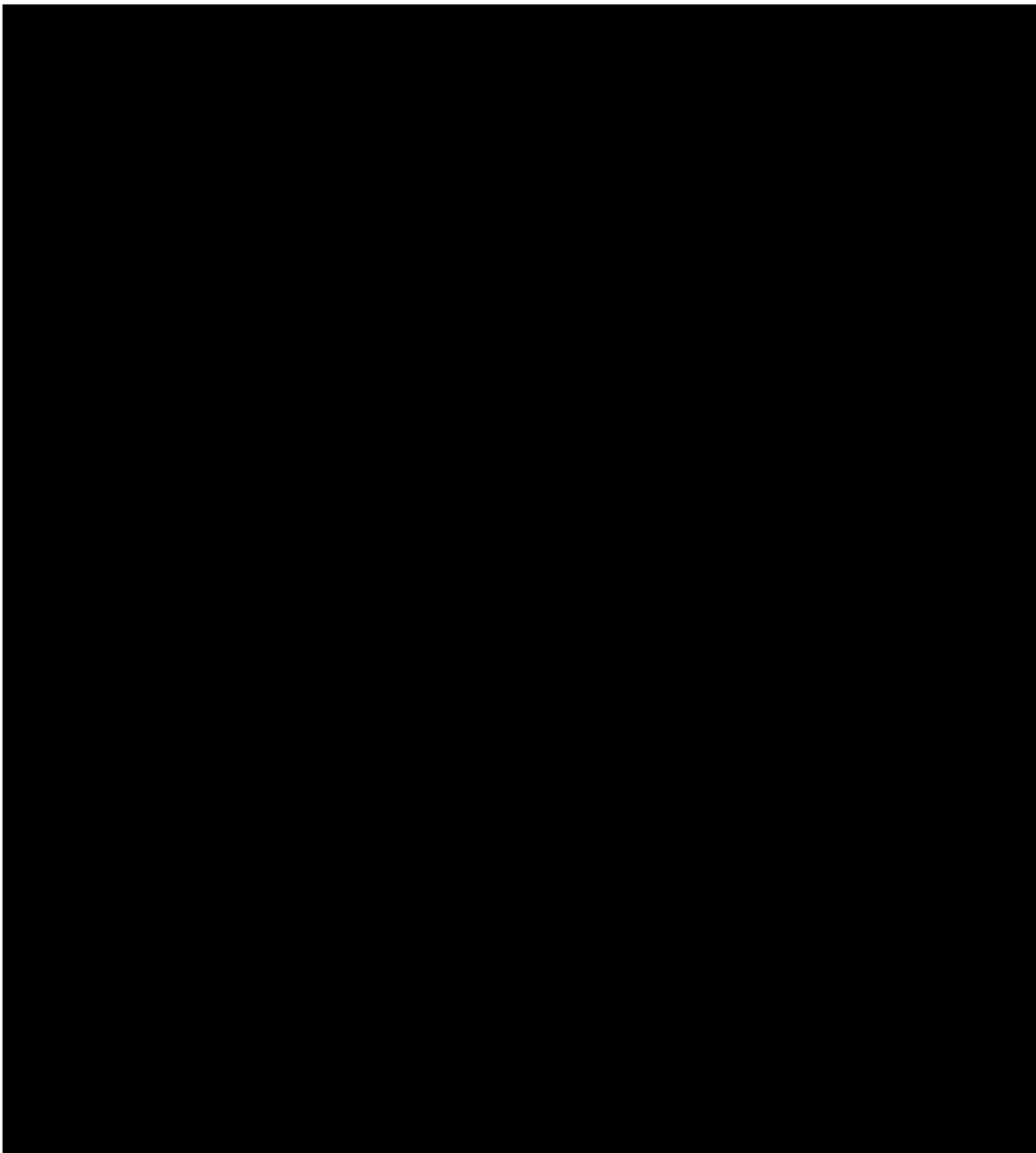
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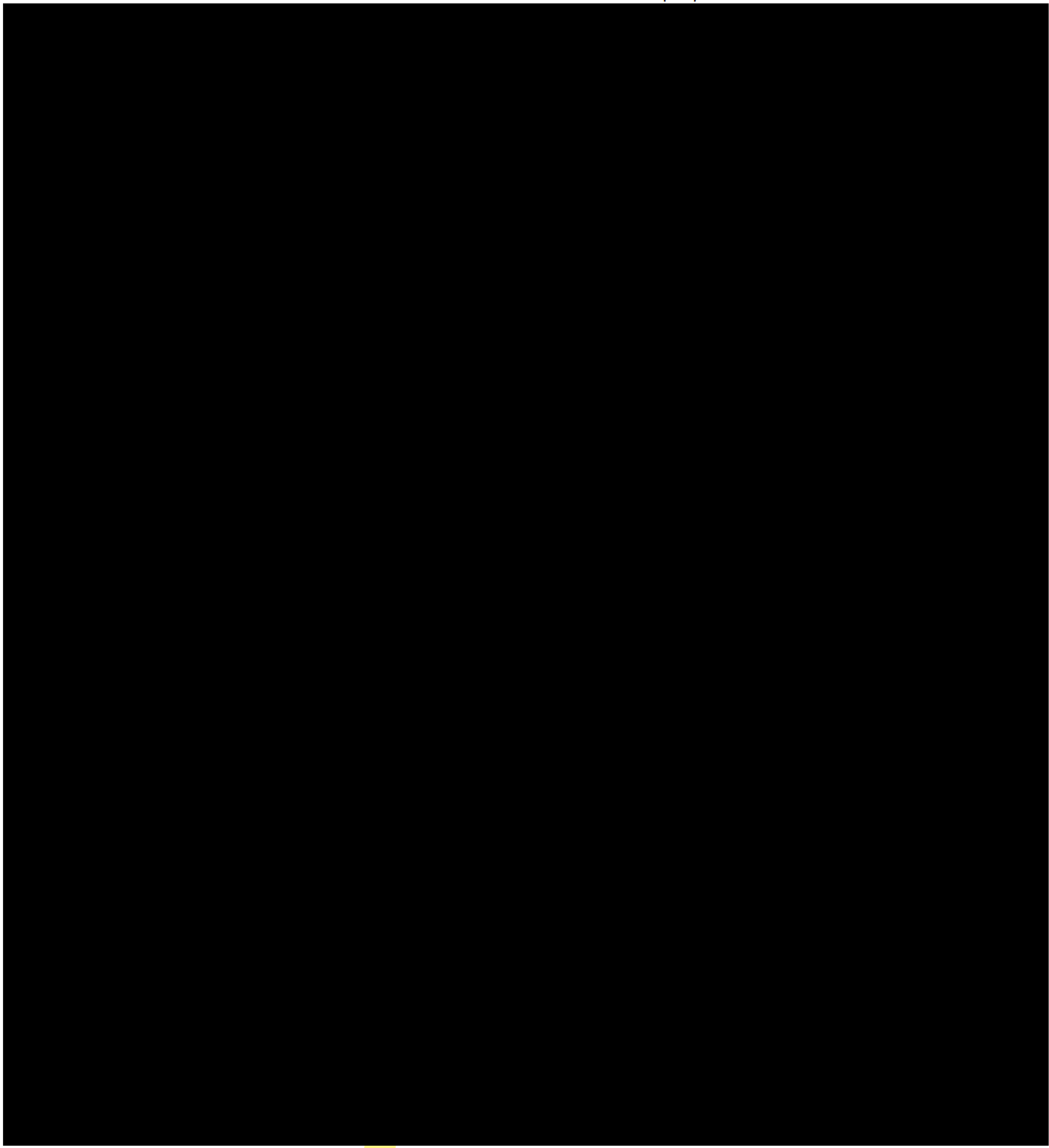
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Schedule 3 - Statement of Work Template

Statement of Work

1. Statement of Work Details

- (a) Statement of Work Name: [Insert].
- (b) Statement of Work Number: [Insert].
- (c) Purchase Order Number and Agreement reference (where available): [Insert].
- (d) This Statement of Work is made under and in accordance with the terms and conditions of the ICT Agreement, entered into between [Insert name of Customer] (ABN [Insert ABN]) and [Insert name of Supplier] (ABN [Insert ABN]) on or about [Insert date] and is a Statement of Work for the purposes of such ICT Agreement.

2. Revision History

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

3. Statement of Work Term

- (a) This Statement of Work commences on [Insert] and continues until [Insert], unless terminated earlier by agreement in writing between the parties or in accordance with the terms of the Agreement (the **Statement of Work Term**).
- (b) The Customer may, in its sole discretion, extend the Statement of Work Term for up to [Insert] additional periods, each of up to [Insert months/years] (each a **Statement of Work Renewal Period**) in duration, by giving the Supplier a notice in writing at least 15 Business Days prior to the end of the then current Statement of Work Term.
- (c) Any Statement of Work Renewal Period exercised in accordance with section 3(b) will be on the same terms and conditions of this Statement of Work as in effect at the end of the then current Statement of Work Term, unless the parties agree to amend this Statement of Work in accordance with clause 39.6 of the Core Terms.

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4. Introduction and overview of the Supplier's Activities

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

5. Services and Deliverables

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

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

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

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

- (c) Out-of-Scope Services and Deliverables are:
 - (i) *[Insert]*; and
 - (ii) *[Insert]*.

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

- (i) ***subject to Acceptance Testing;***
- (ii) ***part of a milestone (including a payment milestone);***
- (iii) ***part of a Stage; and/or***
- (iv) ***subject to Liquidated Damages (that is, a Key Milestone).]***

6. Specifications

The Specifications for *[Insert Deliverable/Service]* include:

- (a) *[Insert]*; and
- (b) *[Insert]*.

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

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

7. Customer Supplied Items (CSI)

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

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

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

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

8. Timeframes and Dates for Delivery

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

Deliverable/Service	Timeframe and Date for Delivery
<i>[Insert]</i>	<i>[Insert Date for Delivery]</i>

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

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

9. Key Milestones

The following dates constitute Key Milestones:

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

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

10. Transition-In Services

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

11. Transition-Out Services

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

12. Roles and responsibilities

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

13. Business Contingency Plan

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

14. Project Plan and management

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

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15. Stages and methodology

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

16. Acceptance Testing

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

17. Governance arrangements

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

18. Assumptions and dependencies

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

19. Service Level agreement

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

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

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

20. Pricing

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

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

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

OR

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

21. Interpretation

- (a) In this Statement of Work, unless the contrary intention appears:
- [Insert any applicable definitions that apply to the Statement of Work. Terms that are defined in the ICTA do not need to be defined again.]*
- (b) Terms in this Statement of Work which are not otherwise defined in this document have the meaning given to them in the ICTA.

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Statement of Work Signing Page

Executed as an agreement:

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

Signature of witness

Signature of authorised representative

Name of witness in full

Name of authorised representative in full

Date

Executed by VMware Australia Pty Ltd, ABN 77 122 677 089 in accordance with section 127 of the Corporations Act 2001 (Cth):

DocuSigned by: [Redacted]
Signature of Director

DocuSigned by: [Redacted]
Signature of Director

[Redacted]
Name of Director in full

[Redacted]
Name of Director in full

Date Jul-23-2025

Date Jul-24-2025

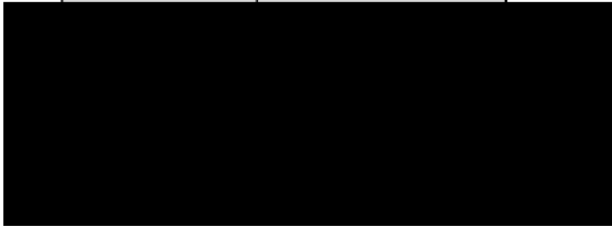
Schedule 4 - Payment Schedule

1. Licensed Software and Support Services

1.1 Licensed Software and Support Services and Prices

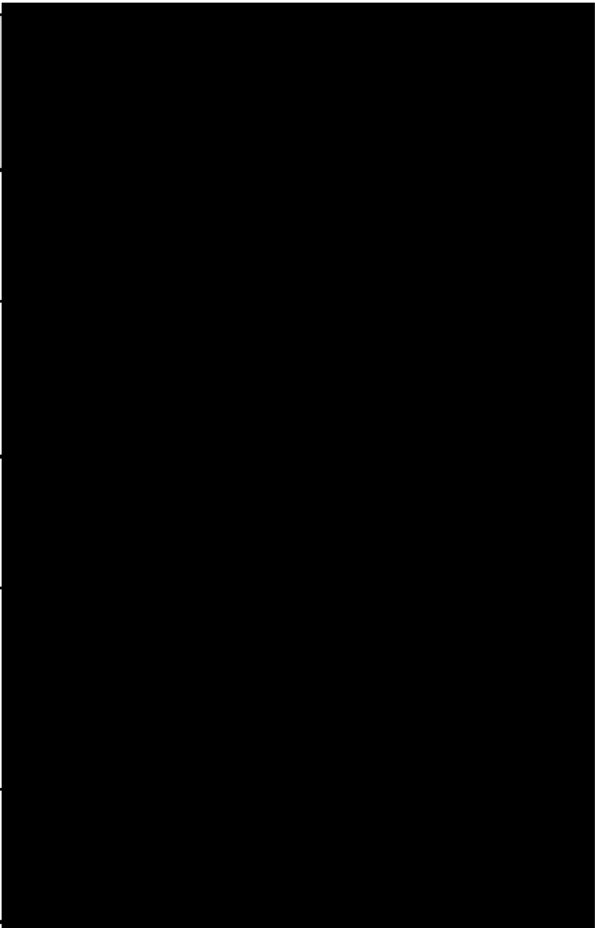
- (a) The Supplier is entitled to charge the Customer for following Prices for the Licensed Software and Software Support Services referred to in section 1.1(b) below, on the following dates:

Invoice Date	Amount Due (ex GST)



- (b) The Supplier must provide the following Licensed Software to the Customer and provide Support Services for such Licensed Software under the initial Order:

Offering Name	Offering Code	License Type	Authorised Use Limitation
VMware Cloud Foundation	VCF-CLD-FND	Subscription	13196 Core
1 Day / Week Technical Adoption Manager for VCF	TAM-VCF	Subscription	2 Instance
VMware Live Recovery Protected VM	VCF-VLR-PVM	Subscription	100 Virtual Machine
VMware vDefend Firewall with Advanced Threat Prevention (Bundle)	ANS-FW-ATP-B	Subscription	2900 Core
VMware Avi Load Balancer (Enterprise)	ANS-VMW-ALB	Subscription	48 Service Unit



*For the purposes of the above, each instance is 1 day / week.

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Software from the VMWare Cloud Foundation business unit ("**VCF Software**") shall require, when explicitly noted in the applicable SPD, the Customer to provide the Supplier with a regularly-scheduled verified report detailing the Customer's installed base and license compliance for such VCF Software using the format and process specified by the Supplier from time to time ("**Compliance Report**"). In order to fulfill such reporting requirements, the Customer must ensure that the Compliance Report files generated by the applicable VCF Software are either transmitted by the software or uploaded by the Customer on the schedule required in the SPD and in accordance with the product documentation. The VCF Software Documentation and SPD set forth any impacts to the product functionality or other consequences of the Customer's failure to transmit or upload a timely, unaltered Compliance Report. The Customer assumes any and all risks associated with the loss of any and all functionality and access to updates, upgrades and patches when caused by the Customer's failure to provide timely, unaltered Compliance Reports.

2. Services and Prices for Services**2.1****2.2****2.3 Product License Language**

The Services are to implement the pre-existing features and functions of the Supplier's software, as applicable, and do not include any customisation or development activity that impacts any of the full features and benefits and underlying source code of the Licensed Software. Payment of license fees and or support fees for the Licensed Software and Support Services are not contingent upon the Customer receiving the Services.

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2.4

2.5

2.6

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3. General terms applicable to this Payment Schedule

3.1 Offer Validity and Contract Execution

This Agreement will not be binding on either party unless the Customer executes and delivers this Agreement duly executed without any changes for the full term and total fees that are due prior to 26 July 2025.

3.2 Physical delivery

The Licensed Software (and any hardware components if included within this Order), will be delivered either in tangible media FCA SD (FCA Shipping Dock), as defined in INCOTERMS 2020, from the Supplier's shipping point stated in this Order or by electronic delivery (ESD).

3.3 Payment information

Notwithstanding anything contrary in this Agreement, payment terms will be net thirty (30), date of invoice. The Supplier reserves the right to change credit or payment terms at the Supplier's discretion if the Customer's financial condition or previous payment history so warrant. In the event a payment due date falls on a weekend or a holiday the payment will be payable by the Customer to the Supplier on the Business Day immediately prior to such date. The Supplier must send Customer an invoice at least thirty (30) days prior to each respective due date. The Customer will make payments and payment remittance in accordance with the wire transfer instructions on the invoice.

3.4 Migration

The Customer understands that, on the Commencement Date, the Supplier may migrate a previously licensed (i.e. before the Commencement Date) software (the "**Original Offering(s)**") to a new software Offering (the "**Migrated Offering(s)**"). It is the Customer's responsibility to understand which products herein may be Migrated Offering. Any Migrated Offerings are provided in consideration of Original Offering(s) being terminated. The Customer will cease using and de-install the Original Offering(s) following a transition period not to exceed ninety (90) days, as of the date of receipt of the Migrated Offering(s). However, when such Original Offerings are VMware branded offerings, the Customer is not required to cease using or de-install such offerings (subject to any EoS or EoL declarations) but is prohibited from further deployments of such Original Offerings). The Migrated Offering(s) are subject to this Order, and this Agreement including all financial obligations relating to the Original Offering(s) which remain valid and enforceable and are applicable to the Migrated Offering(s). Prior to signature of this Agreement or generation of a PO for this Order, the Customer should ensure it understands the migration for the Offerings licensed herein. Execution of this Agreement or generation of a PO for this Order shall constitute acceptance of such migration and shall also constitute a representation and warranty by Customer that it has reviewed and

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fully understands same. Migration path for licensed Offerings can be obtained at <https://www.broadcom.com/docs/product-migration>.

3.5 Software Support Availability

The Customer understands that the Supplier may either (i) stabilise software in which no future enhancements, versions, releases, development, or service packs are planned, or (ii) the software may be end of life or a particular version is end of service in which the Supplier will no longer provide (a) operational or technical support and (b) develop and provide new enhancements, features, upgrades, service packs, and fixes for the software offering (the "Software Support Availability"). Prior to acceptance of this Order, the Customer should ensure it understands the support for the Offerings licensed herein. Acceptance of this Order shall constitute acceptance of such support and shall also constitute a representation and warranty by the Customer that it has reviewed and fully understands same. Software Support Availability for licensed Offerings can be obtained at <https://www.broadcom.com/docs/end-of-support>.

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Attachment to Payment Schedule

The following shall apply for Extended Support only:

Extended Support

Extended Support shall be provided for the Broadcom product(s) and version(s) listed in the table below “Covered Programs” during the period beginning on the Start Date through the End Date.

Extended Support will be provided for Covered Programs installed by the Customer.

Covered Program(s):

Product Name	Release Version	Authoris Limitation	
VCF vSphere ESXi	7.0U3m	3272	

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Schedule 5 - Change Request Form

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

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

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Schedule 6 - Deed of Confidentiality and Privacy

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

In favour of: Transport for NSW, ABN 18 804 239 602 of [Insert address of Recipient] (Customer)

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

Background

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

1. Definitions and Interpretation

1.1 Definitions

In this Deed:

Confidential Information means information that:

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

but excludes information:

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

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

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

Deed means this deed poll.

Government Agency means any of the following:

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

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

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

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

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

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

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the Customer, the Recipient or the Supplier) from time to time in force in:

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- (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
- (ii) any other jurisdiction (to the extent that the Customer or any Personal Information or the Supplier or the Recipient is subject to the laws of that jurisdiction),

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

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

1.2 Interpretation

In this Deed:

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

2. Access and non-disclosure

- (a) The Recipient acknowledges and agrees that:
 - (i) in the course of performing duties under the Agreement, it may receive or have access to Confidential Information and/or Personal Information;

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- (ii) compliance with this Deed and the protection of Confidential Information and Personal Information are of paramount importance to the Customer; and
- (iii) the obligations in this Deed are for the benefit of the Customer and the Customer may enforce the obligations under this Deed.
- (b) The Recipient must not disclose any Confidential Information or Personal Information that it receives or obtains in connection with the Agreement or the Supplier's Activities except with the consent of the Customer or as otherwise authorised under the Agreement or this Deed.
- (c) If the Customer grants its consent for the Recipient to disclose Confidential Information or Personal Information, it may impose conditions on that consent. In particular, the Customer may require that the Recipient obtain the execution of a deed in these terms by the person to whom the Recipient proposes to disclose the Personal Information or Confidential Information.
- (d) The Recipient's obligations under this Deed will not be taken to have been breached to the extent it is required by law to disclose the Confidential Information or Personal Information. However, if the Recipient is required by law to disclose any Confidential Information or Personal Information, the Recipient must, before doing so, immediately notify the Customer and comply with any reasonable directions or requirements given by the Customer.

3. Recipient's obligations

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

3.2 Comply with Privacy Laws

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

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

- (a) where the Recipient has access to Confidential Information or Personal Information by password or other secure means, not disclosing that password or means of access to any other person unless it has been authorised in writing to do so by the Customer; and
- (b) complying with the security requirements under the Agreement or as notified by the Customer to the Recipient.

3.4 Breach of obligations

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

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

3.5 Return of Confidential Information and Personal Information

If requested by the Customer, the Recipient must:

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

4. Remedies

The Recipient acknowledges that:

- (a) damages may not be an adequate remedy for the Customer for any breach of this Deed by the Recipient; and

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- (b) the Customer is entitled to seek injunctive relief as a remedy for any breach or threatened breach of this Deed by the Recipient, in addition to any other remedies available at law or in equity under, or independently of, this Deed.

5. General

5.1 No exclusion of law or equity

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

5.2 Waiver

The Recipient acknowledges and agrees that:

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

5.3 Governing Law

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

5.4 Continuing obligations

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

5.5 Revocation or amendment

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

Executed as a deed poll:

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

[If the Recipient is an individual]

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

Signature of witness

Signature of Recipient

Full name and position of witness

Full name and position of Recipient

Date

[If the Recipient is a company]

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

Signature of director

Signature of director/company secretary

Full name of director

Full name of director/company secretary

Date

Date

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Schedule 7 - Escrow Deed – Not used

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Schedule 8 - Performance Guarantee – Not used

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Schedule 9 - Financial Security – Not used

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Services Module

Background

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

PART A: PRELIMINARIES

1. General

1.1 Scope

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

1.2 Acknowledgements

The parties acknowledge and agree that the:

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

1.3 Services Period

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

PART B: SUPPORT SERVICES

2. Provision of Support Services

2.1 Application

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

2.2 Support Period

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

2.3 General

- (a) The Supplier must carry out the Support Services specified in the Order Form.

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

2.4 Help desk

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

3. Software Support Services

3.1 Application

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

3.2 Updates and New Releases

- (a) This clause 3.2 applies where the Supplier provides Software Support Services and Updates and/or New Releases form part of those Software Support Services.
- (b) The Supplier must offer and provide the Customer all:
 - (i) Updates applicable to the Software; and/or
 - (ii) New Releases applicable to the Software,

at no additional cost and when the Update and/or New Release becomes available, except where otherwise specified in the Order Form (in relation to either Updates or New Releases, or both).
- (c) All Updates and New Releases that the Supplier provides must conform to the security and other requirements of the Agreement and must not reduce or diminish the functionality, performance or availability of the Software.

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

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3.3 No restriction

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

4. Support Services for Hardware and Other ICT Deliverables

4.1 Application

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

4.2 Provision of Support Services

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

4.3 Preventative Maintenance

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

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

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4.4 Engineering changes

- (a) Unless otherwise specified in the Order Form, the Supplier must make available to the Customer all engineering changes to any Hardware and Other ICT Deliverables that:
 - (i) are designed to improve the safety, performance and reliability of the Deliverables; and
 - (ii) the Supplier generally makes available to its other customers.
- (b) The Supplier must give the Customer advance written notice of all proposed engineering changes in accordance with any notice period specified in the Order Form. This notice should include sufficient particulars about the proposed engineering changes to enable the Customer to determine whether to implement the proposed engineering changes.
- (c) Except where any engineering changes are classified by the Supplier or the manufacturer as being mandatory to ensure product security or safety in accordance with the Agreement (**Mandatory Engineering Changes**), the Customer may, at its sole discretion, elect not to proceed with any engineering changes.
- (d) For any engineering changes that the Customer proceeds with, the Customer may (at its sole discretion) elect to either:
 - (i) procure the Supplier to, at its own cost, provide a "user installable part" which the Customer must promptly Install in accordance with the Supplier's, and any manufacturer's, instructions; or
 - (ii) allow the Supplier to Install the engineering change, at the Supplier's own cost.
- (e) The Supplier must:
 - (i) perform relevant tests to demonstrate that the engineering change has been successfully implemented and, if requested by the Customer, provide written confirmation of such tests;
 - (ii) if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the engineering change; and
 - (iii) promptly following performance of the engineering change, make any necessary updates to the User Documentation in accordance with the Agreement.
- (f) Except for Mandatory Engineering Changes, a refusal of the Customer to implement an engineering change will not affect the Customer's entitlement to the Deliverables and Services under the Agreement.

4.5 Remedial Maintenance

- (a) Where specified in the Order Form, the Supplier must provide Remedial Maintenance as specified in the Order Form and in accordance with the requirements of this clause 4.5.

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- (b) The Supplier must promptly, after being notified of a Defect or problem in relation to a Deliverable (including any Machine Code):
 - (i) repair or restore the Deliverable to enable it to operate in accordance with the Agreement;
 - (ii) comply with any applicable Service Levels and response times specified in the Order Documents;
 - (iii) to the extent that it is practical to do so, implement appropriate measures to minimise disruption to Customer Users and the Customer's operations during the provision of Remedial Maintenance; and
 - (iv) comply with any other requirements specified in the Agreement.
- (c) The Supplier must:
 - (i) perform relevant tests to demonstrate that the Remedial Maintenance has been successfully implemented and, if requested by the Customer, provide written confirmation of such tests;
 - (ii) if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the Remedial Maintenance; and
 - (iii) promptly following performance of the Remedial Maintenance make any necessary updates to the User Documentation in accordance with the Agreement.

PART C: OTHER SERVICES

5. Development Services

5.1 Application

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

5.2 Performance requirements

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

5.3 Design process

- (a) This clause 5.3 applies where it is specified in the Order Form that the Supplier must prepare a design specification with respect to the provision of the Software Solution and the Development Services (**Design Specification**).
- (b) The Supplier must prepare a Design Specification for the Customer's approval by the date specified in the Order Documents or as otherwise agreed by the Customer in writing. The Design Specification must:
 - (i) be based on, and consistent with, the Specifications;

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- (ii) enable the Software Solution to be installed within the Customer Environment; and
- (iii) provide a detailed technical explanation of how the Software Solution will provide the functions specified in the Specifications, including, as applicable, details of the processes, visual displays, screen layouts, system flowcharts, user interfaces and data flows.
- (c) The Design Specification will, when approved by the Customer in writing, become part of the Specifications.
- (d) For clarity, the Design Specification is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the Design Specification, including any updates to it.

5.4 Development process

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

5.5 Alternative project delivery methodology

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

5.6 Warranties in relation to Development Services

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

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

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6. Systems Integration Services**6.1 Application**

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

6.2 Provision of Systems Integration Services

- (a) The Supplier must provide the Systems Integration Services specified in the Order Documents. Except to the extent otherwise set out in the Order Documents, the Systems Integration Services will include:
 - (i) designing, providing, configuring, installing and testing the System; and
 - (ii) carrying out all other Systems Integration Services specified in the other Order Documents.
- (b) The Supplier must carry out all Systems Integration Services in accordance with clause 6 and the other requirements of the Agreement.
- (c) Except to the extent otherwise specified in the Order Documents, the Supplier will assume primary project management and control in relation to all Systems Integration Services, including:
 - (i) coordinating the Supplier's Activities with the Customer and Other Suppliers (where applicable); and
 - (ii) managing project risks and discharging responsibilities which are identified as the Supplier's responsibility in the Order Documents.
- (d) The Supplier must perform the Systems Integration Services at the times, and in accordance with the requirements, set out in the Order Documents (including any approved SI Plan and SI Specifications).

6.3 SI Plan and SI Specifications

- (a) The Supplier must, prior to performing the Systems Integration Services, prepare and deliver to the Customer for its approval:
 - (i) a systems integration implementation plan for carrying out the Systems Integration Services (**SI Plan**); and
 - (ii) specifications for the System (**SI Specifications**).
- (b) The SI Plan requirements and the SI Specifications will be specified in the Order Form.
- (c) Where the requirements for the SI Plan are not specified in the Order Form, the SI Plan must, at a minimum, include:
 - (i) an assessment and definition of:
 - A. the Customer Environment;
 - B. the System;

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- C. all relevant interfaces that are necessary in order for the System to properly interface with the Customer Environment;
 - D. the Customer's requirements and expectations in respect of the Systems Integration Services, including the Customer's business requirements and any objectives to be met by the Supplier in carrying out the Systems Integration Services;
 - E. the roles and responsibilities of the parties; and
 - F. any resources (including Customer Supplied Items) required to carry out the Systems Integration Services;
- (ii) a strategy for the delivery of the Systems Integration Services that is appropriate for the Customer's needs, including the staging and implementation of the Systems Integration Services and associated testing;
 - (iii) a Data Migration Plan (where applicable); and
 - (iv) such other details specified in the other Order Documents.
- (d) Unless otherwise specified in the Order Form, the SI Specifications must, at a minimum, include:
- (i) detailed technical and functional specifications for the System; and
 - (ii) such other details specified in the other Order Documents.
- (e) For clarity, the SI Plan and SI Specifications are Document Deliverables. Clause 8 (Document Deliverables) of the Agreement therefore applies to the SI Plan and SI Specifications, including any updates to them.

6.4 Warranties in relation to Systems Integration Services

The Supplier warrants that:

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

7. Data Services

7.1 Application

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

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7.2 Customer Provided Data

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

7.3 Further restrictions

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

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

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7.4 Backups

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

7.5 Data cleansing

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

- (a) eliminating records that are clearly duplicates;
- (b) correcting misspellings and errors;
- (c) ensuring that there are consistent descriptions, punctuation and syntax; and
- (d) resolving any other obvious inaccuracies, omissions or inconsistency issues,

to meet the level of accuracy and consistency stated in the Order Documents.

7.6 Data analysis

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

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7.7 Data migration

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

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- (c) For clarity, the Data Migration Plan is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the Data Migration Plan, including any updates to it.

7.8 Tools and Methodologies

- (a) Where the Data Services are to be performed using software, software tools, object libraries, methodologies or other tools owned by the Supplier or any other party (**Tools and Methodologies**), the Supplier must, at the Customer's request, provide the Customer with an overview of the Tools and Methodologies.
- (b) Where the Tools and Methodologies are required to perform the Data Services, or the Customer requires access to any of them after the completion of the Data Services, the Supplier must:
 - (i) where the Supplier owns any Tools and Methodologies, provide the Customer with a licence to use those Tools and Methodologies on the same licence terms as specified in clause 17 (Intellectual Property) of the Agreement; and
 - (ii) where any Tools and Methodologies are owned by a third party, comply with clause 17.7 (Third party Intellectual Property Rights) of the Agreement in relation to those Tools and Methodologies.

8. Other Professional Services

8.1 Application

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

8.2 General

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

8.3 Timeframe for provision

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

9. Managed Services

9.1 Application

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

9.2 General

- (a) The Supplier must provide the Managed Services in accordance with these Module Terms and the requirements set out in the other Order Documents.

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- (b) The Managed Services must be provided to meet the Specifications, standards and Dates for Delivery under the Agreement.

9.3 Transition-In Services

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

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

9.4 Procedures Manual

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

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

9.5 Managed Third Party Contracts

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

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- (iii) grant any consent or approval, or exercise any of the Customer's rights under the Managed Third Party Contracts; or
 - (iv) purport to act for, or on behalf of, the Customer or bind the Customer in any respect, whether at Law or in contract.
- (e) The Supplier must immediately notify the Customer's Representative in writing of any actual, suspected or alleged:
 - (i) breach;
 - (ii) Claim;
 - (iii) dispute; or
 - (iv) matter or circumstance that impacts the Customer's or Supplier's rights and remedies (as applicable),

under, or in connection with, any Managed Third Party Contract.
- (f) The Supplier must, if requested by the Customer, provide all necessary support and assistance required by the Customer in relation to the investigation, resolution and management of any of the matters or circumstances specified in clause 9.5(e).
- (g) Unless otherwise specified in the Payment Particulars, all costs associated with the management and novation of Third Party Contracts form part of the Price for the provision of the Managed Services.
- (h) The parties may specify an alternative approach in relation to the administration of Managed Third Party Contracts in the Order Form, in which case they will comply with that alternative approach.

9.6 Assets

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

9.7 Transition-Out Services

Without limiting clause 31 (Transition-Out Services) of the Agreement, where the Order Form specifies that the Supplier will provide Transition-Out Services, the Supplier must (unless otherwise specified in the Order Form):

- (a) assist the Customer to transition the Managed Services to a new service provider or to the Customer; and

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- (b) if requested by the Customer:
 - (i) assist the Customer to obtain the novation or assignment of the Managed Third Party Contracts to a new service provider or to the Customer;
 - (ii) deal with any Assets that were used in the provision of the Managed Services in accordance with the Customer's reasonable requirements; and
 - (iii) grant or assist the Customer (or new service provider) to procure sufficient rights and licences to continue using assets, software or other Materials used in the provision of the Managed Services.

PART D: GENERAL

10. Training

10.1 Training Services

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

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10.2 Training Reports

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

11. Additional and ancillary Deliverables and Services

11.1 Provision of additional and ancillary Deliverables and Services

The Supplier must supply:

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

11.2 Requirements

The Supplier must provide all additional, related, incidental and/or ancillary Deliverables and Services specified in clause 11.1 in accordance with all applicable requirements and timeframes under the Agreement.

12. Records

- (a) The Supplier must keep and maintain full and accurate records of all Services provided under this Module in accordance with the Agreement and this clause 12.
- (b) Unless otherwise specified in the Order Documents, the records must include the following details:
 - (i) any issues in relation to the Services that have arisen or been reported by the Customer;

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- (ii) a record of any Deliverables provided as part of the Services, including the:
 - A. date provided;
 - B. quantity provided; and
 - C. name and (where applicable) serial number of the Deliverables;
- (iii) any repairs, replacements or other remedial action taken by the Supplier or its Personnel in relation to any Deliverables (or parts or components) that have been supplied as part of the Services;
- (iv) any Delays associated with the provision of the Services and the reason for those Delays;
- (v) any actions that the parties need to take, or decisions that need to be made, to ensure the provision of the Services in accordance with the requirements of the Agreement;
- (vi) the progress of the Services against any Project Plan; and
- (vii) such other records in relation to the Services that are specified in the Order Form.
- (c) Without limiting the generality of the foregoing, where the Supplier provides any:
 - (i) Development Services, the Supplier must keep records that adequately detail and describe all changes to the Software; and
 - (ii) Managed Services, the Supplier must keep records relating to all actions and tasks the Supplier has taken, and the requests or communications it has made, with respect to any Managed Third Party Contracts.
- (d) The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 12 to the Customer's Representative in accordance with the times set out in the Order Documents or as otherwise reasonably required by the Customer.

13. Exceptions

- (a) The Supplier is not liable for any failure of the Services or associated Deliverables to comply with the Agreement to the extent arising as a result of:
 - (i) any Critical CSI not operating in accordance with the Agreement;
 - (ii) any misuse of the Services or associated Deliverables by the Customer;
 - (iii) in relation to Support Services for Hardware or Other ICT Deliverables, the Customer not implementing any Mandatory Engineering Changes;

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- (iv) in relation to Development Services for Software, the Customer's combination, operation or use of the relevant Software with any other product, equipment, software or document of the Customer or a third party except where:
 - A. such combination, operation or use is authorised under the Agreement;
 - B. the Supplier supplied the Software on the basis that it can be combined, operated or used with the Customer's or relevant third party products; or
 - C. such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Development Services and the associated Software;
- (v) damage caused by the operation of any Deliverables other than in accordance with any recommended and reasonable operating procedures specified in the Order Form and User Documentation; or
- (vi) any Virus, Denial of Service Attack or other malicious act that adversely affects the Services or associated Deliverables (or any software installed on the Deliverables or connected to them), except to the extent that the Virus, Denial of Service Attack or other malicious act was:
 - A. introduced or carried out by the Supplier or its Personnel;
 - B. caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or
 - C. due to the Supplier or its Personnel breaching the Agreement, including any failure to comply with the security obligations under the Agreement.
- (b) The Customer may, at its sole discretion, request the Supplier to provide Services in respect of correcting or resolving any of the issues set out in clause 13(a) and, if so, the Supplier must provide such Services on a time and materials basis, based on the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing. However, any issue that results from one or more of the circumstances specified in clauses 13(a)(iv)A to 13(a)(iv)C or clauses 13(a)(vi)A to 13(a)(vi)C must be rectified at the Supplier's sole cost and in accordance with the Agreement.

Annexure A: Definitions and interpretation

1. Definitions and interpretation

1.1 Definitions

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

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

Assets means the physical assets and items specified in the Order Form (or as otherwise agreed between the parties in writing) which are to be transferred to the Supplier in accordance with clause 9.6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

Unless as otherwise expressly specified, in this Module:

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

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Software Module (Non-Cloud)

Background

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

PART A: PRELIMINARIES

1. General**1.1 Scope**

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

1.2 Acknowledgements

The parties acknowledge and agree that the:

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

PART B: SOFTWARE LICENSING

2. Licensed Software**2.1 Provision of Licensed Software**

- (a) Except where otherwise specified, this Part B applies where it is specified in the Order Form that the Supplier will provide Licensed Software.
- (b) By the Dates for Delivery (or as otherwise agreed between the parties in writing), the Supplier must deliver or provide the Customer with access to (as applicable):
 - (i) the Licensed Software;

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

2.2 Installation by the Supplier

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

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

2.3 Backups

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

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

3. Licensing

3.1 Licence Period

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

3.2 Licensing model

- (a) The parties agree that the licensing model specified in the Order Form applies to the Licensed Software being provided under the Agreement.
- (b) Where the Licensed Software is licensed on a User Licensing Model, the following terms apply, unless otherwise expressly stated in the Order Form:
 - (i) there is no cap on the number of Permitted Users who may access and use the Licensed Software, except where otherwise specified in the Order Form; and
 - (ii) where the Order Form specifies that there is a cap on the number of Permitted Users, the Customer:
 - A. must ensure that only the number of Permitted Users specified in the Order Form (or as otherwise agreed between the parties in writing) use the Licensed Software; and
 - B. may, at its sole discretion, increase the number of Permitted Users at any time during the Licence Period (or while a licence is in place to use the Licensed Software), subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars.

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- (c) Where the Licensed Software is not licensed on a User Licensing Model, the Customer must ensure that it does not exceed any applicable consumption or other ceiling with respect to use of the Licensed Software as specified in the Order Form. The Customer may, at its sole discretion, increase its consumption or ceiling at any time during the Licence Period (or while a licence is in place to use the Licensed Software), subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars.

3.3 Scope of licence

- (a) Notwithstanding clauses 17.2, 17.4 and 17.5 of the Agreement, the parties agree that the licence rights with respect to the Licensed Software will be on the terms specified in this Module.
- (b) Unless otherwise specified in the Order Form, the Supplier grants (or must procure a grant) to the Customer and its Personnel a non-exclusive licence to access and use the Licensed Software for any purpose in connection with:
 - (i) the Customer performing its obligations, and exercising its rights, under the Agreement;
 - (ii) the full use of the Licensed Software as contemplated under the Agreement, including, where applicable, installing, operating, supporting, enhancing, upgrading and maintaining the Licensed Software or integrating it with other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (iii) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Licensed Software and associated Deliverables or systems that may integrate or interoperate with the Licensed Software;
 - (iv) the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; or
 - (v) such other Permitted Purpose specified in the Order Form.
- (c) For clarity, the Customer may use or make such number of copies of the Licensed Software as are reasonably required for:
 - (i) evaluation and training;
 - (ii) backup or disaster recovery;
 - (iii) archiving or record-keeping;
 - (iv) security purposes;
 - (v) the Customer's internal business or operational purposes; or
 - (vi) exercising any of the Customer's rights at Law or under the Agreement.
- (d) The Customer may sub-license or transfer its rights under clause 3.3 to any class of Permitted Users. The Customer must use its reasonable endeavours to ensure that Permitted Users only access and use the Licensed Software for the Permitted Purpose and in accordance with this Module.

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- (e) The parties acknowledge and agree that:
 - (i) the rights and licences specified in this clause 3.3 are included in the Price and will be provided to the Customer and Permitted Users on a royalty-free basis and at no additional charge to the Customer and Permitted Users, unless otherwise specified in the Order Form;
 - (ii) the Customer obtains no right, title or interest with respect to the Licensed Software, except to the extent expressly set out in the Agreement, including in this clause 3.3; and
 - (iii) nothing in this Module is intended to exclude or restrict any rights that the Customer has at Law, including under Part III, Division 4A of the *Copyright Act 1968* (Cth).

4. Updates and New Releases

4.1 Application

This clause 4 applies where:

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

4.2 Updates and New Releases

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

at no additional cost and when the Update and/or New Release becomes available, except where otherwise specified in the Order Form (in relation to either Updates or New Releases, or both).
- (b) All Updates and New Releases that the Supplier provides must conform to the security and other requirements of the Agreement and must not reduce or diminish the functionality, performance or availability of the Licensed Software.
- (c) To the extent reasonably practicable, the Supplier must:
 - (i) provide the Customer with written notice of all Updates and New Releases prior to installation; and
 - (ii) if requested to do so by the Customer, at the Supplier's sole cost (unless otherwise specified in the Order Form), demonstrate the extent to which the relevant Update and New Release is capable of providing the functionality and performance specified in the Specifications and Order Documents (including, where available, through the provision of release notes pertaining to the Update and New Release).

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- (d) Subject to clauses 4.2(e) and 4.2(f), the Customer is under no obligation to accept, approve or permit the installation (whether manually or automatically applied) of any Update or New Release offered by the Supplier pursuant to this clause 4.2 and a refusal by the Customer to implement an Update or New Release will not affect the Customer's entitlement to the Deliverables and Services.
- (e) Notwithstanding the above, the Customer must accept any Update that is designed to correct or redress a security vulnerability that is affecting the Licensed Software (Security Correction) but only to the extent that the Update complies with clause 4.2(b) and such other conditions specified in the Order Form.
- (f) If the Customer rejects the offer by the Supplier of an Update or New Release (other than any Security Correction), the Supplier must (unless otherwise specified in the Order Form) continue to maintain the version of the Licensed Software that the Customer is using for 18 months (or such other period as specified in the Order Form) from the date that the Customer provides written notice to the Supplier of the rejection of the Update or New Release. After this period, the parties acknowledge and agree that:
 - (i) the Licensed Software may have its usefulness reduced over time;
 - (ii) the Supplier may not be able to remedy any Defects in the Licensed Software; and
 - (iii) the Supplier is not responsible for any Defect in the Licensed Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the Update or New Release been installed.
- (g) If the Customer accepts an Update or New Release the:
 - (i) Specifications with respect to the Licensed Software will be deemed to be amended to the extent that the specifications for the Update and New Release supersede the existing Specifications;
 - (ii) Supplier must promptly update the User Documentation to the extent required to reflect the Update and New Release and, once updated, promptly provide a copy to the Customer;
 - (iii) Supplier must deliver the Update and New Release in a timely manner and in accordance with any timeframes agreed between the parties in writing; and
 - (iv) Agreement will continue to apply in all respects to the Update and New Release.

4.3 No restriction

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

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

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

5.2 Effect of transfer

Transfers under clause 5.1 will:

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

6. Additional licensing conditions**6.1 Restrictions**

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

6.2 End of Licence Period

- (a) Except where a perpetual licence has been granted to the Customer under the Agreement, within 20 Business Days following the end of the Licence Period (or such later period specified in the Order Form), the Customer must in accordance with the Order Form either destroy or return (as applicable) to the Supplier all copies of the Licensed Software that are in its possession or control.

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- (b) Notwithstanding clause 6.2(a), the Customer may retain a copy of the Licensed Software for archival or record-keeping purposes or to the extent authorised or required by Law.

7. Third parties

7.1 Third Party Components

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

7.2 Third party warranties

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

8. Audits

8.1 Records of usage

If specified in the Order Form, the:

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

8.2 Audit and verification

- (a) Subject to clause 8.2(c), the Supplier may, acting reasonably, undertake audits in accordance with this clause 8.2 to verify the Customer's compliance with the Licensed Software terms under the Agreement (**Software Audits**). All Software Audits will be conducted at the Supplier's sole cost.
- (b) The Supplier may undertake Software Audits in accordance with the approved Audit Procedure and at the times and the intervals specified in the Order Form or as otherwise agreed between the parties in writing.
- (c) The Supplier must:
 - (i) provide the Customer with at least 90 days' written notice prior to undertaking any Software Audits (or such other notice specified in the Order Form);

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- (ii) at the time of providing notice pursuant to clause 8.2(c)(i), provide to the Customer, for its approval, a draft copy of the processes and procedures that will be used to carry out the relevant Software Audit (**Audit Procedure**) and such other information that is reasonably required by the Customer to sufficiently understand the Audit Procedure; and
- (iii) if requested by the Customer, within two Business Days of the Customer's request, provide the Customer with information in relation to the Customer's licences and entitlements under the Agreement.
- (d) The Supplier must not install any tools or applications within the Customer Environment or systems in order to conduct any Software Audits without the Customer's prior written agreement.

8.3 Results and consequences of Software Audit

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

PART C: SOFTWARE SUPPORT SERVICES

9. Provision of Software Support Services

9.1 Application

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

9.2 Support Period

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

9.3 General

- (a) The Supplier must carry out the Software Support Services specified in the Order Form.
- (b) The Supplier must carry out all Software Support Services:
 - (i) in accordance with the requirements in this Part C and any additional requirements specified in the other Order Documents;

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- (ii) to meet any applicable Service Levels;
- (iii) in a manner that is consistent with the Customer's operating requirements (if any) and the Specifications; and
- (iv) in a manner that causes minimal disruption to Permitted Users and the Customer's operations.

10. Help desk

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

PART D: GENERAL

11. Training
11.1 Training Services

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

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- E. include such other detail as specified in the Order Documents.
- (c) For clarity, the training Plan is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the training Plan, including any updates to it.
- (d) Training will occur at the location(s) specified in the Order Documents or such other location(s) agreed by the Customer in writing.

11.2 Training Reports

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

12. Additional and ancillary Deliverables and Services

12.1 Provision of additional and ancillary Deliverables and Services

The Supplier must supply:

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

12.2 Requirements

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

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13. Exports

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

14. Records

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

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- (vii) such other records in relation to the Deliverables and Services that are specified in the Order Form.
- (c) The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 14 to the Customer's Representative in accordance with the times set out in the Order Documents or as otherwise reasonably required by the Customer.

15. Exceptions

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

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

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Annexure A: Definitions and interpretation**1. Definitions and interpretation****1.1 Definitions**

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

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

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

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

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

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

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

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

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

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

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

Permitted Users means:

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

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

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

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

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

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

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

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

1.2 Interpretation

Unless as otherwise expressly specified, in this Module:

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