



# Digital.NSW ICT Purchasing Framework

## ICT Agreement (ICTA)

between

**Department of Communities and Justice (ABN 36 433 875 185) for and on behalf of the State of New South Wales**

and

**ServiceNow Australia Pty Ltd (ABN 88 149 683 312).**

**Enterprise Service Management Platform  
(ServiceNow)Project**

**ICTA Module: [Cloud]**

**Agreement Reference No: [prj\_5269]**

## Contents

<b>PART A: PRELIMINARIES</b>	<b>1</b>
<b>1. Definitions and Agreement documents</b>	<b>1</b>
1.1 Defined terms and interpretation	1
1.2 Agreement documents	1
1.3 Order of precedence	2
1.4 Role of the Master ICT Agreement	2
1.5 Supplier's Documents	2
<b>2. Supplier's acknowledgments</b>	<b>3</b>
<b>3. Purchasing Services and/or Deliverables by Order</b>	<b>4</b>
3.1 Order Form	4
3.2 Electronic execution	4
3.3 Additional Orders	4
3.4 No exclusivity or minimum commitment	4
3.5 Additional Conditions	4
3.6 Reseller arrangements	5
<b>4. Relationship and governance</b>	<b>5</b>
4.1 General	5
4.2 Nature of relationship	5
4.3 Governance	5
<b>5. Term</b>	<b>5</b>
5.1 Initial Term	5
5.2 Renewal Period	5
<b>6. Performance of the Supplier's Activities</b>	<b>6</b>
6.1 General	6
6.2 Customer Supplied Items	6
6.3 ICT Accessibility	7
6.4 Co-operation with the Customer and Other Suppliers	7
6.5 Project management	8
6.6 Staged implementation	8
6.7 Delays	9
6.8 Extension of time	9
6.9 Delay costs	10
6.10 Site	11
<b>7. Transition-In</b>	<b>12</b>
7.1 Application	12
7.2 Transition-In Plan	12
7.3 Transition-In Services	12
<b>8. Document Deliverables</b>	<b>13</b>
8.1 General	13
8.2 Review	13
8.3 No obligation	14
8.4 User Documentation	14
<b>9. Defects</b>	<b>15</b>
<b>10. Change Control Procedure</b>	<b>16</b>
10.1 Change Requests	16
10.2 Process for submitting and agreeing to Change Requests	16
10.3 Electronic transactions	17

10.4	Acknowledgements.....	17
<b>11.</b>	<b>Personnel.....</b>	<b>18</b>
11.1	Nominated Personnel .....	18
11.2	Replacement of Nominated Personnel.....	18
11.3	Supplier's Personnel.....	19
11.4	Deed of Confidentiality and Privacy.....	20
11.5	Subcontracting .....	20
11.6	Background checks .....	21
11.7	Compliance with employment Laws .....	22
11.8	Non-solicitation .....	22
<b>12.</b>	<b>Compliance.....</b>	<b>22</b>
12.1	Compliance with Laws and directions .....	22
12.2	Policies, Codes and Standards .....	23
12.3	Policy Changes .....	23
12.4	Work health and safety .....	24
12.5	Work health and safety where Supplier's Activities include construction work .....	24
12.6	The environment.....	25
12.7	Conflicts of Interest.....	25
<b>13.</b>	<b>Modern Slavery .....</b>	<b>26</b>
13.1	Compliance .....	26
13.2	Information.....	26
13.3	Modern Slavery due diligence .....	27
13.4	Subcontractors.....	27
13.5	Response to Modern Slavery Incident.....	27
13.6	Termination .....	27
<b>14.</b>	<b>Acceptance Testing .....</b>	<b>27</b>
14.1	General .....	27
14.2	Testing by Supplier .....	28
14.3	Testing by the Customer .....	28
14.4	Effect of failure to meet Acceptance Criteria .....	29
14.5	Effect of Acceptance Certificate .....	30
<b>15.</b>	<b>Performance .....</b>	<b>30</b>
15.1	Performance obligations .....	30
15.2	Service standards and Service Levels .....	31
15.3	Consequences for failing to meet a Service Level .....	31
15.4	Performance reports .....	32
15.5	Performance reviews .....	33
15.6	Notice .....	33
15.7	Meetings .....	33
<b>16.</b>	<b>Liquidated Damages .....</b>	<b>33</b>
<b>17.</b>	<b>Intellectual Property.....</b>	<b>34</b>
17.1	Ownership of Existing Materials .....	34
17.2	Licence to use Existing Materials .....	34
17.3	Ownership of New Materials.....	35
17.4	Customer licence to use Supplier owned New Materials .....	35
17.5	Licence term .....	36
17.6	Supplier Licence to use Customer owned New Materials .....	36
17.7	Third party Intellectual Property Rights .....	36
17.8	Open Source Software .....	37
17.9	Consents and Moral Rights .....	37
17.10	Prohibited activities.....	38
17.11	Additional obligations.....	38
17.12	Warranties and acknowledgements .....	38

17.13	Replacement of Deliverables.....	38
<b>18.</b>	<b>Escrow.....</b>	<b>39</b>
<b>19.</b>	<b>Customer Data.....</b>	<b>39</b>
19.1	Obligations in relation to Customer Data.....	39
19.2	Security of Customer Data .....	40
19.3	Location of Customer Data .....	40
19.4	Backup of Customer Data .....	41
19.5	Restoration of lost Customer Data .....	41
19.6	Rights to access, use, extract and retrieve Customer Data .....	41
19.7	Record, retention, return and destruction of the Customer Data .....	42
19.8	General .....	42
<b>20.</b>	<b>Privacy .....</b>	<b>43</b>
20.1	Protection and use of Personal Information .....	43
20.2	Data Management and Protection Plan.....	44
20.3	No limitation of obligations.....	44
<b>21.</b>	<b>Security .....</b>	<b>44</b>
21.1	Scope of the Supplier's security obligations .....	44
21.2	Supplier's security obligations .....	45
21.3	Audits and compliance .....	46
<b>22.</b>	<b>Security Incidents .....</b>	<b>47</b>
22.1	Notification of Security Incidents .....	47
22.2	Actions required in relation to a Security Incident .....	48
<b>23.</b>	<b>Confidentiality .....</b>	<b>49</b>
<b>24.</b>	<b>Payment and invoicing .....</b>	<b>50</b>
24.1	Price.....	50
24.2	Benchmarking.....	50
24.3	Outcome of benchmarking .....	51
24.4	Invoicing.....	52
24.5	Payment.....	53
24.6	Payment disputes .....	53
24.7	Set off .....	53
24.8	Taxes .....	53
<b>25.</b>	<b>Business contingency and Disaster recovery .....</b>	<b>54</b>
25.1	Business contingency.....	54
25.2	Business Contingency Plan.....	54
25.3	Disasters .....	55
<b>26.</b>	<b>Step-in .....</b>	<b>55</b>
26.1	Step-In Rights .....	55
26.2	Conclusion of Step-In .....	56
26.3	No prejudice.....	57
<b>27.</b>	<b>Insurance .....</b>	<b>57</b>
<b>28.</b>	<b>Performance Guarantee and Financial Security .....</b>	<b>58</b>
28.1	Performance Guarantee .....	58
28.2	Financial Security .....	58
28.3	Costs.....	58
<b>29.</b>	<b>Termination.....</b>	<b>58</b>
29.1	Termination for cause by the Customer .....	58
29.2	Termination for convenience by the Customer.....	59
29.3	Consequences of reduction of scope .....	60

29.4	Termination for cause by the Supplier.....	60
29.5	Dispute resolution.....	60
29.6	Survival of rights on termination or reduction in scope.....	60
<b>30.</b>	<b>Suspension.....</b>	<b>61</b>
<b>31.</b>	<b>Transition-Out Services.....</b>	<b>61</b>
31.1	Application of this clause.....	61
31.2	Transition-Out Plan.....	61
31.3	General.....	62
<b>32.</b>	<b>Consequences of expiry or termination.....</b>	<b>62</b>
32.1	Extracting or retrieving Customer Data.....	62
32.2	Confidential Information and intellectual property.....	62
<b>33.</b>	<b>Warranties.....</b>	<b>63</b>
33.1	Mutual warranties.....	63
33.2	General Supplier warranties.....	63
33.3	Warranties in relation to Supplier's Activities.....	63
33.4	Implied warranties.....	64
<b>34.</b>	<b>Indemnities and liability.....</b>	<b>64</b>
34.1	Indemnities.....	64
34.2	Third Party IP Claims.....	64
34.3	Indemnities not affected by insurance.....	65
34.4	Status of indemnities.....	65
34.5	Liability cap.....	65
34.6	Exclusions of liability.....	66
34.7	Application and contribution.....	67
34.8	Mitigation.....	67
<b>35.</b>	<b>Dispute resolution.....</b>	<b>67</b>
35.1	General.....	67
35.2	Escalation.....	67
35.3	Alternative dispute resolution.....	68
35.4	Acknowledgment.....	68
35.5	Costs.....	68
35.6	Continue to perform.....	68
<b>36.</b>	<b>Force Majeure.....</b>	<b>68</b>
36.1	Force Majeure Event.....	68
36.2	Notification and diligence.....	69
36.3	Liability not relieved.....	69
36.4	Prolonged Force Majeure Event.....	69
<b>37.</b>	<b>Reports and audits.....</b>	<b>69</b>
37.1	Records and reports.....	69
37.2	Audits and inspections.....	70
37.3	Conduct of audits and inspections.....	71
37.4	Survival.....	72
<b>38.</b>	<b>Proportionate liability.....</b>	<b>72</b>
<b>39.</b>	<b>General.....</b>	<b>72</b>
39.1	Government information.....	72
39.2	Personal Property Securities Act.....	73
39.3	No use of the Customer's name or logo.....	73
39.4	Prior work.....	73
39.5	Entire agreement.....	74
39.6	Variation.....	74
39.7	Survival and merger.....	74

39.8	Severability .....	74
39.9	Waiver .....	74
39.10	Cumulative rights .....	74
39.11	Further assurances .....	74
39.12	Assignment, novation and other dealings .....	74
39.13	Notices .....	75
39.14	Construction .....	76
39.15	Expenses .....	76
39.16	English language .....	76
39.17	Governing Law .....	76
<b>Schedule 1 - Definitions and interpretation .....</b>		<b>78</b>
<b>Schedule 2 - Order Form .....</b>		<b>93</b>
PART A: ICTA .....		93
PART B: Cloud Module .....		106
PART C: Services Module .....		111
PART D: Software Module (Non-Cloud) .....		111
PART E: Hardware and Other ICT Deliverables Module .....		111
Annexure A to Order Form – Supplier's Documents .....		113
Annexure B to Order Form – Statement of Work.....		<b>Error! Bookmark not defined.</b>
Annexure C to Order Form – Supplementary Customer Requirements .....		114
Annexure D to Order Form – Additional Conditions .....		115
Annexure E to Order Form - Customer Policies .....		<b>Error! Bookmark not defined.</b>
<b>Schedule 3 - Statement of Work Template .....</b>		<b>123</b>
<b>Schedule 4 - Payment Schedule .....</b>		<b>124</b>
<b>Schedule 5 - Change Request Form .....</b>		<b>125</b>
<b>Schedule 6 - Deed of Confidentiality and Privacy .....</b>		<b>126</b>
<b>Schedule 7 - Escrow Deed .....</b>		<b>130</b>
<b>Schedule 8 - Performance Guarantee .....</b>		<b>131</b>
<b>Schedule 9 - Financial Security .....</b>		<b>132</b>

# ICT Agreement (ICTA)

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**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.

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## PART A: PRELIMINARIES

### 1.        Definitions and Agreement documents

#### 1.1       Defined terms and interpretation

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

#### 1.2       Agreement documents

This Agreement comprises the following documents:

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

### 1.3 Order of precedence

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

### 1.4 Role of the Master ICT Agreement

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

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

### 1.5 Supplier's Documents

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

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## 2. Supplier's acknowledgments

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

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### **3. Purchasing Services and/or Deliverables by Order**

#### **3.1 Order Form**

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

#### **3.2 Electronic execution**

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

#### **3.3 Additional Orders**

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

#### **3.4 No exclusivity or minimum commitment**

The Supplier acknowledges and agrees that:

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

#### **3.5 Additional Conditions**

The parties agree to comply with any Additional Conditions.

### 3.6 Reseller arrangements

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

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## 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.

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## 5. Term

### 5.1 Initial Term

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

### 5.2 Renewal Period

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

## PART B: SUPPLIER'S ACTIVITIES

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### 6. Performance of the Supplier's Activities

#### 6.1 General

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

#### 6.2 Customer Supplied Items

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

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

### 6.3 ICT Accessibility

- (a) The Supplier acknowledges that the Customer is committed to:
  - (i) meeting Accessibility Standard AS EN 301 549 (**Accessibility Standard**); and
  - (ii) ensuring that the Services and Deliverables support access to information and communications technology for all Customer Users, regardless of disability.
- (b) Without limiting any other obligation under this Agreement, the Supplier must ensure that, to the extent reasonably practicable, all Services and Deliverables:
  - (i) are available to Customer Users on a non-discriminatory accessible basis and do not infringe anti-discrimination Laws; and
  - (ii) meet the Accessibility Standard and any other accessibility requirements to the extent specified in the Order Documents (unless otherwise required by the Order Form).

### 6.4 Co-operation with the Customer and Other Suppliers

- (a) Each party agrees to reasonably co-operate with the other party and its Personnel to promote the timely progress of the activities contemplated by this Agreement.
- (b) The Supplier acknowledges that the Customer may require the Supplier to co-operate and work collaboratively with any Other Suppliers in connection with the provision of the Supplier's Activities.

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

## 6.5 Project management

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

## 6.6 Staged implementation

- (a) Where the Order Documents specify that the Supplier's Activities will be carried out in different Stages, the Supplier must:
  - (i) carry out each Stage in accordance with the requirements and staging so specified in the Order Documents; and
  - (ii) not commence work on a Stage until it receives written notice from the Customer to proceed with the work in that Stage. Unless otherwise agreed by the parties in writing, the execution of this Agreement by the

Supplier and the Customer is deemed to be sufficient notice to proceed with work on any first Stage described in the Order Documents.

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

## 6.7 Delays

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

## 6.8 Extension of time

- (a) If a Delay occurs and that Delay was beyond the reasonable control of the Supplier, the Supplier may request an extension of time on the terms of this clause 6.8.
- (b) To request an extension of time under clause 6.8(a), the Supplier must within five Business Days of the commencement of the occurrence of the Delay, give the Customer's Representative written notice of the:
  - (i) particulars of the Delay and the occurrence causing the Delay; and
  - (ii) extension of time claimed in days, together with the basis for calculating that period.

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

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

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

## 6.9 Delay costs

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



**(Additional Activities);**

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

**6.10 Site**

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

to obtain adequate access to carry out the Supplier's Activities; and

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

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## **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.

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## 8. Document Deliverables

### 8.1 General

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

### 8.2 Review

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

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

### **8.3 No obligation**

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

### **8.4 User Documentation**

- (a) The Supplier must, at its sole cost, provide the User Documentation to the Customer's Representative except where otherwise specified in the Order Form.
- (b) The User Documentation must be supplied in an electronic format and by the time specified in the Order Documents or, where no timeframe is specified, where reasonably required by the Customer.

- (c) Where it is specified in the Order Form that the Customer also requires any User Documentation in a hard copy format (or where otherwise requested by the Customer), the Supplier must provide the Customer's Representative with at least one copy of the User Documentation at no additional charge to the Customer.
- (d) The Supplier must ensure that any User Documentation that is supplied to the Customer's Representative:
  - (i) provides adequate instructions on how to enable the Customer and Customer Users to utilise the Services and Deliverables (as applicable) without reference to the Supplier; and
  - (ii) complies with the same requirements as specified in clause 8.1(d) in relation to Document Deliverables.
- (e) The Supplier must update the User Documentation as is needed for the Customer and Customer Users to be able to use the Services and Deliverables (as applicable) in an efficient and effective manner.

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## 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.
- (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.

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## **10. Change Control Procedure**

### **10.1 Change Requests**

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

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

### **10.2 Process for submitting and agreeing to Change Requests**

- (a) Each Change Request must be submitted in a form substantially similar to the Change Request Form included at Schedule 5 (or such other form approved by the Customer) and containing the details specified in that Change Request Form or such other details as may be reasonably required by the Customer.

- (b) Where rates and charges for any Change Requests, and/or a pricing methodology, have been specified in the Payment Particulars, then the Prices in the relevant Change Request must not exceed those rates and charges and must be based on any applicable pricing methodology specified in the Payment Particulars. Where no rates, charges or methodology are specified, prices must be based on those costs and expenses reasonably and necessarily incurred by the Supplier to implement the relevant Change Request.
- (c) The party receiving the draft Change Request Form must notify the other party in writing as to whether it:
  - (i) approves or rejects the Change Request; or
  - (ii) requires further information in relation to any aspect of the Change Request.
- (d) The parties must respond to Change Requests and requests for information regarding Change Requests within seven Business Days of receiving the request or such other timeframe as reasonably agreed between the parties having regard to the nature and substance of the work required by the relevant request.
- (e) Each party will act reasonably in preparing, submitting, reviewing, considering and assessing Change Requests.
- (f) If a Change Request is approved, the:
  - (i) parties must promptly execute the relevant Change Request Form; and
  - (ii) Supplier must perform the Supplier's Activities in accordance with the executed Change Request Form.
- (g) No Change Request is binding on either party or to be carried out by the Supplier until the relevant Change Request Form is executed by both parties in accordance with this clause 10.

### **10.3 Electronic transactions**

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

### **10.4 Acknowledgements**

The parties acknowledge and agree that:

- (a) the Change Control Procedure does not apply to changes to the Core Terms, the Module Terms or any Additional Conditions, which must be effected in accordance with the variation procedure specified in clause 39.6;
- (b) the Customer does not need to follow the Change Control Procedure with respect to:
  - (i) Additional Orders submitted in accordance with clause 3.3; or
  - (ii) the Customer's exercise of its unilateral right to:

- A. remove from the scope of this Agreement any future Stages pursuant to clause 6.6(c); or
  - B. reduce the scope of this Agreement pursuant to clause 29;
- (c) the Customer is not obliged to pay the Supplier for implementing any Change Request unless the parties have complied with this clause 10;
- (d) the Customer is under no obligation to place Change Requests;
- (e) if any Change Request made pursuant to the Change Control Procedure omits or removes any part of the Supplier's Activities, the Customer may thereafter either provide those Supplier's Activities itself or employ or engage third parties to do so;
- (f) the Customer may, in its sole discretion, agree or reject a Change Request;
- (g) no Change Request will invalidate, or amount to a repudiation of, this Agreement; and
- (h) each party must bear its own costs in preparing, submitting and negotiating any Change Request.

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## **11. Personnel**

### **11.1 Nominated Personnel**

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

### **11.2 Replacement of Nominated Personnel**

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

- (a) approved by the Customer. The Customer must act reasonably in granting or withholding approval, or granting approval subject to conditions. If requested by the Customer, the Supplier must provide the Customer with such information as the Customer requires concerning any proposed replacement of any Nominated Personnel (including a resume and an opportunity to interview them); and



- (b) of equal or superior ability to, and has the required experience of, the original Nominated Personnel and meets the Personnel requirements specified in this Agreement.

### 11.3 Supplier's Personnel

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

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

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

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

#### **11.4 Deed of Confidentiality and Privacy**

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

#### **11.5 Subcontracting**

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

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

## **11.6 Background checks**

- (a) The Supplier must:
  - (i) prior to involving any of its Personnel in carrying out the Supplier's Activities, undertake all necessary background checks of those Personnel to ensure that they are fit and proper to provide the Supplier's Activities; and
  - (ii) monitor and assess its Personnel throughout their involvement in the Supplier's Activities to ensure that they remain fit and proper to provide the Supplier's Activities.
- (b) Without limiting the generality of clause 11.6(a), if specified in Item 22 of the Order Form or where not so specified in that Item but reasonably required by the Customer, the Supplier must:
  - (i) carry out any specific background checks of its Personnel as specified in Item 22 of the Order Form or as requested by the Customer, including criminal record and "Working with Children" checks; and
  - (ii) provide the results of those checks to the Customer's Representative within the timeframe specified in Item 22 of the Order Form, or if no time is specified, within five Business Days of receipt (or within such other time as reasonably required by the Customer).

- (c) Where the outcome of a background check reveals that any of the Supplier's Personnel are not fit and proper to be involved in the provision of the Supplier's Activities, the Supplier must not use those Personnel with respect to such activities.
- (d) The Supplier acknowledges and agrees that:
  - (i) all background checks will be undertaken at the Supplier's sole cost, unless otherwise agreed by the Customer in writing;
  - (ii) the Customer may provide the results of any background checks to 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
  - (iv) irrespective of the cost of complying with the Policy Change, the Supplier's compliance with its obligations under clause 12.1 would involve the Supplier complying with that Policy Change in any event,

then the Supplier must comply with the Policy Change at no additional cost to the Customer.
- (b) If neither clauses 12.3(a)(iii) nor 12.3(a)(iv) apply and the Supplier cannot comply with a Policy Change without incurring material additional cost and expense, then:
  - (i) the Supplier must promptly notify the Customer in writing of the additional, incremental cost and expense (calculated on a cost-only and zero-margin basis) that would be directly attributable to its compliance with the Policy Change, accompanied with evidence to substantiate the

additional, incremental costs and expenses (including information as to how those costs and expenses have been calculated); and

- (ii) following receipt of such notification, the Customer may:
  - A. approve the incurrence of the costs and expenses notified to it under clause 12.3(b)(i), in which case the Supplier must comply with the relevant Policy Change and, subject to so complying, will be entitled to invoice the Customer for such costs and expenses;
  - B. reject the incurrence of the costs and expenses notified to it under clause 12.3(b)(i), in which case, the Supplier will not be required to incur those costs or to comply with the Policy Change; or
  - C. require the Supplier to, in which case the Supplier must, participate in reasonable good faith discussions with the Customer in relation to an alternative approach to managing the Policy Change.

## 12.4 Work health and safety

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

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

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

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

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

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

## **12.6 The environment**

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

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

## **12.7 Conflicts of Interest**

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

## 13. Modern Slavery

### 13.1 Compliance

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

### 13.2 Information

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

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



### 13.3 Modern Slavery due diligence

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

### 13.4 Subcontractors

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

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

### 13.5 Response to Modern Slavery Incident

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

### 13.6 Termination

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

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

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## 14. Acceptance Testing

### 14.1 General

- (a) Unless otherwise specified in the Order Form, this clause 14 will apply in relation to the supply of any Deliverables that are not Documents.

- (b) Where the parties have agreed further details as to the form or the conduct of Acceptance Tests in the Order Documents, those details apply in addition to this clause 14, except to the extent expressly stated in the Order Form.

## **14.2 Testing by Supplier**

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

to demonstrate that the tests have been successfully completed in accordance with clause 14.2.

## **14.3 Testing by the Customer**

- (a) The Customer may carry out Acceptance Tests in respect of each Deliverable to which Acceptance Testing applies and the Supplier must provide all reasonable assistance required by the Customer in connection with the Customer's Acceptance Testing.
- (b) If the Customer carries out Acceptance Tests, the Customer must conclude the Acceptance Tests in accordance with any timeframes specified in the Order Documents or, where no timeframes are specified, within a time reasonably determined by the Customer.
- (c) Following completion of the Customer's Acceptance Testing in respect of a Deliverable, the Customer must either:
  - (i) provide to the Supplier an Acceptance Certificate in respect of that Deliverable; or
  - (ii) notify the Supplier that the Acceptance Criteria in respect of that Deliverable have not been met.
- (d) Neither the full or partial Acceptance of any Deliverable nor any exercise by the Customer of any option or other right under this clause 14 will:

- (i) operate as a sole or exclusive remedy; or
  - (ii) limit or prejudice any rights or remedies of the Customer under this Agreement or at Law.
- (e) Where the Deliverable meets the Acceptance Criteria, the Customer must issue the Acceptance Certificate no later than 10 Business Days from completion of the Acceptance Testing, or within such other timeframe specified in the Order Documents.
- (f) Where the period referred to in clause 14.3(e) elapses without the Customer either providing an Acceptance Certificate to the Supplier in respect of that Deliverable or notifying the Supplier that the Acceptance Criteria have not been met, the Supplier must submit to the Customer's Representative a written reminder notice identifying the Deliverable in respect of which it requires a decision by the Customer. If the Customer does not take one of the actions referred to in clause 14.3(c) or otherwise communicate with the Supplier in relation to that reminder notice within 15 Business Days of its receipt, then the relevant Deliverable will be deemed to have been Accepted by the Customer.

#### **14.4 Effect of failure to meet Acceptance Criteria**

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

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

## 14.5 Effect of Acceptance Certificate

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

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## 15. Performance

### 15.1 Performance obligations

The Supplier must:

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

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

## 15.2 Service standards and Service Levels

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

## 15.3 Consequences for failing to meet a Service Level

- (a) If the Supplier fails to meet any applicable Service Levels, it will:
  - (i) notify the Customer of the Service Level failure in accordance with clause 15.6;

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

## 15.4 Performance reports

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

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

- (c) the additional reports specified in the Module Terms and Order Form for the time period specified in those documents (which may include, where so specified, access to real-time or near-real time reporting capability); and
- (d) any other reports as reasonably requested by the Customer from time to time, including as may be required by the Customer to enable the Customer to meet its internal or New South Wales Government compliance, regulatory and operational reporting obligations.

## 15.5 Performance reviews

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

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## 16. Liquidated Damages

- (a) This clause 16 applies if Item 29 of the Order Form provides for Liquidated Damages to be payable in relation to a failure by the Supplier to meet a Key Milestone.
- (b) If the Supplier fails to meet a Key Milestone, the Supplier must pay the Customer the amount of Liquidated Damages set out in, or otherwise calculated in accordance with, Item 29 of the Order Form in relation to the period between the relevant Key Milestone and the date on which the:
  - (i) Supplier achieves the relevant Key Milestone; or
  - (ii) Customer terminates the relevant Order (or this Agreement),
 but subject always to the maximum number of days (if any) for which Liquidated Damages are payable, or maximum percentage of the value of applicable Prices, as may be specified in Item 29 of the Order Form.
- (c) The Supplier acknowledges that the Liquidated Damages payable under this clause 16 are a reasonable and genuine pre-estimate of the Loss likely to be suffered by the Customer in respect of a failure by the Supplier to meet the relevant Key

Milestone. However, they do not limit the rights or remedies of the Customer to claim Loss from the Supplier in the event that the amount of Loss actually incurred by the Customer exceeds such genuine pre-estimate, in the amount of the difference between such Loss actually incurred and the Liquidated Damages payable under this clause 16.

- (d) The Supplier will not be liable to pay Liquidated Damages to the extent that the Supplier's failure to achieve a Key Milestone was caused or contributed to by the:
  - (i) breach or negligence of the Customer;
  - (ii) unavailability or failure of any Critical CSI; or
  - (iii) acts or omissions of an Other Supplier.

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## 17. Intellectual Property

### 17.1 Ownership of Existing Materials

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

### 17.2 Licence to use Existing Materials

- (a) Unless otherwise specified in the applicable Module Terms or in Item 37 of the Order Form, the Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate and distribute any Intellectual Property Rights in the Supplier's Existing Materials for any purpose in connection with the:
  - (i) Customer performing its obligations and exercising its rights under this Agreement;
  - (ii) full use of any Services and/or Deliverables in which the Supplier's Existing Material is incorporated, including installing, operating, upgrading, modifying, supporting, enhancing and maintaining the Deliverables or integrating them with any other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
  - (iii) performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Deliverables and systems that may integrate or interoperate with the Deliverables; or
  - (iv) carrying out, or exercise, of the functions or powers of the Customer, a Government Agency or the Crown, including any statutory requirements concerning State records or auditing.
- (b) Where:
  - (i) the Supplier's Existing Material is incorporated into any New Materials; and
  - (ii) clause 17.4(b) applies in respect of those New Materials,

then the licence granted in clause 17.2(a) will also include, in respect of the Supplier's Existing Materials, an equivalent right and licence to that described in clause 17.4(b), to the extent required to support the exploitation and



commercialisation of the Intellectual Property Rights in the relevant New Materials under that clause (but excluding commercial exploitation of the Supplier's Existing Materials independently of the New Materials in which they are incorporated).

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

### **17.3 Ownership of New Materials**

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

### **17.4 Customer licence to use Supplier owned New Materials**

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

owned, operated or maintained by the Customer or a Government Agency;

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

## 17.5 Licence term

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

## 17.6 Supplier Licence to use Customer owned New Materials

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

## 17.7 Third party Intellectual Property Rights

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

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

- (c) otherwise, not use any third party Intellectual Property Rights in the provision of the Services or the production of any Deliverables.

## 17.8 Open Source Software

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

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

## 17.9 Consents and Moral Rights

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

- (ii) Moral Rights consents from all authors of that CSI,

to the extent required to enable the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this Agreement with respect to that CSI.

## **17.10 Prohibited activities**

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

## **17.11 Additional obligations**

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

## **17.12 Warranties and acknowledgements**

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

## **17.13 Replacement of Deliverables**

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

- (a) procure for the Customer the right to continue to use the Services and/or Deliverables on terms no less favourable than those set out in this Agreement;
- (b) promptly replace or modify the Services and/or Deliverables so that the alleged infringement ceases and the replaced or modified Services and/or Deliverables provides the Customer with no less functionality and performance as that required by this Agreement; or

- (c) only where the options in paragraphs (a) and (b) are not reasonably possible and subject to prior consultation with and receipt of approval from the Customer, accept return of the affected Deliverable or cease to provide the affected Service (as applicable) and, within 30 days, refund the Customer any fees paid for the relevant Service and/or Deliverable, subject to any reasonable deduction for any in-production use already made by the Customer of the relevant Service and/or Deliverable.

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## 18. Escrow

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

## PART C: DATA AND SECURITY

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### 19. Customer Data

#### 19.1 Obligations in relation to Customer Data

- (a) This clause 19 applies where the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Customer Data in connection with this Agreement.
- (b) The Supplier acknowledges and agrees that it obtains no right, title or interest with respect to any Customer Data, other than a right to use Customer Data for the sole purpose of, and only to the extent required for, the carrying out of the Supplier's Activities in accordance with this Agreement.
- (c) As between the Supplier and Customer, all rights in and in relation to Customer Data remain with the Customer at all times and the Supplier assigns all rights, title and interest in the Customer Data to the Customer on creation. The Supplier agrees to do all things necessary to assign or vest ownership of all rights in Customer Data to the Customer on creation.
- (d) The Supplier must:

- (i) not use any Customer Data for any purpose other than for the sole purpose of, and only to the extent required for, carrying out the Supplier's Activities in accordance with this Agreement;
- (ii) not sell, assign, lease or commercially transfer or exploit any Customer Data;
- (iii) not perform any data analytics on Customer Data, except to the sole extent permitted by this Agreement;
- (iv) ensure that all of its Personnel who access, or have the ability to access, Customer Data are appropriate to do so, including passing any background or security checks as required by this Agreement;
- (v) apply to the Customer Data the level of security and (if applicable) encryption that is required under this Agreement;
- (vi) apply technical and organisational controls which are appropriate to ensure that all Customer Data is at all times protected from any unauthorised access, modification or disclosure and only handled and processed in accordance with the terms of this Agreement and any other security requirements reasonably specified by the Customer; and
- (vii) ensure that Customer Data is at all times managed in accordance with the *State Records Act 1998* (NSW) (to the extent applicable); and
- (viii) ensure that its Personnel (including subcontractors) comply with this clause 19.1(d) and manage and safeguard Customer Data in accordance with all other requirements of this Agreement.

## 19.2 Security of Customer Data

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

## 19.3 Location of Customer Data

- (a) The Supplier must not:
  - (i) transfer, store, process, access, disclose or view Customer Data; or
  - (ii) perform any of its obligations under this Agreement which could involve Customer Data being stored, processed, accessed, disclosed or viewed, outside of New South Wales, Australia, except in accordance with clause 19.3(b).
- (b) Notwithstanding clause 19.3(a), the Supplier may transfer, store, process, access, disclose or view Customer Data outside of New South Wales:
  - (i) if permitted under the Order Form or any relevant Module Terms;

- (ii) at the locations specified in the Order Documents (or as otherwise agreed to in writing in advance by the Customer); and
- (iii) subject to the Supplier's and its Personnel's compliance with the Data Location Conditions.

#### **19.4 Backup of Customer Data**

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

#### **19.5 Restoration of lost Customer Data**

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

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

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

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

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

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

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

- (a) If specified in the Order Form, the Supplier must:
  - (i) establish, keep and maintain complete, accurate and up-to-date records of all Customer Data accessed, collected or changed by it; and
  - (ii) make copies of the records referred to in clause 19.7(a)(i) available to the Customer immediately upon request.
- (b) On the date that any Customer Data is no longer needed for the purposes of the Supplier carrying out the Supplier's Activities (or should the Customer notify the Supplier that the Customer Data is no longer needed), the Supplier must at its sole cost:
  - (i) immediately stop using the relevant Customer Data (except as permitted under this Agreement); and
  - (ii) at the Customer's direction (subject to clause 19.7(c)):
    - A. securely and permanently destroy all records and backups of the Customer Data in accordance with the timeframes under this Agreement and supply the Customer's Representative with a certificate of destruction that confirms that this has occurred; or
    - B. securely return all records of Customer Data to the Customer in accordance with the timeframes under this Agreement.
- (c) The Supplier will be entitled to retain copies of records of Customer Data to the extent, and only for the period, that such retention is mandated by any Laws to which the Supplier is subject.
- (d) The Supplier acknowledges and agrees that:
  - (i) where the Order Documents specify additional requirements for the capture and retention of audit log data, including categories of data and periods of retention, the Supplier must comply with those requirements; and
  - (ii) notwithstanding anything to the contrary in this Agreement, no Customer Data should be destroyed until the Supplier has met the data retrieval requirements under clause 32.1.

## 19.8 General

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



## 20. Privacy

### 20.1 Protection and use of Personal Information

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

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## **21. Security**

### **21.1 Scope of the Supplier's security obligations**

- (a) Without limiting any other security obligation under this Agreement, the Supplier's security obligations under this clause apply to:

- (i) the Supplier's Activities; and
  - (ii) Customer Data and Personal Information, where and to the extent that the Supplier or its Personnel is in the possession of, controls, or is able to control, such data and information.
- (b) For the purposes of this clause 21, "**control**" includes controlling, managing, processing, generating, capturing, collecting, transferring, transmitting, deleting and destroying.

## 21.2 Supplier's security obligations

- (a) The Supplier must implement, maintain and enforce a formal program of technical and organisational security measures (including an audit and compliance program) relating to ICT security and cyber security that is in accordance with:
- (i) this clause 21; and
  - (ii) the standards or requirements specified in Item 40 of the Order Form,
- (Security Program)**, provided that, where clause 21 and the standards or requirements specified in the Order Form both address standards in respect of the same subject matter, the Security Program must reflect the higher standard.
- (b) The Security Program must be designed to:
- (i) monitor, audit, detect, identify, report and protect against Security Incidents, Viruses, and any other threats or hazards to the security or integrity of the Customer's operations or the Services and Deliverables in carrying out the Supplier's Activities;
  - (ii) ensure the security (including the confidentiality, availability and integrity) of the Services and Deliverables in accordance with the requirements of this Agreement;
  - (iii) ensure the continuity of the Customer's access to, and use of, the Services and Deliverables and in a manner that achieves any applicable Service Levels. This includes continuity of access and use during any business continuity event, Disaster recovery event, scheduled or unscheduled maintenance and similar events;
  - (iv) manage any potential security risks in the Supplier's supply chains that bear upon the Supplier's Activities;
  - (v) monitor, detect, identify and protect against fraud and corruption by the Supplier's organisation and the Supplier's Personnel; and
  - (vi) ensure that the Security Program is comprehensive in covering all components of the Supplier's Activities and protects data in accordance with this Agreement.
- (c) Without limiting its obligations under clause 21.2(a), the Supplier must ensure its Security Program complies, and is consistent, with the Policies, Codes and Standards (to the extent applicable to security).
- (d) The Supplier must regularly review and continuously improve the Security Program to ensure it remains current and up-to-date and continues to satisfy the requirements of this clause 21.2 and is in accordance with Best Industry Practice.

- (e) If specified in Item 40 of the Order Form, the Supplier must have, obtain and maintain from the Commencement Date and for the duration of the Supplier's Activities the security certifications specified or referenced in Item 40 of the Order Form from an accredited, independent, third party register or accredited, independent third party certification body. Unless otherwise specified in Item 40 of the Order Form, the certifications must be updated at least annually and must comply with any specific certification requirements set out in the Order Form.
- (f) Without limiting this clause 21.2, the Supplier must comply with any additional security obligations or standards specified in the Order Form.

### 21.3 Audits and compliance

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

which must contain (at a minimum) full and complete details of information and reports insofar as they relate to the Supplier's Activities. Where the Supplier is not permitted to provide the Customer with any of the foregoing (due to confidentiality

obligations to third parties or because to do so would cause the Supplier to breach any Law or relevant security certification that the Supplier is subject to), the Supplier may (acting reasonably) redact those components that it is not permitted to provide to the Customer but only to the fullest extent needed to prevent the Supplier's non-compliance.

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

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## **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,

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 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:
    - 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.

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## 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
  - 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

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### 24. Payment and invoicing

#### 24.1 Price

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

#### 24.2 Benchmarking

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



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

### 24.3 Outcome of benchmarking

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

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

## 24.4 Invoicing

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

## 24.5 Payment

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

## 24.6 Payment disputes

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

## 24.7 Set off

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

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

## 24.8 Taxes

- (a) Subject to clause 24.8(b), the Price is inclusive of, and the Supplier is responsible for paying, all Taxes levied or imposed in connection with the provision of the Supplier's Activities under this Agreement.
- (b) Unless otherwise specified, all amounts specified in this Agreement are exclusive of GST.
- (c) The Customer must, subject to receipt from the Supplier of a Correctly Rendered Invoice, pay any GST that is payable in respect of any taxable supply made under this Agreement in addition to the amount payable (exclusive of GST) for the taxable supply. GST is payable at the same time as the amount payable for the taxable supply to which it relates.

- (d) Where the Customer is required by any applicable Law to withhold any amounts from the payments made by it to the Supplier under this Agreement, the Customer:
  - (i) may withhold such amounts and will not be required to gross-up its payments to the Supplier for any amounts withheld; however
  - (ii) will provide the Supplier with a certificate of withholding or such other reasonable evidence of such withholding, to facilitate the Supplier's claims or deductions with the relevant taxing authority.

## PART E: RISK ALLOCATION AND MANAGEMENT

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### 25. Business contingency and Disaster recovery

#### 25.1 Business contingency

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

#### 25.2 Business Contingency Plan

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

- (g) For clarity, the Business Contingency Plan is a Document Deliverable. Clause 8 therefore applies to the Business Contingency Plan, including any updates to it.

## 25.3 Disasters

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

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

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## 26. Step-in

### 26.1 Step-In Rights

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

the Customer may give written notice to the Supplier that it intends to exercise its rights under this clause 26 (**Step-In Rights**).
- (c) To the extent reasonably practicable, before exercising Step-In Rights the Customer agrees to consult with the Supplier in relation to measures to mitigate or manage the impact of events and circumstances giving rise to the Step-In Rights.
- (d) For the purpose of exercising Step-In Rights, the Customer:
  - (i) will be entitled to act as the Supplier's agent under all contracts entered into by the Supplier that relate to the Supplier's Activities and are necessary for the Customer to exercise the Step-In Rights; and
  - (ii) may:
    - A. give reasonable instructions to any employee of the Supplier (and the Supplier must ensure that such requests are complied with); and
    - B. contract with any of the subcontractors engaged by the Supplier,

as is reasonably required by the Customer to exercise the Step-In Rights.

- (e) Upon receiving notice from the Customer stating that the Customer is exercising the Step-In Rights, the Supplier must:
  - (i) at the Customer's request, allow the Customer or a third party engaged by the Customer to provide part or all of the Supplier's Activities; and
  - (ii) maintain all third party agreements, consents and approvals necessary to enable the Customer to exercise its rights under this clause 26.
- (f) If the Customer exercises its Step-In Rights under this clause 26:
  - (i) the Customer will be relieved from paying any component of the Price that relates to those Supplier's Activities in respect of which it has exercised Step-In Rights, for the period of such exercise, however will continue to pay those components of the Price which relate to Supplier's Activities unaffected by the Step-In Rights; and
  - (ii) the Supplier must pay to the Customer on demand an amount equal to:
    - A. any costs incurred by the Customer in connection with the exercise of its Step-In Rights (including any costs relating to the Customer or its Personnel providing any part or all of the Supplier's Activities) under clause 26.1(e)(i)); and
    - B. the quantum of any increase in the fees or costs paid by the Customer to any third party (including any substitute supplier) in respect of the period of the exercise of the Step-In Rights.
- (g) The Customer will use its reasonable efforts to minimise the quantum of any increase under clause 26.1(f)(ii)B.
- (h) The Supplier will not be responsible for any default or delay in the delivery of the Supplier's Activities to the extent that it was caused by the Customer or any third party providing part or all of the Supplier's Activities as contemplated in clause 26.1(e)(i), except to the extent contributed to by the Supplier or any of its Personnel.
- (i) If the Customer exercises its Step-In Rights for 60 days or more (or such other period as specified in Item 48 of the Order Form), then the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 29.1(d).

## 26.2 Conclusion of Step-In

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

### 26.3 No prejudice

The parties acknowledge and agree that:

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

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## 27. Insurance

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

disclosure of the full policy terms is restricted by confidentiality obligations owed by the Supplier to third parties).

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## 28. Performance Guarantee and Financial Security

### 28.1 Performance Guarantee

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

### 28.2 Financial Security

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

### 28.3 Costs

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

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## 29. Termination

### 29.1 Termination for cause by the Customer

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

- (a) if the Supplier breaches a term of this Agreement which is:
  - (i) not capable of remedy; or



- (ii) capable of remedy, but the Supplier fails to remedy it within 30 days of receiving a notice to do so;
- (b) if an Insolvency Event occurs in respect of the Supplier, to the extent there is no prohibition at Law in respect of such termination;
- (c) if the Supplier or any parent company of the Supplier involved in the performance of the Supplier's Activities undergoes a Change in Control or Other Changes, without the Customer's prior written consent; or
- (d) in any of those circumstances specified in clauses 12.7(b), 13.6, 14.4(a)(iii), 14.4(c)(iii), 26.1(i) and 36.4 or as otherwise set out in this Agreement, including the Additional Conditions,

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

## **29.2 Termination for convenience by the Customer**

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

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

but in no case will the total amount payable to the Supplier be more than the total Price that would have been payable by the Customer had this Agreement not been terminated.
- (c) The amount to which the Supplier is entitled under this clause 29.2 will be a limitation on the Customer's liability to the Supplier arising out of, or in connection

with, the termination or reduction in scope of this Agreement and the Supplier may not make any Claim against the Customer with respect to this, other than for the amount payable under this clause 29.2.

### **29.3 Consequences of reduction of scope**

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

### **29.4 Termination for cause by the Supplier**

- (a) The Supplier may immediately terminate this Agreement by written notice to the Customer if:
    - (i) the Customer has not paid an amount due and payable by it under this Agreement and the:
      - A. amount has been properly invoiced in a Correctly Rendered Invoice and is not the subject of any unresolved dispute under clause 24.6;
      - B. Supplier has issued a notice to the Customer, stating that the amount is overdue and that the Supplier intends to terminate unless the amount is paid; and
      - C. Customer does not pay the amount within 90 days of the date it receives the Supplier's notice under clause 29.4(a)(i)B; or
    - (ii) the Customer has:
      - A. breached this Agreement in a manner which results in the Supplier being in breach of a Law; or
      - B. intentionally and wilfully:
        - 1) breached clauses 17.10 or 23; or
        - 2) misappropriated the Intellectual Property Rights of the Supplier in its Existing Materials in a manner that is contrary to the Intellectual Property Rights granted or licenced to the Customer under this Agreement,
- and the Customer does not cease the relevant conduct within 60 days of receiving a written notice from the Supplier requesting it to do so.
- (b) This clause 29.4 exhaustively sets out the Supplier's rights to terminate this Agreement.

### **29.5 Dispute resolution**

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

### **29.6 Survival of rights on termination or reduction in scope**

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

## 30. Suspension

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

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

## 31. Transition-Out Services

### 31.1 Application of this clause

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

### 31.2 Transition-Out Plan

- (a) If the Order Form specifies that a Transition-Out Plan must be prepared by the Supplier with respect to the Supplier's Activities, by any date specified in the Order Form or otherwise promptly on request, the Supplier must prepare, and submit to the Customer's Representative for the Customer's approval in accordance with clause 8, a plan setting out how the Supplier will effect:
  - (i) the orderly disablement of the Supplier's Activities; or
  - (ii) where applicable, the transfer of the performance of the Supplier's Activities under this Agreement to the Customer or a third party, including complying with the obligations set out in this clause 31.

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

### **31.3 General**

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

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

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## **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.

### **33.4 Implied warranties**

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

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## **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

- (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
\$1,000,000 and above (including GST)	Two times the total fees paid or payable by the Customer under this Agreement.

\* "Paid or payable" includes amounts that at the relevant time have not been paid but which would have become payable if the parties performed all of their obligations under this Agreement. It is not limited to amounts that at the relevant time have become due and payable.

- (c) The Supplier's liability under this Agreement is uncapped, and the limitation of liability set out in clause 34.5(a) does not apply in relation to each of the following:
- (i) liability arising:
    - A. under any of the indemnities in clause 34.1; or
    - B. in respect of any of the matters referenced in that clause, except to the extent that the parties expressly agree to, in Item 53 of the Order Form, an alternative approach in relation to regulating the quantum of any such liability; or
  - (ii) the Supplier's abandonment or repudiation of its obligations under this Agreement.
- (d) Where the Supplier is a current member of a relevant scheme approved under the Professional Standards Legislation, and that scheme applies to limit the liability of the Supplier in accordance with that scheme, then the Supplier's liability will not be regulated by clauses 34.5(a) and 34.5(c) but will instead be limited only to the extent specified under that scheme. For clarity, to the extent that any such scheme does not apply, the Supplier's liability will continue to be determined in accordance with the other provisions of this clause 34.

## 34.6 Exclusions of liability

- (a) In no event will either party's liability to the other party, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for special, indirect, incidental or consequential loss or damage.
- (b) Nothing in clause 34.6(a) will preclude a party from recovering:
- (i) Loss which may fairly and reasonably be considered to arise naturally, in the usual course of things, from the breach or other act or omission giving rise to the relevant liability; and
  - (ii) any kinds of Loss which the parties expressly agree, in Item 53 of the Order Form, will be treated as Loss of the kind referred to in clause 34.6(b)(i),
- and where the Customer is the recovering party:
- (iii) any Loss against which the Supplier is required to indemnify the Indemnified Entities under clause 34.1, to the extent such Loss relates to monies, amounts or liabilities owed, due, paid or payable, or obligations owed, to a third party; and
  - (iv) subject to applicable common law tests in respect of the recovery of Loss, any costs and expenses relating to any of the following activities (which, for clarity, will be treated as loss of the kind referred to in clause 34.6(b)(i)):



- A. repairing or replacing the relevant Deliverable or Licensed Software or re-supplying any Services, including the cost of procuring replacement deliverables or services of equivalent functionality and performance internally or from a third party;
- B. implementing any reasonably necessary temporary workaround in relation to the Licensed Software, Services or Deliverables;
- C. engaging labour resources to reload any lost or corrupt data to the extent caused or contributed by the Supplier, from the last backup made of such data (regardless of whether the Supplier is responsible for backup of that data as part of the Supplier's Activities); and
- D. activities undertaken by, or on behalf of, the Customer in connection with the mitigation of Loss.

### 34.7 Application and contribution

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

### 34.8 Mitigation

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

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## 35. Dispute resolution

### 35.1 General

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

### 35.2 Escalation

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

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

### 35.3 Alternative dispute resolution

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

### 35.4 Acknowledgment

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

### 35.5 Costs

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

### 35.6 Continue to perform

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

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## 36. Force Majeure

### 36.1 Force Majeure Event

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

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

## 36.2 Notification and diligence

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

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

## 36.3 Liability not relieved

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

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

## 36.4 Prolonged Force Majeure Event

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

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## 37. Reports and audits

### 37.1 Records and reports

- (a) The Supplier must keep and maintain true and accurate records and accounts of:
  - (i) all of the Supplier's Activities performed under this Agreement, including all records specified in the Module Terms;
  - (ii) the Supplier's compliance with its obligations under this Agreement; and

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

## **37.2 Audits and inspections**

- (a) The Customer or its nominee (which may be an advisor, consultant or other third party engaged by the Customer) may conduct audits and inspections of the Supplier's and its Personnel's performance of its obligations under this Agreement, including the:
  - (i) Supplier's and any of the Supplier's subcontractors' operational practices and procedures as they relate to this Agreement;
  - (ii) accuracy of the Supplier's Invoices and reports submitted under this Agreement; and
  - (iii) Supplier's and its Personnel's compliance with its other obligations under this Agreement.
- (b) For the purpose of conducting an audit or inspection under clause 37, or for the purposes of an inspection, examination or audit undertaken by or on behalf of the Auditor-General in accordance with its powers to assess the expenditure of public money related to this Agreement, the Customer, Auditor-General or their nominees may, on giving reasonable advance notice to the Supplier (at reasonable times and during Business Hours where practicable):
  - (i) access the premises and facilities of the Supplier to the extent reasonably required to carry out the audit or inspection;

- (ii) to the extent relating to the Supplier's Activities, access, inspect and copy documents, resources and books and records, however stored, in the possession or control of the Supplier or its Personnel; and
  - (iii) require assistance in respect of any inquiry into or concerning the Supplier's Activities, including any parliamentary or statutory review or inquiry.
- (c) If an audit will involve the Supplier being required to produce documents, resources or books and records, the Customer will accompany its notice under clause 37.2(b) with a general description of the scope and purpose of the audit.
- (d) To the extent an audit involves physical access to the premises or facilities of the Supplier the:
  - (i) Customer will limit the exercise of its audit or inspection rights to no more than once per calendar year, unless the audit arises from the Supplier's breach of this Agreement or the Customer forming, on a reasonable basis, a view that such breach may have occurred; and
  - (ii) Customer or its nominee must comply with the Supplier's reasonable security requirements during such physical access.
- (e) The Supplier must provide all reasonable access, assistance and co-operation required by the Customer or its nominee in carrying out an audit under this clause 37.2.
- (f) Without limiting any rights or remedies of the Customer, if an audit shows that the Supplier or its Personnel has:
  - (i) breached, or is in breach of, this Agreement, the Supplier must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Customer; or
  - (ii) overcharged the Customer in any Invoice, the Supplier must promptly refund any amounts that the Supplier has overcharged the Customer, and adjust all of the current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount. Where the overcharging discrepancy identified exceeds 10% of the amount that should have been correctly invoiced, the Supplier must also promptly reimburse the Customer for the reasonable costs (including internal costs) of conducting the audit.
- (g) Subject to clause 37.2(f)(ii), each party must bear its own costs of executing its rights under, or complying with, this clause 37.

### **37.3 Conduct of audits and inspections**

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

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

### 37.4 Survival

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

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## 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

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### 39. General

#### 39.1 Government information

- (a) The Supplier acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Agreement on its nominated website established for GIPA Act disclosures. The Supplier irrevocably consents to the Customer acting in accordance with this clause 39.
- (b) To the extent that section 121 of the GIPA Act applies, the Supplier must, upon receipt of a written request by the Customer, provide the Customer with immediate access to the following information contained in records held by the Supplier:
  - (i) information that relates directly to the performance of the Supplier's Activities;
  - (ii) information collected by the Supplier from members of the public to whom it provides, or offers to provide, any aspect of the Supplier's Activities; and
  - (iii) information received by the Supplier from the Customer to enable it to carry out the Supplier's Activities.
- (c) For the purposes of clause 39.1(b), information does not include information that:
  - (i) discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
  - (ii) the Supplier is prohibited from disclosing to the Customer by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
  - (iii) if disclosed to the Customer, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Customer whether at present or in the future.
- (d) The Supplier must provide copies of any of the information referred to in clause 39.1(b), as requested by the Customer, at the Supplier's own expense and in such medium as the Customer may reasonably require.

- (e) Without limiting any other provision of this clause 39.1, the Supplier:
- (i) authorises the Customer to make information concerning the Supplier available to other Government Agencies or Eligible Customers (including to the relevant head of any Government Agency or Eligible Customer and any responsible Minister of a Government Agency) for any purpose in connection with facilitating the Customer's exercise of its rights under this Agreement or the carrying out, or exercise, of the functions or powers of the Customer, any Government Agency, Eligible Customer or the Crown. Such information may include any information provided by the Supplier to the Customer and any information relating to the Supplier's performance under this Agreement (including any reports provided under clause 15.4);
  - (ii) acknowledges that information about the Supplier from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any officers or associates of the Supplier or a Related Body Corporate may be taken into account by Government Agencies and Eligible Customers considering whether to offer the Supplier future opportunities for working with those entities, for assessing the terms of their own contracts (or proposed contracts) with the Supplier or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;
  - (iii) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
  - (iv) releases and indemnifies the Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

### **39.2 Personal Property Securities Act**

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

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

### **39.3 No use of the Customer's name or logo**

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

### **39.4 Prior work**

Except as otherwise agreed between the parties in writing:

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

treated as a payment under this Agreement and will be in part discharge of the Customer's obligation to pay the Price.

### **39.5 Entire agreement**

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

### **39.6 Variation**

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

### **39.7 Survival and merger**

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

### **39.8 Severability**

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

### **39.9 Waiver**

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

### **39.10 Cumulative rights**

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

### **39.11 Further assurances**

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

### **39.12 Assignment, novation and other dealings**

- (a) The Supplier must not, in whole or in part, assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so without



obtaining the prior written consent of the Customer, which consent may be withheld at the Customer's sole discretion.

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

### 39.13 Notices

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

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

#### **39.14 Construction**

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

#### **39.15 Expenses**

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

#### **39.16 English language**

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

#### **39.17 Governing Law**

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

Executed as an agreement:

**Signed** for and on behalf of the **State of New South Wales, represented by the Department of Communities and Justice (ABN 36 433 875 185)**, by its authorised representative, but not so as to incur personal liability, in the presence of:

**Refer to the DocuSign on Last Page**

Signature of witness

**Refer to the DocuSign on Last Page**

Name of witness in full

**Refer to the DocuSign on Last Page**

Date

**Refer to the DocuSign on Last Page**

Signature of authorised representative

**Refer to the DocuSign on Last Page**

Name of authorised representative in full

**Signed** for and on behalf of **SERVICENOW AUSTRALIA PTY LTD ABN 88 149 683 312** by its authorised representative, but not so as to incur personal liability, in the presence of:

Signature of witness

Name of witness in full

Signature of authorised representative

Name of authorised representative in full

Date

## Schedule 1 - Definitions and interpretation

### 1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

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

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

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

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

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

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

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

**Additional Conditions** means any terms or conditions that vary or are additional to the terms and conditions set out in the Core Terms or Module Terms and which are stated or referenced in Items 11 or 66 of the Order Form.

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

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

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

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

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

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

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

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

**Best Industry Practice** means a standard of service or deliverable, in terms of quality, productivity, performance, cost and timeliness of delivery, that, when considered collectively, is equal to or better than the commonly accepted best practice being provided at the relevant

time by a supplier of like or similar services, deliverables and activities to the Supplier's Activities throughout the world.

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

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

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

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

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

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

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

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

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

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

**Confidential Information** means information that:

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

but excludes information:

- (e) in the public domain, unless it came into the public domain due to a breach of confidentiality;

- (f) independently developed by the Recipient; or
- (g) in the possession of the Recipient without breach of confidentiality by the Recipient or other person.

**Conflict of Interest** means the Supplier or its Personnel:

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

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

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

**Core Terms** means clauses 1 to 39 of this Agreement.

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

**Correctly Rendered Invoice** means an Invoice which:

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

**Critical CSI** means any:

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

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

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

**Customer Data** means all data (including metadata) and information relating to the Customer or any Government Agency and the operations, facilities, customers, clients, personnel, assets

and programs of the Customer and any Government Agency, including Personal Information, in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed or produced as part of carrying out the Supplier's Activities, but excluding any Performance Data.

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

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

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

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

**Data Location Conditions** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

**Government Agency** means any of the following:

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

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

**ICT** means information and communication technologies.

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

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

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

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

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

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

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

**Intellectual Property Rights** means all intellectual property rights, including:

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

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

**Invoice** means a tax invoice issued under the GST Law.

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

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

**Laws** means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is

enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Open Source Software** means software available under a licence which:

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

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

**Order Documents** means:

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

**Order Form** means:

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

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

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

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

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

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

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

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

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

**Personal Information** means:

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

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

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

**Plans** means any:

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

**Policies, Codes and Standards** means:

- (a) all applicable SME Policies and associated requirements;
- (b) the other policies, codes, standards and guidelines and associated requirements specified in this Agreement, including within:

- (i) clauses 12.2(b) and 37.1(b); and
- (ii) the Order Form; and
- (c) any Policy Changes with which the Supplier is or becomes required to comply with under clause 12.3.

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

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

**Privacy Laws** means:

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

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

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

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

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

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

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

**Security Incident** means 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).

**SME Policies** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## 1.2 Interpretation

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

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

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

### 1.3 Discretion

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

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

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

No	Item	Ref	Description or selection
<b>KEY DETAILS</b>			
1.	Customer	Generally Schedule 1	The Crown in right of the State of New South Wales, acting through the Department of Communities and Justice, ABN 36 433 875 185
2.	Customer's Representative	Generally Schedule 1	Name: Naomi Youness Position: Chief Digital Information Officer Email: <naomi.youness@dcj.nsw.gov.au>
3.	MICTA	1.4 Generally Schedule 1	Is this Agreement entered into pursuant to a MICTA? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No.
4.	Supplier	Generally Schedule 1	ServiceNow Australia Pty Ltd ABN 88 149 683 312
5.	Supplier's Representative	Generally Schedule 1	Name: <span style="background-color: black; color: black;">[REDACTED]</span> Position: Associate Enterprise Account Executive Email: <span style="background-color: black; color: black;">[REDACTED]</span> Phone: <span style="background-color: black; color: black;">[REDACTED]</span>
6.	Notices for the Customer	39.13(b)	Customer's address: 6PSQ, 10 Darcy Street, Parramatta NSW 2150  (Attention: Kiran Bucktowar  Customer's email: <kiran.bucktowar@dcj.nsw.gov.au>
	Notices for the Supplier	39.13(b)	Supplier's address: ServiceNow Australia Pty Ltd Level 48, 680 George Street Sydney NSW 2000 Australia  Supplier's email: <a href="mailto:legalnotices@servicenow.com">legalnotices@servicenow.com</a>

No	Item	Ref	Description or selection
<b>TERM</b>			
7.	Commencement Date	5.1 Schedule 1	The Commencement Date is 29/06/2024.
8.	Initial Term	5.1 Schedule 1	The Initial Term commences on the Commencement Date and continues for 3 years ending on 28/06/2027 inclusive.
9.	Renewal Period	5.2 Schedule 1	Two (2) renewal periods of twelve (12) months each.
	Notice period for renewals	5.2	Not applicable
<b>ORDERING AND PURCHASING</b>			
10.	Additional Orders	3.3 Schedule 1	<p>The Customer is permitted to place Additional Orders where it wishes to increase the number of Permitted Users.</p> <p>A Change Request Form should be included for all Orders which must be agreed and signed by authorised representatives of both parties.</p>
11.	Additional Conditions	3.5 Schedule 1	The Additional Conditions are as set out in Annexure C to Order Form - Additional Conditions.
12.	Reseller arrangements	3.6	Not applicable
13.	Schedules	Generally Schedule 1	<p><input checked="" type="checkbox"/> Schedule 1 - Definitions and interpretation</p> <p><input checked="" type="checkbox"/> Schedule 2 - Order Form</p> <p><input checked="" type="checkbox"/> Schedule 3 - Statement of Work Template (Note: If a Statement of Work is used, this should be included at Annexure B to Schedule 2 (Order Form). The template in Schedule 3 can be used for this purpose).</p> <p><input type="checkbox"/> Schedule 4 - Payment Schedule</p> <p><input checked="" type="checkbox"/> Schedule 5 - Change Request Form (Note: The Change Request Form should be included for all Orders. However, note that, if approved by the Customer, an alternate form to the default provisions in Schedule 5 may be used).</p> <p><input type="checkbox"/> Schedule 6 - Deed of Confidentiality and Privacy</p> <p><input type="checkbox"/> Schedule 7 - Escrow Deed</p> <p><input type="checkbox"/> Schedule 8 - Performance Guarantee</p>

No	Item	Ref	Description or selection
			<input type="checkbox"/> Schedule 9 - Financial Security
	Modules	1.2(c)	<input checked="" type="checkbox"/> Cloud Module <input type="checkbox"/> Services Module <input type="checkbox"/> Software Module (Non-Cloud) <input type="checkbox"/> Hardware and Other ICT Deliverables Module
<b>SUPPLIER'S ACTIVITIES</b>			
14.	Scope	Generally	The Supplier must provide the Supplier's Activities in accordance with the ServiceNow Order Form.
15.	Requirements - Accessibility requirements	6.3(b)(ii)	Not applicable.
	Requirements - Work health and safety	12.4(f)	Not Applicable
16.	Site attendance	6.10 Schedule 1	Will the Supplier be required to attend the Site to carry out any aspect of the Supplier's Activities (including the supply of any Deliverables)?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Site location		Not Applicable.
	Physical delivery	6.10 Schedule 1	Not Applicable
	Requirements for attendance at the Site	Annexure C	Not Applicable
17.	Policies, Codes and Standards	12.2 Schedule 1 Annexure C Annexure E	Not Applicable
	SME Policies	12.2 Schedule 1	Not Applicable.
	Aboriginal Procurement	12.2(b)	Not Applicable.

No	Item	Ref	Description or selection
	Policy: Aboriginal participation		
18.	Nominated Personnel	11.1 Schedule 1	Not Applicable
19.	Deed of Confidentiality and Privacy	11.4(a) Schedule 1	Not Applicable.
20.	Permitted subcontractors	11.5(a)	Is the Supplier permitted to subcontract? Yes  The Customer acknowledges that the Supplier is part of a global group of companies and that in the usual operation of its business, off-shore internal resources may be utilised in the delivery of certain Services. For the purposes of clause 11.5, Customer provides its approval for the subcontracting of the performance of Services to the Supplier's Related Companies ("Internal Subcontractors"). For clarity, the above only applies to Internal Subcontractors. In the event the Supplier wishes to use other subcontractors to perform any of its obligations under this Agreement, the Supplier must comply with clause 11.5 of the Core Terms (and, for clarity, the Customer may require such subcontractors to sign a deed of confidentiality and privacy as a condition of granting its consent). Further, the Customer reserves its rights as set out in section 8 of the Data Processing Addendum.
21.	Subcontractor deed	11.5(j)	Not applicable.
	Additional subcontractor procurement policy requirements	11.5(k)	Not applicable.
22.	Background checks	11.6(b) Annexure C	Supplier must comply with the Background Checks according to the Data Security Addendum Section 3.3.1
	Timeframes and time for background checks		Not Applicable.
<b>PERFORMANCE AND DELIVERY</b>			
23.	Timeframes and requirements for performance	6.1	As set out in the ServiceNow Order Form.
	Specifications	6.1 Schedule 1	The Specifications for the Professional Services are set out in the relevant Statement of Work.

No	Item	Ref	Description or selection
24.	Service Levels	15.2 Schedule 1	Service Levels are as set out in the Customer Support Addendum (see Annexure E). Clause 15.2(b) shall not apply.
25.	Performance reports	15.4(a)(iii)	The Customer will have access to the information set out in clause 15.4 via the Customer self-service support portal at <a href="https://hi.service-now.com/now">https://hi.service-now.com/now</a>
	Additional performance reporting requirements	15.4(c)	Not Applicable.
	Performance reviews	15.5(a)	Quarterly Service Review may be scheduled by agreement in writing between the parties.
26.	Meetings	15.7(a)	The Supplier's Representative must meet with the Customer's Representative for a monthly operational meeting at the times and at the locations agreed by the parties in writing from time to time (including video (MS teams) link.
27.	Project Plans	6.5(b)	Not Applicable.
	Other Plans	Schedule 1	Not Applicable.
28.	Stages	6.6(a) Schedule 1	Not Applicable.
	Project methodology	6.6(e)	Not Applicable.
	Costs of removing any Stage(s)	6.6(d)	Not Applicable.
29.	Liquidated Damages	16(a) 16(b) Schedule 1	Not Applicable.
30.	Governance Framework	4.3	Governance forums – <ul style="list-style-type: none"> <li>an operation meeting up to once a month between the Supplier's Representative and the Customer's Representative at a time and location as agreed in writing between the parties.</li> </ul>

No	Item	Ref	Description or selection
			<ul style="list-style-type: none"> <li>Meeting requirements - Each person may attend in person or remotely (as practical and agreed by the Parties in writing, acting reasonably)</li> <li>Reporting requirements – to be agreed between the parties</li> <li>Escalation requirements – the provisions of clause 35.2 apply.</li> </ul>
31.	Customer Supplied Items	6.2 Schedule 1	Not Applicable.
	Date for provision of CSI		Not Applicable.
	CSI requirements		Not Applicable.
	Supplier's costs for CSI and time for payment		Not Applicable.
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	The Supplier is not required to provide Transition-Out Services. The Customer shall have a right to extract or retrieve Customer Data, or request that the Supplier otherwise provide the Customer Data to the Customer, for a period of up to 10 days after the expiry or termination of this Agreement at no additional cost, following which the Supplier shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Service provided under the Cloud Module. For the avoidance of doubt, the Supplier must not delete Customer Data, including Personal Information pursuant to clause 4.4 (Deletion of Personal Data) of the Data Processing Addendum until 30 days following termination and/or expiration of this Agreement.
	Transition-Out Plan	31.2 Schedule 1	Not applicable.

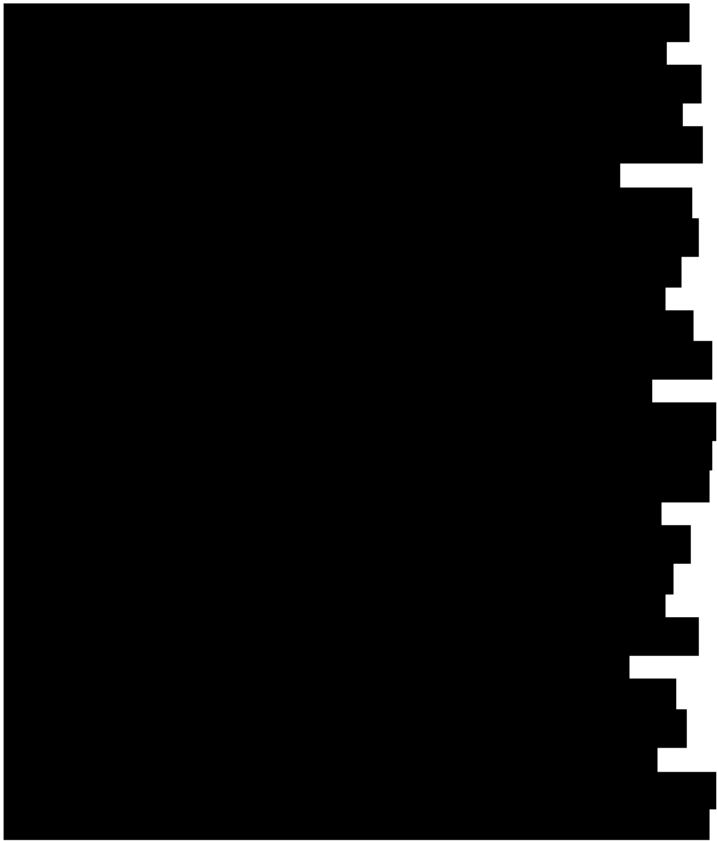


No	Item	Ref	Description or selection
	Transition-Out Period	31.3 Schedule 1	Not applicable.
34.	User Documentation	8.4(a)	For the purpose of clause 8.4 of this Agreement, User Documentation will be deemed to have been "supplied" to the Customer when it is made electronically accessible to the Customer.
	Format for the User Documentation	8.4(c)	Not applicable.
35.	Acceptance Testing	14 Schedule 1	Not Applicable.
		14.1	Not Applicable.
		14.2 Schedule 1	Not Applicable.
36.	Warranty Period	9 Schedule 1	Up to 30 days from the provision of the performance of the Deliverable.
<b>INTELLECTUAL PROPERTY</b>			
37.	Ownership of Existing Materials	17.1	Clause 17.1 applies in all circumstances.
	Licence to use Existing Materials	17.2 17.5	In relation to any Existing Materials other than Cloud Services, the Supplier grants to the Customer a non-exclusive, royalty-free, non-transferable, non-sublicensable worldwide license to use the Intellectual Property Rights in the Existing Materials, solely in connection with use of the Cloud Services under this Agreement during the relevant Term.
	Ownership of New Materials	17.3	Not applicable.
	Licence to use New Materials	17.4 17.5	The Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, non-sublicensable, non-transferable, royalty-free licence to use the Intellectual Property Rights in such New Materials, for the Customer's internal business purposes in connection with the:  (i) Customer performing its obligations and exercising its rights under this Agreement; and

No	Item	Ref	Description or selection
			<p>(ii) full use of any Services and/or Deliverables in which New Material is incorporated, including installing and operating the Deliverables.</p> <p>The licence granted in clause 17.4(a) does not include the right and licence to exploit and commercialise the Intellectual Property Rights in New Materials.</p> <p>The term of the licence granted in relation to New Material shall be the relevant Term.</p>
	Third party Intellectual Property Rights	17.7	<p>The Supplier grants Customer a limited, personal, worldwide, non-sublicensable, non-transferable, non-exclusive, royalty-free license during the relevant Term for the Cloud Services to install and execute Ancillary Software on Customer's machines, solely to facilitate Customer's authorised access to and use of the Cloud Services.</p> <p>"Ancillary Software" means software licensed by the Supplier to Customer that is typically deployed on Customer's machines to enable access to and use of the Cloud Services. Ancillary Software may include or be provided with code licensed under third-party agreements, including open source software.</p> <p>Unless otherwise agreed by the parties, no other rights are granted by the Supplier to the Customer in relation to third party Intellectual Property Rights.</p>
38.	Escrow	18	Not Applicable.
	Escrow Materials	18 Schedule 1	Not Applicable.
<b>DATA AND SECURITY</b>			
39.	Location of Personal Information	20.1(a)(iv) Schedule 1 Annexure C	<p>Personal Information may be transferred to the Supplier in relation to the operation of this Agreement. The Customer acknowledges and agrees that insofar as Personal Information may be included within Customer Data, the Supplier may be unaware of such inclusion and such Personal Information will be treated in accordance with the requirements of this Agreement applicable to Customer Data generally.</p> <p>The Customer provides its consent:</p> <p>(i) to the extent Personal Information is included in the Customer Data, to:</p> <p>(a) the transfer and storage of such Personal Information to other locations outside New South Wales but which are within Australia; and</p> <p>(b) the Supplier and/or its related corporate entities being granted with access to such Personal Information from</p>

No	Item	Ref	Description or selection
			<p>locations which may be outside Australia, where required for the purpose of providing support or otherwise facilitating the fulfillment of its obligations under this Agreement; and</p> <p>(ii) to the extent Personal Information is included in information provided to the Supplier in respect of the administration and provision of the Services and the general operation of this Agreement, to the transfer of such Personal Information and/or access to such Personal Information from such locations as are customarily used by the Supplier and its related corporate entities for the purpose of its standard business operations which may include locations outside Australia.</p>
	Data Location Conditions	19.3(b) Schedule 1 Annexure C	<p>The Customer advises that it is possible that Customer Data may be transferred to the Supplier under this Agreement. The Customer provides its consent:</p> <p>(i) to the transfer and storage of Customer Data to other locations outside New South Wales but which are within Australia; and</p> <p>(ii) to the Supplier and/or its related corporate entities being granted with access to such Customer Data from locations which may be outside Australia, where required for the purpose of providing support or otherwise facilitating the fulfillment of its obligations under this Agreement.</p>
40.	Security obligations, standards and Information Security Requirements	19.2 21.2 Annexure C Annexure E	The Supplier and the Customer shall comply with the terms set out in the Data Security Addendum.
	Security certifications	21.2(e) Annexure C	While providing the Cloud Services, the Supplier will ensure there is a written information security program of policies, procedures and controls aligned to the ISO27001 Series, or substantially equivalent standard, governing the processing, storage, transmission and security of Customer Data.
	Security audits	21.3 Schedule 1 Annexure C	Not Applicable
41.	Backup of Customer Data	19.4 Annexure C	In accordance with the Data Security Addendum.
	Retention of Customer Data	19.7 Annexure C	Not applicable.
42.	Security Incident	22.1	Not applicable.

No	Item	Ref	Description or selection
		22.2 Schedule 1 Annexure C	

No	Item	Ref	Description or selection
<b>ES AND PAYMENT</b>			
43.	Payment Particulars	24.1(a)	<p>Fees are as set out in the ServiceNow Order Form.</p> <p>The Supplier must Invoice the Customer in accordance with the Invoice Schedule set out in the ServiceNow Order Form.</p> <p>Total fees specified in an invoice (including applicable GST) are due and payable within 30 days from the invoice date.</p> <p>Applicable GST is to be added to all invoices payable by the Customer under this Agreement. Pricing is exclusive of GST.</p> <p>Customer shall reimburse the Supplier for all authorised and verifiable travel expenses incurred during the performance of the Professional Services. The Supplier agrees to keep commercially reasonable records of all expenses to support claims for reimbursement from Customer. All such fees and expenses shall be invoiced to Customer within sixty (60) days from the date the fees and expenses were incurred.</p> 
	Price model (exception)	24.1(b)	<p><b>Cloud Services</b></p> <p>The price per unit is fixed during the Initial Term as set out in the ServiceNow Order Form for the units, products and duration in the ServiceNow Order Form at the unit prices listed in the ServiceNow Order Form against each product.</p>

No	Item	Ref	Description or selection
44.	Benchmarking	24.2	Not applicable
45.	Invoicing timeframes	24.4(a)	<p><b>Services ordered under Cloud Module:</b> Cloud Services fees are invoiced on the Commencement Date and annually in advance thereafter.</p> <p><b>Training Services ordered under Cloud Module:</b> invoiced at the same time as fees for Services ordered under the Cloud Module.</p>
46.	Payment requirements and invoicing	24.5(a)	<p>Invoices must be sent to:  <a href="mailto:invoices@justice.nsw.gov.au">invoices@justice.nsw.gov.au</a>, with a copy to the Customer's Representative.</p> <p><i>Note: The above email address is unmanned and used by the SAP system only to extract invoices.</i></p> <p>a) Without limitation, any electronic invoices must satisfy the criteria below to ensure that they are paid in a timely manner:</p> <ul style="list-style-type: none"> <li>i. all invoices must be sent as PDF attachments;</li> <li>ii. each email must attach only one 'PDF' file, containing only one invoice;</li> <li>iii. any supporting documents must be contained within the same attached 'PDF' file as the invoice, with the invoice being the first page and all supporting documents to follow; and</li> <li>iv. a valid agreement number / purchase order number must be quoted on all invoices.</li> </ul>
	Time for payment	24.5(a) Schedule 1 Generally	The Customer will pay any Correctly Rendered Invoice in accordance with the timeframes specified in clause 24.5(a).
	Purchase order number and Agreement reference number for Correctly Rendered Invoices		The purchase order number must be specified on each Correctly Rendered Invoice provided that the purchase order number to be specified on Correctly Rendered Invoices is notified by the Customer to the Supplier at least fifteen (15) Business Days prior to the date of the invoice.
	Supplier's nominated bank account	24.5(a)(i)	<p>Account Name: ServiceNow Australia Pty Ltd</p> <p>██</p> <p>██████████</p> <p>██</p>



No	Item	Ref	Description or selection
<b>RISK ALLOCATION AND MANAGEMENT</b>			
47.	Business Contingency Plan	25.2(a) 25.2(b)(iii) 25.2(d)	As set out in section 4.4 of the Data Security Addendum, a Business Contingency Plan will be maintained by the Supplier and is available to the Customer via CORE.
48.	Step-In Rights	26	Not Applicable.
49.	Insurance	27(a)	<p>The Supplier must hold and maintain the following types of insurance for the Term (unless otherwise stated below) and in the amounts specified below:</p> <ul style="list-style-type: none"> <li>Workers' Compensation Insurance, in accordance with applicable statutory, federal, and other legal requirements;</li> <li>Employers' Liability Insurance covering the Supplier's employees in an amount of not less than \$1,000,000 for bodily injury by accident and \$1,000,000 per employee for bodily injury by disease;</li> <li>Commercial General Liability Insurance written on an occurrence form and including coverage for bodily injury, property damage, products and completed operations, personal injury, and advertising injury arising out of the products or services provided by the Supplier under this Agreement, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate;</li> <li>Combined Technology Errors' &amp; Omissions Policy with a \$5,000,000 per claim limit, including: (a) Professional Liability Insurance providing coverage for the services and software in this Agreement (which coverage will be maintained for at least two years after termination of this Agreement); and (b) Privacy, Security, and Media Liability Insurance providing liability coverage for unauthorized access or disclosure, security breaches, and system attacks, as well as infringements of copyright and trademark that might result from this Agreement; and</li> <li>Excess Liability over Employers' Liability, Commercial General Liability, and Commercial Automobile Liability, with a \$5,000,000 aggregate limit.</li> </ul> <p>For the purpose of this section, a "claim" means a written demand for money or a civil proceeding that is commenced by service of a complaint or similar pleading.</p>
	Cyber security and other insurances	27(a) 27(b)	For the purposes of clauses 27(a) and (b) of the Agreement, the Supplier must hold and maintain Combined Technology Errors' & Omissions Policy as set out above.
50.	Performance Guarantee	28.1	Not Applicable.

No	Item	Ref	Description or selection
51.	Financial Security	28.2	Not Applicable.
52.	Termination for convenience	29.2(b)(ii)B	Not applicable.
53.	Limitation Amount	34.5(b)	Limited to the amounts paid by Customer for use of the products or provision of the services giving rise to the claim during the 12-month period preceding the first event giving rise to liability. Multiple claims will not enlarge this limit.
	Alternate approach to uncapped liability	34.5(c)	Notwithstanding clause 34.5(c), liability arising under the indemnity in clause 34.1(b) shall be subject to clause 34.5(a).
	Non-excluded Losses	34.6(b)(ii)	Not applicable.
	Alternative dispute resolution	35	Clause 35.3 (Alternative Dispute Resolution) shall not apply. If the dispute remains unresolved 20 Business Days after the date of the Dispute Notice (or such longer period as may be agreed by the parties in writing), then either party may commence any other form of dispute resolution, including court proceedings, to determine the dispute.
54.	Prolonged Force Majeure Event	36.4	Not Applicable

**PART B: Cloud Module**

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

No	Item	Mod ref	Description or selection
<b>SCOPE</b>			
55.	Cloud Services	1.1	The Cloud Services and associated Deliverables that the Supplier must provide are as set out in the ServiceNow Order Form
56.	Services Period	1.3	The Supplier must provide the Cloud Services for the Term.
57.	Unilateral Variation	1.4	The Supplier shall not be required to provide notice of a Unilateral Variation in accordance with clause 1.4(b) unless the Unilateral Variation would have a material impact on the Customer's use of the Cloud Services.
	Form of, and medium for, notice of a Unilateral Variation	1.4(c)	The Supplier must provide written notice to the Customer's Representative (including, for the avoidance of doubt, by email).
58.	Dates for Delivery	2.1(a)	The Supplier must provide access to: a) the Cloud Services;



No	Item	Mod ref	Description or selection
			<p>b) User Documentation; and</p> <p>c) Third Party Components and other Deliverables,</p> <p>on the Commencement Date and for the duration of the Term.</p>
	Third Party Components	2.1(a)(iii) Annexure A	Not Applicable.
	Date for provision of access codes	2.1(b)	The default applies.
59.	Scope of licence	2.2(b)	Notwithstanding clause 2.2, the number and type of Permitted Users as set out in Item 63 may access and use the Cloud Services during the relevant Term for the Cloud Services, solely for the Customer's internal business purposes in accordance with the User Documentation which can be accessed at <a href="https://docs.servicenow.com">https://docs.servicenow.com</a> . This User Documentation includes solely technical program or interface documentation, user manuals, operating instructions, and release notes.
60.	Permitted Purpose	2.2(b)(v) Annexure A	Not applicable.
<b>LICENSING MODEL AND TERMS</b>			
61.	Licensing model	2.3(a)	User Licensing Model
	Licensing terms	2.3(b)	There is a cap on the number of Permitted Users. The number of Permitted Users is limited to the number set out in Item 63.
		2.3(c)	Not Applicable.
62.	Permitted Users	2.3(b) Annexure A	As set out in the ServiceNow Order Form.
63.	Data backups by the Customer	2.5(a)	The Customer is not required to make and maintain backups of data under clause 2.5(a)(i) of the Cloud Module.
	Data backups by the Supplier	2.5(b) Annexure C	The Supplier shall perform backups in accordance with the Data Security Addendum.
64.	Records of usage and audits	2.6	The Supplier may remotely review the scope of Customer's use of the Cloud Services, and on the Supplier's written request, Customer will provide reasonable assistance to verify Customer's compliance with the Agreement with respect to access to and use of

No	Item	Mod ref	Description or selection
			the Cloud Services. If the Supplier determines that Customer has exceeded its permitted access and use rights to the Cloud Services, the Supplier will notify Customer and Customer will, within 30 days, either: (1) disable any unpermitted use; or (2) purchase additional subscriptions commensurate with Customer's actual use.
65.	Additional Conditions - Cloud Services terms	2.7	<p>(a) <b>Access Logs</b> – Clause 4.2(a)(iv) is deleted and replaced with the following:</p> <p>“The production infrastructure log activities are centrally collected, are secured in an effort to prevent tampering, and are monitored for anomalies by a trained security team. The Supplier shall provide a logging capability in the platform that captures login and actions taken by users in the Supplier application. Customer has full access to application audit logs within its instance(s), including successful and failed access attempts to Customer's instance(s). Customer is responsible for exporting application audit logs to Customer's syslog server through available built-in platform features”.</p> <p>(b) <b>Customer Data</b> – For the purposes of clause 4.2(a)(vi), the Customer expressly authorises the Supplier's Personnel to download, extract, edit, store, copy (whether electronic or hardcopy), print or otherwise retain any Customer Data solely for the purposes of and to the extent necessary to fulfill its obligations under this Agreement.</p> <p>(c) <b>Security Related Questions</b> - Clause 4.2(b)(ii) is amended by inserting the following wording at the end of this sub-clause: “subject to any restrictions imposed by the Supplier's subcontractors or any obligations of confidentiality”.</p> <p>(d) <b>Media Decommissioning</b> – clause 4.5(a)(i) of the Cloud Module is deleted and replaced with the following:</p> <p>“the Supplier shall use NIST 800-88 Industry standard (or substantially equivalent) for destruction of sensitive materials, including Customer Data, before such media leaves the Supplier's data centres for disposition”.(e)</p> <p><b>Change to Location of Customer Data</b> – clauses 4.4(a)(ii) and 4.4(f) of the Cloud Services Module is deleted.</p>
66.	Restrictions	3(a)	<p>Customer will not (and will not permit others to):</p> <p>(1) use the Cloud Services in excess of contractual use limits (including as stated in Item 63), or in a manner that circumvents use limits or technological access control measures;</p> <p>(2) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of the Cloud Services available for access by third-parties;</p>

No	Item	Mod ref	Description or selection
			<p>(3) access the Cloud Services for purposes of developing or operating products or services for third-parties in competition with the Cloud Services;</p> <p>(4) copy, create derivative works based on, or otherwise modify the Cloud Services, except as may be otherwise expressly stated in this Agreement;</p> <p>(5) use it in violation of Laws (including those applicable to collection and processing of Customer Data through the Cloud Services);</p> <p>(6) use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Rights (including the rights of publicity) without first obtaining the owner's permission;</p> <p>(7) use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or</p> <p>(8) access or disable any Supplier or third-party data, software, or network (other than Customer's instance of the Subscription Service).</p>
67.	Primary and Secondary Data Centres	4.3(a) 4.4(a) Annexure C	The primary data and secondary data centres shall be located in Australia.
68.	Remote access to Customer Data	4.3(b) Annexure C	As set out in Item 39 above.
69.	Notice of change to location of data centres	4.4(a)	10 Business Days prior to the change occurring, unless the location of data centres remains in Australia, in which no notification will be required to be given by Supplier to Customer.
70.	Excluded locations	4.4(b) Annexure C	Not applicable.
71.	Media decommissioning	4.5(a)(ii) Annexure C	In accordance with section 3.1.2 of the Data Security Addendum.
<b>SUPPORT AND TRAINING SERVICES</b>			
72.	Support Services	5.1 5.3	Notwithstanding any other clause of this Agreement, Support Services are described and shall be provided in

No	Item	Mod ref	Description or selection
			<p>accordance with the Customer Support Addendum See Annexure E.</p> <p>For the purposes of clause 5.3(b)(ii), the parties acknowledge that the provisions set out in the Customer Support Addendum are consistent with the Customer's operating requirements.</p>
73.	Support Period	5.2 Annexure A	The Supplier must provide the Support Services during the Term.
74.	Help desk	5.4	<p>Customer support is available via the support portal <a href="https://support.servicenow.com/now">https://support.servicenow.com/now</a> ("<b>Support Portal</b>").</p> <p>Customer will receive from the Supplier communications via email, phone, or through the Support Portal regarding the Cloud Services and acknowledges that access to the Support Portal may require multi-factor authentication by Customer.</p> <p>Customer will appoint a reasonable number of contacts to engage Customer support for questions and technical issues and Customer must maintain current contact information for the following authorized contacts in the Support Portal who have been trained to administer the Cloud Services:</p> <ul style="list-style-type: none"> <li>• Primary Business Contact;</li> <li>• Secondary Business Contact;</li> <li>• Technical Contact;</li> <li>• Support Contact;</li> <li>• Primary Customer Administrator; and</li> <li>• Security Contact.</li> </ul>
75.	Training Services	6.1	<p>The Training Services are as set forth in the ServiceNow Order Form, including as specified in the "Education, Services and Knowledge" section.</p> <p>The Training Services commence on a date as agreed between the Customer and the Supplier. The Training Services will end on a date as agreed between the Customer and the Supplier. The parties agree that the Training Services will be consumed within 12 months of the Cloud Services commencement date specified in Item 7.</p> <p>The location of Training Services, course content and other items will be agreed between the Customer and the Supplier prior to the commencement of the Training Services.</p> <p>The training Plan referred to in clause 6.1(b)(ii) is not required unless otherwise agreed between the parties.</p>

No	Item	Mod ref	Description or selection
76.	Training Reports	6.2	The Supplier is not required to provide Training Reports.
<b>GENERAL</b>			
77.	Additional/ancillary Deliverables and Services	7.1	Not Applicable
78.	Records	8	Not applicable.
79.	Operating procedures	9(a)(iv)	The Customer will use the operating procedures specified in the User Documentation to operate the Cloud Services.

**PART C: Services Module – Not Applicable**

**PART D: Software Module (Non-Cloud) – Not Applicable**

**PART E: Hardware and Other ICT Deliverables Module – Not Applicable**

**ANNEXURE 1 – SERVICENOW ORDER FORM**



ANNEXURE 1

Order Form



ServiceNow Australia Pty Ltd  
Level 48, 680 George Street  
Sydney NSW 2000  
ABN: 88 149 683 312

Order Number
ORD1994161-1

Pricing Expiration: 28 Jun 2024

SNC Account Exec	
Phone	
E-mail	

Customer Invoice Address				Customer Ship To Address			
Company Name	Department of Communities and Justice			Company Name	Department of Communities and Justice		
Address	6 Parramatta Square 10 Darcy St			Address	6 Parramatta Square 10 Darcy St		
Suite				Suite			
City	Parramatta			City	Parramatta		
State/Province	NSW - New South Wales			State/Province	NSW - New South Wales		
Zip/Postal Code	2150			Zip/Postal Code	2150		
Country	Australia			Country	Australia		
AP Contact Name	Accounts Payable			Business Contact	Christopher Warren		
Title				Title	Senior System Administrator		
Phone	(029) 377-6000			Phone	+61 0468900480		
E-mail	invoices@justice.nsw.gov.au			E-mail	Christopher.Warren@facs.nsw.gov.au		
Account #	ACCT0026184			VAT/ABN/GST/Other #	36 433 875 185		
Reference Contract #(s)	CON0590323			PO #			
				Payment Terms	Net due in 30 days		
Currency	AUD						

Product Code	Subscription Product Name	Type	Units	Term (mos)	Term Start Date	Term End Date	Net Price (Monthly)	Net Price (Annual)	Net Price (Total)
PROD17256	ServiceNow® IT Service Management Professional	Fulfiller User		36 Months	29 Jun 2024	28 Jun 2027			
PROD15404	ServiceNow® HR Service Delivery Professional	HR User		36 Months	29 Jun 2024	28 Jun 2027			
PROD15891	ServiceNow® Now Platform-Custom App (7 Apps)	App User		36 Months	29 Jun 2024	28 Jun 2027			
PROD03434	ServiceNow® Performance Analytics For Now Platform Custom Application	Application		36 Months	29 Jun 2024	28 Jun 2027			
PROD16744	ServiceNow® Security Operations Professional - SIR	Unrestricted User		36 Months	29 Jun 2024	28 Jun 2027			
PROD20826	ServiceNow® Security Operations Enterprise - VR	Devices		36 Months	29 Jun 2024	28 Jun 2027			
PROD14995	ServiceNow® ITOM Operator Professional	Subscription Unit		36 Months	29 Jun 2024	28 Jun 2027			
PROD12490	ServiceNow® Integrated Risk Management Professional	IRM Operator		36 Months	29 Jun 2024	28 Jun 2027			
PROD18126	ServiceNow® Integrated Risk Management - IRM Lite Operator	IRM Lite Operator		36 Months	29 Jun 2024	28 Jun 2027			

Product Code	Subscription Product Name	Type	Units	Term (mos)	Term Start Date	Term End Date	Net Price (Monthly)	Net Price (Annual)	Net Price (Total)
PROD20914	ServiceNow® Third-party Risk Management Base	Module	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD20917	ServiceNow® Third-party Risk Management Standard	Transactions	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD17800	ServiceNow® Business Stakeholder	Business Stakeholder User	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD16951	ServiceNow® Strategic Portfolio Management Standard	SPM User	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD22420	ServiceNow® Automation Engine Enterprise	Unattended Robot	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD12015	ServiceNow® Application Portfolio Management	APM User	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD20920	ServiceNow® Data At Rest Encryption Transition	Application	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD22207	ServiceNow® Cloud Encryption	Application	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD20930	ServiceNow® Additional Non-Production Instance - Shared Environment (4TB)	Shared Environment	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD21220	ServiceNow® Creator Professional Plus	Creator	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD12492	ServiceNow® Agile Team	Module	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD15338	ServiceNow® AI Search Starter	Documents	1	36 Months	29 Jun 2024	28 Jun 2027			
PROD16252	ServiceNow® Impact Guided	Success	1	36 Months	29 Jun 2024	28 Jun 2027			

Subscription Product SubTotal \$ 5,902,660.56 \$ 17,707,981.68

Education, Knowledge and Professional Services Subtotal \$ 0.00

Estimated Grand Total \$ 17,707,981.68

Invoice Schedule	Invoice Date	Amount	Grand Total
Annual Subscription Fee	Upon Signature	\$ 5,902,660.56	\$ 5,902,660.56
Annual Subscription Fee	May 29, 2025	\$ 5,902,660.56	\$ 5,902,660.56
Annual Subscription Fee	May 29, 2026	\$ 5,902,660.56	\$ 5,902,660.56

\$ 17,707,981.68 \$ 17,707,981.68

Hosting Information					
Instance Name	Instance Type	Hosting Type	Storage Limit	Hosting Included	Data Center
nswfacsprod	Prod	Shared	4TB	Included	Australia
nswfacsdev	Non-Prod	Shared	4TB	Included	Australia
nswfacsuat	Non-Prod	Shared	4TB	Included	Australia
dojns	Non-Prod	Shared	4TB	Additional	Australia
Customer ServiceNow Admin:		Christopher Warren			
Email:		Christopher.Warren@facs.nsw.gov.au			

Customer's platform storage capacity entitlement can be found here: <https://www.servicenow.com/content/dam/servicenow-assets/public/en-us/doc-type/legal/sn-scaling-platform-capacity-addendum.pdf>

## Terms and Conditions



Customer's terms for the purchase of the services set forth herein are governed by this Order Form, the Customer Contract and schedules incorporated therein.

**Notes**

Please read the product description on this Order Form for the Subscription Service.

[Redacted text block]

The annual subscription fee for ServiceNow Impact Guided ("Impact Subscription Service Fee") is based on the total of the annual subscription fees of all Subscription Products subscribed to by Customer, not including the Impact Subscription Service Fee. As Customer exceeds capacity of purchased Subscription Products, or if Customer purchases additional Subscription Products, additional Impact Subscription Service Fees apply at 10% of total annual Subscription Product fees, not including the Impact Subscription Service Fee.

**USER TYPE DEFINITIONS**

A **"User"** means any employee or contractor of Customer or Customer Affiliate that is assigned a unique username and password and has a user profile in the Subscription Service designated as "active". Only Users may be given access to the Subscription Service by Customer. A use right may not be shared or transferred. Customer shall not use the subscription service in a manner that circumvents usage restrictions.

For applications for which Customer has purchased **"Unrestricted Users"**, Customer may use the number of purchased Unrestricted Users indicated on the Order Form. Unrestricted Users may perform any or all functions for all User Types below.

For applications for which Customer has purchased **"Fulfiller Users"**, Customer may use the number of purchased Fulfiller Users indicated on the Order Form. A Fulfiller User is any User other than an Approver User or Requester User. Without limitation, a Fulfiller User is any User that performs any function other than an Approver User function or Requester User function, including those set forth in the table below for a Fulfiller User.

**"Process User"** has the same use rights as **"Fulfiller User."**

For applications for which Customer has purchased **"Approver Users"**, Customer may use the number of purchased Approver Users indicated on the Order Form. An Approver User is any User performing any of the functions set forth in the table below for an Approver User. An Approver User may only perform the functions set forth in the table below for an Approver User.

For applications for which Customer has purchased **"Requester Users"**, Customer may use the number of purchased Requester Users indicated on the Order Form. A Requester User is any User performing any of the functions set forth in the table below for a Requester User. A Requester User may only perform the functions set forth in the table below for a Requester User.

**"End User"** has the same use rights as **"Requester User."**

FUNCTION / USE RIGHTS AUTHORIZED	USER TYPES		
	REQUESTER	APPROVER	FULLFILLER
Create its own request	included	included	included
View its own request	included	included	included
Modify its own request	included	included	included
Search the Service Catalog	included	included	included
Search the Knowledge Base	included	included	included
Access public pages	included	included	included
Take surveys	included	included	included
Set its own notification preferences	included	included	included
View assets assigned to user	included	included	included
Access and post to Live Feed	included	included	included
Initiate Chat sessions	included	included	included
Participate in a Watch List	included	included	included
View a report published to them	included	included	included
Approve requests by email that are routed to user	-	included	included
Approve requests routed to user via system	-	included	included
Create any record	-	-	included
Delete any record	-	-	included
Modify any record	-	-	included
Drill through any report	-	-	included

Create any report	-	-	included
Delete any report	-	-	included
Modify any report	-	-	included
Perform development activities	-	-	included (see below)
Perform administrative activities	-	-	included

#### CUSTOM TABLE CREATION AND INSTALLATION

The creation or installation of Custom Tables in a production instance requires either the purchase of the Now Platform App Engine product or an express Custom Table entitlement that is granted with the purchase of another product.

A "Custom Table" is any non-ServiceNow provided table created or installed by or on behalf of Customer on the ServiceNow Platform and used for any purpose, including the creation of a custom application, unless such table is specifically exempt. A list of exempt ServiceNow provided tables and Custom Table use rights are as set forth in the Custom Table Guide on <https://www.servicenow.com/products/entitlements-packages.html> and ARE EXPRESSLY DEEMED INCORPORATED HEREIN BY THIS REFERENCE. Customer may request printed copies of the documents incorporated herein by reference by emailing us at [legal.request@servicenow.com](mailto:legal.request@servicenow.com).

#### SUBSCRIPTION PRODUCTS

Subscription Product Code/Name	Included ServiceNow Applications and Use Rights
PROD17256 ServiceNow® IT Service Management Professional	<p>Included Applications: DevOps Config; Incident Management; Digital Product Release; Problem Management; Change Management; Release Management; Asset Management; Request Management; Cost Management; Walk-Up Experience; Continual Improvement Management; Digital Portfolio Management; Financial Modeling; DevOps Change Velocity; Mobile Publishing; Vendor Manager Workspace; Universal Request Pro; Predictive Intelligence; Virtual Agent; and Platform Analytics Advanced</p> <p>Customer is granted the rights for Fulfiller User as defined in the User Type Definitions Section. Usage is limited by the number of purchased Fulfiller Users.</p> <p>Virtual Agent includes 1000 Virtual Agent Conversation Transactions per Fulfiller per month (unused Virtual Agent Conversation Transactions expire monthly). A Virtual Agent Conversation Transaction is defined as any structured conversation between a chatbot and user on a pre-built or custom topic.</p> <p>Additional monthly Virtual Agent Transactions require the purchase of Virtual Agent Transaction Pack(s).</p> <p>Platform Analytics Advanced, Virtual Agent, Predictive Intelligence, and Universal Request Pro use rights apply only to IT Service Management Professional Applications and App Engine Starter 50 Custom Tables.</p> <p>App Engine Starter 50: Customer is granted the right to create or install up to 50 Custom Tables and to grant each Fulfiller User the right to access those Custom Tables and perform the actions granted to that User Type.</p> <p>Protocols and Spokes that are available in the Subscription Product are set forth in the then-current applicable Product Documentation. Use of Protocols and Spokes may require purchase of Integration Hub Transactions at an additional fee.</p> <p>The following Application(s) became available in the family release indicated below. San Diego - Digital Portfolio Management and DevOps Change Velocity (Formerly: DevOps and DevOps Insights) DevOps Config - Tokyo</p>
PROD15404 ServiceNow® HR Service Delivery Professional	<p>Included Applications: Case and Knowledge Management; Employee Center Pro; Lifecycle Events; Continual Improvement; Communities; Mobile Publishing; Universal Request Pro; Platform Analytics Advanced; Predictive Intelligence; and Virtual Agent</p> <p>Usage of the HR Service Delivery Professional Applications is limited to the number of HR Users active in the ServiceNow HR Profile table. An HR User is defined as any active User in the ServiceNow HR Profile table that is within their employment start and end date, including full-time employees, part-time employees, contractors, and contingent workers. Customer may grant new hires (i.e. those who need to initiate an onboarding journey) and alumni that are outside of their employment start and end date the right to access HR Service Delivery Professional as Users and these Users do not require an HR User subscription.</p> <p>Lifecycle Event usage is limited to events that remain within the HR domain and explicitly excludes onboarding, offboarding, and transfers.</p> <p>Platform Analytics Advanced, Virtual Agent and Predictive Intelligence use rights apply only to HR Professional Applications and App Engine Starter 15 Custom Tables.</p> <p>App Engine Starter 15: Customer is granted the right to create or install up to 15 Custom Tables and to grant each HR User the right to access those Custom Tables.</p>

PROD15891 ServiceNow® Now Platform-Custom App (7 Apps)	<p>Now Platform – Custom Apps (7 apps) allows Customer to deploy up to seven (7) custom-built applications developed on the ServiceNow Platform into production.</p> <p>An App User is any User that has the right to use Now Platform – Custom App (7 Apps) deployed as scoped applications.</p>
PROD03434 ServiceNow® Performance Analytics For Now Platform Custom Application	<p>Performance Analytics For Now Platform Custom Application</p> <p>Any User may use Performance Analytics with Now Platform Custom Application for which he or she has use rights.</p> <p>The annual subscription fee for Performance Analytics ("PA Subscription Fee") is based on the total of the annual subscription fees of the Now Platform Custom Application subscribed by Customer. As Customer exceeds capacity of purchased users or purchases additional users of the Now Platform Custom Application, additional PA Subscription Fees shall apply.</p>
PROD16744 ServiceNow® Security Operations Professional - SIR	<p>Included Applications: Security Incident Response; Threat Intelligence; Event Management for Security Operations; Security Incident Response Integration Bundles; Major Security Incident Management; Predictive Intelligence; and Platform Analytics Advanced.</p> <p>Usage of Security Operations Professional is limited to the number of Unrestricted Users. An Unrestricted User is every User that is assigned a unique username and has a user profile in the Subscription Service designated as "active".</p> <p>Platform Analytics Advanced and Predictive Intelligence: Use rights apply only to Security Operations Professional Applications and included App Engine Starter Custom Tables.</p> <p>App Engine Starter 5: Customer is granted the right to create or install up to 5 Custom Tables and to grant each Unrestricted User the right to access those Custom Tables and perform the actions within the granted Unrestricted User rights.</p> <p>The Event Management for Security Operations application may only be used for managing security-related events.</p>
PROD20826 ServiceNow® Security Operations Enterprise - VR	<p>Included Applications: Vulnerability Response; Vulnerability Solution Management; Application Vulnerability Response; Configuration Compliance; Patch Orchestration; Cloud Security (Vulnerability Response); Cloud Security (Configuration Compliance); Predictive Intelligence; and Platform Analytics Advanced.</p> <p>Usage of Security Operations Enterprise - VR is limited to the number of Devices. A Device is an active IP device or interface that is monitored or scanned as part of Customer's corporate security infrastructure for which ServiceNow may receive and process security events.</p> <p>Platform Analytics Advanced and Predictive Intelligence: Use rights apply only to Security Operations Enterprise - VR Applications and included App Engine Starter Custom Tables.</p> <p>App Engine Starter 25: Customer is granted the right to create or install up to 25 Custom Tables and to grant each User the right to access those Custom Tables as an Unrestricted User. An Unrestricted User is every User that is assigned a unique username and has a user profile in the Subscription Service designated as "active".</p>
PROD14995 ServiceNow® ITOM Operator Professional	<p>Included Applications: ITOM Visibility; ITOM Health; Platform Analytics Advanced; and Predictive Intelligence</p> <p>Includes entitlement for up to the number of Subscription Units purchased.</p> <p>A Subscription Unit is a unit of measure applied to Managed IT Resources using Defined Ratios. A list of Managed IT Resources, Defined Ratios for a Subscription Unit, and included Protocols and Spokes are set forth in the IT Operations Management (ITOM) - ServiceNow Subscription Unit Overview on <a href="http://www.servicenow.com/products/entitlements-packages.html">www.servicenow.com/products/entitlements-packages.html</a> and ARE EXPRESSLY DEEMED INCORPORATED HEREIN BY THIS REFERENCE. Customer may request printed copies of the documents incorporated herein by reference by emailing us at <a href="mailto:legal.request@servicenow.com">legal.request@servicenow.com</a>.</p> <p>Protocols and Spokes require IntegrationHub Transactions which are not included in the ITOM Operator Professional Subscription Product.</p> <p>MetricBase: ITOM Health includes entitlement for unlimited MetricBase Series, as collected by the Agent Client Collector, per each Configuration Item (CI) in the Customer's instance. A CI is any component tracked within a Customer's ServiceNow CMDB.</p> <p>A MetricBase series is a set of data points for a metric indexed in a time order and stored for a defined retention policy.</p> <p>MetricBase Series may be used within the ITOM Health Application only.</p> <p>Platform Analytics Advanced and Predictive Intelligence use rights apply only to ITOM Operator Professional Applications and App Engine Starter 5 Custom Tables.</p> <p>Bundled Custom Tables: Customer is granted the right to create or install up to 5 Custom Tables and to grant each User the right to access those Custom Tables as an Unrestricted User. An Unrestricted User is every User that is assigned a unique username and has a user profile in the Subscription Service designated as "active".</p> <p>Protocols and Spokes that are available in the Subscription Product are set forth in the then-current applicable Product Documentation. Use of Protocols and Spokes may require purchase of Integration Hub Transactions at an additional fee.</p>

<p>PROD12490 ServiceNow® Integrated Risk Management Professional</p>	<p>Included Applications: Policy and Compliance Management; Compliance Case Management; Risk Management; Audit Management; Use Case Accelerators; Advanced Risk Management; Advanced Audit Management; GRC: Metrics; Regulatory Change Management; Predictive Intelligence; Virtual Agent; and Platform Analytics Advanced</p> <p>Customer is granted use rights for the following Applications as described herein:</p> <p>Advanced Risk Management: Customer is granted the right to manage advanced risk assessments through manual risk factors, risk-rollups, and risk hierarchies.</p> <p>Predictive Intelligence, Virtual Agent, and Platform Analytics Advanced: Use rights apply only to Integrated Risk Management (IRM) Professional Applications and included Bundled Custom Tables.</p> <p>Virtual Agent includes 1000 Virtual Agent Conversation Transactions per IRM Operator per month (unused Virtual Agent Conversation Transactions expire monthly). A Virtual Agent Conversation Transaction is defined as any structured conversation between a chatbot and user on a pre-built or custom topic.</p> <p>Additional monthly Virtual Agent Transactions require the purchase of Virtual Agent Transaction Pack(s).</p> <p>An IRM Operator is any User who contributes to, or is part of, an IRM application workflow or process in any way, including the receipt of an attestation or assessment request. An IRM Operator may perform any or all functions within the Integrated Risk Management Applications.</p> <p>IRM purchase does not include access to Unified Compliance Framework (UCF) which Customer must purchase separately.</p> <p>Bundled Custom Tables: Customer is granted the right to create or install up to 5 Custom Tables and to grant each IRM Operator the right to access those Custom Tables.</p> <p>Protocols and Spokes that are available in the Subscription Product are set forth in the then-current applicable Product Documentation. Use of Protocols and Spokes may require purchase of Integration Hub Transactions at an additional fee.</p> <p>The following Application(s) became available according to the release indicated below: Risk Management - Geneva Policy and Compliance Management; Audit Management - Helsinki Predictive Intelligence - Kingston Virtual Agent - London Use Case Accelerators; Advanced Risk Management - New York Regulatory Change Management - Orlando Advanced Audit Management - Paris</p>
<p>PROD18126 ServiceNow® Integrated Risk Management - IRM Lite Operator</p>	<p>An IRM Lite Operator is any User that can perform one or more of:</p> <p>Respond to policy acknowledgments, control attestations, evidence requests, risk identification questionnaire, classic risk assessments, manual indicator and metric data tasks;</p> <p>Update assigned compliance case tasks, issues (including the ones from issue triage), remediation tasks, risk event tasks (applicable to customers with IRM Enterprise product subscription only), risk identification questionnaires, classic risk assessments, risk response tasks, indicator and metric data tasks;</p> <p>Make updates to requested policy exception, logged or reported issues (including the ones from issue triage), and risk events (applicable to customers with IRM Enterprise product subscription only);</p> <p>Request policy exceptions;</p> <p>Report issues, risk events (applicable to customers with IRM Enterprise product subscription only), create remediation tasks for issues assigned to the logged in User;</p> <p>Review remediation tasks tagged to that issue as well as review and close the issue (if User is the owner of such issue);</p> <p>Approve policy exceptions assigned for business approvals, risk events, advanced risk assessments (applicable to customers with IRM Professional and Enterprise product subscription only), risk response tasks, metric data tasks assigned to them; and</p> <p>Read any data (based on the corresponding Operator SKU) excluding data pertaining to the Audit tables and its related tables.</p> <p>Any User that exceeds the above use rights would require an IRM Operator subscription.</p> <p>The purchase of IRM Lite Operator requires the purchase of Operators for at least one of the following - IRM (Standard, Professional, or Enterprise) subscription product.</p>
<p>PROD20914 ServiceNow® Third-party Risk Management Base</p>	<p>Included Applications: Vendor Risk Management</p> <p>Entitles an unlimited number of Users to manage Onboarding Due Diligence workflow for the First Engagement for an unlimited number of new Third Parties.</p> <p>Third Parties are entities or individuals that are entered as records in the Third Party table. A Third Party</p>

	<p>record is considered to be new if a record for such Third Party does not already exist in the company table ('core_company'). An Engagement refers to a relationship that has been established with a third-party entity or individual, and a First Engagement shall be the first record in the Engagement table for any given Third Party. The location of the aforementioned tables will be specified in the then-current Documentation. Onboarding Due Diligence is a defined workflow.</p> <p>App Engine Starter 5: Customer is granted the right to create up to 5 custom tables and to grant each User the right to access those Custom Tables as an Unrestricted User. An Unrestricted User is every User that is assigned a unique username and has a user profile in the Subscription Service designated as "active".</p> <p>Third-Party Risk Management Base requires a subscription to a Third-Party Risk Management tier.</p>
PROD20917 ServiceNow® Third-party Risk Management Standard	<p>Included Applications: Third-Party Risk Management</p> <p>Entitles Customer to the number of procured Transactions. Transactions are each Actively Managed Third Party or Actively Managed Engagement during any prior 365-day period.</p> <p>Third Parties are entities or individuals that are entered as records in the third party table. An Engagement is any record in the engagement table for any given Third Party. The location of the aforementioned tables will be specified in the then-current Documentation.</p> <p>Actively Managed refers to any activity not included in the Third-Party Risk Management – Base subscription during any prior 365-day period.</p> <p>Third-Party Risk Management Standard requires Third-Party Risk Management Base as a prerequisite.</p>
PROD17800 ServiceNow® Business Stakeholder	<p>A Business Stakeholder User may approve requests by email that were routed to the User or via the Subscription Service and view and drill through reports within the Subscription Products to which the Customer is subscribed.</p> <p>Customers with a separately purchased IT Service Management Subscription product may provide Business Stakeholder Users with the right to update comments to incidents or requests on behalf of other Users.</p> <p>Customers with a separately purchased Customer Service Management, Financial Services Operations, Telecommunications Service Management, Public Sector Digital Services, Technology Provider Service Management, Healthcare &amp; Life Sciences Service Management, or Manufacturing Commercial Operations Subscription product may provide Business Stakeholder Users with the right to create cases and update comments on behalf of their customers or service organizations. Customer may grant Business Stakeholder User rights to users that are either internal or external to Customer's organization.</p> <p>Customer is wholly responsible for Business Stakeholder Users' compliance with the terms of the Agreement and this ordering document, and all acts and omissions of such Users. Such Users will not have the right to take any legal action against ServiceNow under this Agreement or any ordering document.</p> <p>Customers with a separately purchased App Engine Subscription Product may provide Business Stakeholder Users with the right to create or update comments to records in an App Engine Custom Table.</p> <p>Use of Custom Tables with Business Stakeholder User rights requires: (i) use of the ServiceNow created approvals module; and (ii) creation of a read role on the Custom Table associated with the Business Stakeholder User role.</p>
PROD16951 ServiceNow® Strategic Portfolio Management Standard	<p>Included Applications: Collaborative Work Management; Cost Management; Project Portfolio Management; Release Management; Demand Management; Resource Management; Financial Planning; Digital Portfolio Management; Innovation Management; Portfolio Planning and Performance Analytics</p> <p>Usage is limited to the number of SPM Users. An SPM User is defined as any User with the right to access one or more of the Strategic Portfolio Management Applications above and may perform any or all functions within the Strategic Portfolio Management Applications.</p> <p>Performance Analytics use rights apply only to Strategic Portfolio Management Standard Applications and included App Engine Starter Custom Tables.</p> <p>App Engine Starter 5: Customer is granted the right to create or install up to 5 Custom Tables and to grant each SPM User the right to access those Custom Tables.</p> <p>Protocols and Spokes that are available in the Subscription Product are set forth in the then-current applicable Product Documentation. Use of Protocols and Spokes may require purchase of Integration Hub Transactions at an additional fee.</p>

<p>PROD22420 ServiceNow® Automation Engine Enterprise</p>	<p>Included Application(s): RPA Hub; Automation Center; Integration Hub Enterprise; Process Mining (External Data); Document Intelligence; Orchestration Core (Activity Designer; Activity Packs; Password Reset; and Client Software Distribution Application); entitlement for 15 Unattended Robots; entitlement for 45 Attended Robots; entitlement for 100,000 Document Intelligence Pages (unused Pages expire annually without credit or refund); entitlement for up to 6,000,000 Integration Hub Transactions annually (unused Transactions expire annually without credit or refund); entitlement for up to 250 thousand Audit Log Entries; and entitlement for up to 25GB (25,000MB) of API Access Volume per day (unused API Access volume expire daily without credit or refund).</p> <p>Automation Engine Enterprise includes Protocols and Spokes as set forth in the Integration Hub Overview on <a href="http://www.servicenow.com/products/entitlements-packages.html">www.servicenow.com/products/entitlements-packages.html</a> and IS EXPRESSLY DEEMED INCORPORATED HEREIN BY THIS REFERENCE. Customer may request printed copies of the documents incorporated herein by reference by emailing us at <a href="mailto:legal.request@servicenow.com">legal.request@servicenow.com</a>.</p> <p>An Unattended Robot is defined as a form of business process automation that allows the execution of workflows without human supervision through the development and management capabilities offered by Automation Engine. Unattended Robot entitlements are consumed when a robot of type "Unattended" is assigned to a Virtual Machine in the RPA Hub Application.</p> <p>An Attended Robot is defined as a form of business process automation that allows the execution of workflows as a direct result of a human action and under human supervision. Attended Robot entitlements are consumed when a robot of type "Attended" is assigned to a user in the RPA Hub application.</p> <p>Additional Attended Robots and Unattended Robots require the purchase of a separate Attended Robot bundle and/or Unattended Robot bundle.</p> <p>A Page is defined as a section of a document that ends with a page break. Documents with more than one Page are counted as multiple Pages, rounded to the next integer. Additional annual Pages require the purchase of a separate Document Intelligence Page bundle.</p> <p>Customer acknowledges that, to the extent it activates and uses Document Intelligence, Customer Data will be transferred outside of Customer's ServiceNow instance to a centralized ServiceNow environment, provided that such centralized ServiceNow environment shall be hosted in the same ServiceNow data center region as Customer's originating ServiceNow instance. Customer further acknowledges that the relevant terms set forth in the Agreement pertaining to ServiceNow's security and data protection program shall apply, except for those generally relating to certifications, attestations, or audits, and penetration testing. Any Customer Data transferred to such centralized ServiceNow environment will be deleted in accordance with ServiceNow's internal policies and procedures.</p> <p>An Integration Hub Transaction is defined as any outbound call originating from Integration Hub, FlowDesigner, Remote Tables and/or Orchestration. This includes any operation, action, orchestration from Integration Hub, Remote Tables or Orchestration resulting in an outbound call.</p> <p>Additional annual Transactions require the purchase of a separate Integration Hub package.</p> <p>An Audit Log Entry is defined as one record in the sn_po_extdata_audit table for the purpose of Process Mining. Use of Process Mining (External Data) is limited to data generated outside ServiceNow platform.</p> <p>API Access Volume is the total output of data volume in an applicable 24-hour period made by ServiceNow in response to a web service request originating from a system external to ServiceNow. Output of data as a result of Integration Hub Transactions and/or Stream Connect for Kafka are exempt and not included in the API Access Volume.</p> <p>Additional daily API Access Volume require the purchase of a separate API Access Volume package.</p>
<p>PROD12015 ServiceNow® Application Portfolio Management</p>	<p>Included Applications: Application Portfolio Management; Digital Portfolio Management; Financial Modeling; Predictive Intelligence; and Platform Analytics Advanced</p> <p>Usage is limited to the number of APM Users. An APM User is defined as any User with the right to access Application Portfolio Management and may perform any or all functions within Application Portfolio Management.</p> <p>Platform Analytics Advanced and Predictive Intelligence: Use rights apply only to Application Portfolio Management and included Bundled Custom Tables.</p> <p>Bundled Custom Tables: Customer is granted the right to create or install up to 5 Custom Tables and to grant each APM User the right to access those Custom Tables.</p> <p>"Protocols and spokes that are available in the Subscription Product are set forth in the then-current applicable Product Documentation. Use of? protocols and spokes ?may consume Integration Hub transactions? that may? require purchase? of Integration Hub or Automation Engine subscription? at an additional fee. Customer may use the spoke(s) included in Subscription Product for use cases even beyond the Subscription Product. Integration Hub Transactions are not included in the Subscription Product."</p>
<p>PROD20920 ServiceNow® Data At Rest Encryption Transition</p>	<p>Included Applications: ServiceNow Cloud Encryption; Database Encryption</p>

	<p>Data at Rest Encryption Transition allows Customers with a current Database Encryption Subscription to migrate to ServiceNow Cloud Encryption and remain in compliance with their subscription entitlement for Database Encryption.</p> <p>Database Encryption may only be used with MariaDB database</p> <p>Cloud Encryption may be used with MariaDB or Postgres database</p> <p>Data at Rest Encryption Transition requires Database Encryption as a prerequisite.</p> <p>Customer agrees to migrate from Database Encryption to Cloud Encryption. The migration date will be determined by ServiceNow and Customer will be provided prior notification of the migration date.</p> <p>Customer understands that Database Encryption will not be available when Customer migrates to the Postgres database. Customer will not be able to use Database Encryption and will be unable to revert back to use Database Encryption after migrating to the Postgres and Swarm64 database.</p> <p>If the migration occurs during the Subscription Term, Customer consents to terminating access to and use of Database Encryption prior to the end of Customer's Subscription Term.</p>
PROD22207 ServiceNow® Cloud Encryption	<p>Included Applications: ServiceNow Cloud Encryption</p> <p>The annual subscription fee for ServiceNow Cloud Encryption is based on the total of the annual subscription fees of all products subscribed by Customer. As customer exceeds capacity of purchased Subscription Products, or if Customer purchase additional Subscriptions, additional ServiceNow Cloud Encryption Fee may apply.</p>
PROD20930 ServiceNow® Additional Non-Production Instance - Shared Environment (4TB)	<p>Additional non-production instance within a logical single-tenant architecture on multi-tenant cloud infrastructure that is logically and physically separate from ServiceNow's corporate infrastructure. The storage limit for each non-production instance is 4TB of storage, unless additional storage is purchased. Storage included with the non-production instance cannot be shared with other production or non-production instances. The foregoing storage limit applies only to this additional non-production instance.</p>
PROD21220 ServiceNow® Creator Professional Plus	<p>Included Applications: App Engine Studio; Now Assist for Creator; and entitlement for up to 3,500 Assists annually per Creator User (unused Assists expire annually without credit or refund).</p> <p>This Subscription Product is not available to Customers in Self-hosted environments or other restricted environments. This Subscription Product is not available to Public Sector Customers that cannot accept the applicable Product-Specific Terms, or where the Product-Specific Terms are otherwise inconsistent with applicable law or the Public Sector Customer's contract terms.</p> <p>Customer is granted the rights for Creators. A Creator User is any User who may configure, modify, and build new functions and applications using ServiceNow Generative AI platform tools.</p> <p>Customer is entitled to use Creator Professional Plus for the procured number of Creator Users and use-cases contractually allowed for Creator Professional Plus.</p> <p>Creator Users are counting in both production and sub-production instances.</p> <p>Use of this Subscription Product requires use of Next Experience to access full functionality and use of the Generative AI Controller.</p> <p>Use of this Subscription Product is governed by the Product-Specific Terms located at <a href="https://www.servicenow.com/upgrade-schedules.html">https://www.servicenow.com/upgrade-schedules.html</a> (or such successor site or related locations designated by ServiceNow), and may be updated by ServiceNow from time to time. The Product-Specific Terms are expressly incorporated herein by reference.</p> <p>Assists are measured in production and sub-production instances based on the count of various Actions representing usage of generative AI features in the prior 365 days using defined ratios. A list of Assist Actions and defined ratios that correlate to how many Assists are consumed are set forth in the ServiceNow Assist Overview on ServiceNow's Entitlement Supplements located at <a href="https://www.servicenow.com/products/entitlements-packages.html">https://www.servicenow.com/products/entitlements-packages.html</a> (or such successor site or related locations designated by ServiceNow), and may be updated by ServiceNow from time to time. The ServiceNow Assist Overview is expressly incorporated herein by reference, and Customer's continued use of the Subscription Product after any update constitutes Customer's agreement to the updated ServiceNow Assist Overview.</p> <p>Additional annual Assists require the purchase of a separate Assist Pack.</p> <p>The following Applications require the release indicated below in order to function:</p> <p>Now Assist for Creator - Vancouver Patch 2 or later</p>
PROD12492 ServiceNow® Agile Team	<p>Included Applications: Agile Development and Test Management</p> <p>All Users may use the above applications.</p>
PROD15338 ServiceNow® AI Search Starter	<p>AI Search Starter includes entitlement of up to a total cumulative count of 500,000 indexed External Documents ("Total Limit"). Unused indexed External Documents expire at the Subscription Term End Date without credit or refund. If Customer exceeds their Total Limit, additional indexed External Documents can be procured for an additional fee.</p> <p>An External Document is a referenced object from an external source identified by a unique Document ID.</p>



PROD16252 ServiceNow® Impact Guided

The Impact Guided Package is subject to the Impact Guided Package Description. If not attached to this Order Form, the Package Description is set forth on <https://www.servicenow.com/upgrade-schedules.html> and is INCORPORATED HEREIN BY THIS REFERENCE.

**Annexure A to Order Form – Supplier's Documents**

Not applicable.

## **Annexure B to Order Form – Supplementary Customer Requirements**

### **ACCESS CONTROL ACTIVATED BY CUSTOMER**

In the event that Customer activates and maintains the access control plugin (or any subsequent tool provided by the Supplier for the purposes of restricting access to Customer's instances of Cloud Service), Customer may restrict access by Supplier support Personnel to only those individuals authorised by Customer. The parties will co-operate with each other to determine which Supplier support Personnel require access to Customer's instances of the Cloud Service so as to ensure that Supplier can comply with its obligations under this Agreement, including provision of the support services. All obligations of the Supplier under this Agreement which require the Supplier to access Customer's instance(s), including the provision of support services, target response times and service level availability, shall be preconditioned upon the Supplier receiving such access and proportionately limited to the extent that the Supplier verifies by reasonable evidence that access is denied. The access control plugin can be used to restrict access to individuals within the Supplier's support organisation.

## Annexure C to Order Form – Additional Conditions

The Customer warrants and represents that the Additional Conditions are consistent with all applicable New South Wales procurement Laws and policies and New South Wales Procurement Board Directions and shall not be deemed to detract from the parties rights and obligations under the terms and conditions of this Agreement.

The parties acknowledge and agree that for the purpose of clauses 1.2 and 3.5 of the Agreement, the terms contained in the following documents are incorporated into and form part of the Agreement as Additional Conditions:

- ServiceNow Order Form or Use Authorisation Form as set out in Annexure 1 to this Order Form (“**ServiceNow Order Form**”);
- Data Processing Addendum which can be accessed aocompt <https://www.servicenow.com/upgrade-schedules.html> (“**Data Processing Addendum**”);
- Data Security Addendum which can be accessed at <https://www.servicenow.com/upgrade-schedules.html> (“**Data Security Addendum**”); and
- Customer Support Addendum which can be accessed at <https://www.servicenow.com/upgrade-schedules.html> (“**Customer Support Addendum**”).

The Agreement is amended as set out below:

**(a) Supplier’s Acknowledgements** - Clause 2(a) (Supplier’s Acknowledgements) is replaced with the following:

“The Supplier warrants that as at the date of this Agreement it:

- (i) has the expertise to carry out the Supplier's Activities; and
- (ii) has satisfied itself of the nature and extent of the Supplier's Activities and its obligations under this Agreement.”

**(b) ICT Accessibility** - Clause 6.3(a)(i) of the Agreement is deleted.

**(c) Delays** - Clause 6.7 (Delays), 6.8 (Extension of Time) and 6.9 (Delay Costs) are deleted.

### **(d) Security**

- (i) Notwithstanding clause 12.3 of the Agreement, the Security obligations, standards and Information Security Requirements set out in this Order Form cannot be added to or varied except by written agreement between the parties.
- (ii) The Supplier is deemed to have complied with all requirements of clause 19.1(d)(vi) if the Supplier complies with its obligations under the Data Security Addendum and no other security requirements shall be specified by the Customer.
- (iii) The Supplier shall be deemed to have complied with the requirements of clause 21.2(c) if it complies with its obligations under the Data Security Addendum.
- (iv) Clause 20.1(a)(vi), 22.1 and 22.2 of the Agreement are deleted. The agreed timeframes and procedures for notification of security incidents are as set out in the Data Security Addendum, the terms of which are deemed to be replicated here. The Supplier shall notify the Customer of a Breach (as that term is defined in the Data Security Addendum) in accordance with section 5.2.1 of the Data Security Addendum within 48 hours from the date on which the Supplier determines there has been a Breach.
- (v) Notwithstanding clause 21.2(a), where clause 21 and the standards or requirements specified in the Data Security Addendum both address standards in respect of the same subject matter, the provisions of the Data Security Addendum shall apply.
- (vi) Clause 21.3 is deleted and replaced with the following:

The Supplier shall audit its compliance with its Security Program and security obligations under this Agreement in accordance with the terms set out in the Data Security Addendum and below:

- (A) **Audit.** No more than once per year and upon written request by the Customer, the Customer shall have the right directly or through its representative(s) (provided however, that such representative(s) shall enter into written obligations of confidentiality and non-disclosure directly with the Supplier), to access all reasonable and industry recognized documentation evidencing the Supplier's policies and procedures governing the security of Customer Data (“**Audit**”). Such Audit

shall include a written summary report of any assessment performed by an independent third party of the Supplier's information security management system supporting any Cloud Services against the objectives stated in ISO 27001 and SSAE 16 SOC 1 and SOC 2 Type 2 (or equivalent standards). The Supplier reserves the right to refuse to provide the Customer (or its representatives) with any information which would pose a security risk to the Supplier or its customers, or which the Supplier is prohibited to provide or disclose under applicable law or contractual obligation.

- (B) **Output.** Upon completion of the Audit, the Supplier and the Customer may schedule a mutually convenient time to discuss the output of the Audit. The Supplier may in its sole discretion, consistent with industry and Supplier standards and practices, make commercially reasonable efforts to implement the suggestions and improvements noted by the Customer in the Audit to improve the security of the security program. The Audit and the results derived therefrom are Confidential Information of the Supplier.
- (C) **Customer expenses.** Any expenses incurred by the Customer in connection with the Audit shall be borne exclusively by the Customer.

**(e) Data Processing Addendum** - Clause 20.2 of the Agreement is deleted. The parties shall comply with the terms set out in the Data Processing Addendum in relation to any Personal Information which forms part of the Customer Data.

**(f) Return of Customer Data following termination** - For the purposes of clause 32.1 of the Agreement, the parties agree that the Customer shall have a right to extract or retrieve Customer Data, or request that the Supplier otherwise provide the Customer Data to the Customer, for a period of up to 10 days after the expiry or termination of this Agreement at no additional cost, following which the Supplier shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Service provided under the Cloud Module. For the avoidance of doubt, the Supplier must not delete Customer Data, including Personal Information pursuant to clause 4.4 (Deletion of Personal Data) of the Data Processing Addendum until 10 days following termination and/or expiration of this Agreement.

#### **(g) Compliance**

- (i) The Supplier's obligation under clause 12.1(b) of the Agreement is subject to, and in reliance on, Customer's compliance with its related obligations and responsibilities under the Agreement.
- (ii) Clause 12.1(c) (Compliance with Laws and Directions) is deleted.
- (iii) Clause 12.2 is deleted and shall not apply.

**(h) Modern Slavery** - Clause 13 (Modern Slavery) is amended as follows:

- (i) clause 13.1 is amended by deleting the words "represents" and "and undertakes"; and
- (ii) deleting clause 13.2(b)(i); and
- (iii) deleting clause 13.4(b).

#### **(i) Performance**

- (i) Clause 15.1(b)(i) is amended by deleting the words "and are fit for the purpose for which they are required as detailed in or reasonably ascertained from, the Order Documents".
- (ii) Notwithstanding the terms of clauses 15.3(a) and 15.6, the Supplier shall notify the Customer of any Service Level failure, provide updates, take action to minimise the impact of any Service Level failure, correct the failure, take action to prevent the recurrence of the failure and investigate the circumstances of the failure in accordance with the terms set out in the Customer Support Addendum.
- (iii) Clause 15.3(a)(vi) is deleted.

**(j) Licence to use New Materials** - Notwithstanding clause 17.4(c) of the Agreement, the rights and licences granted by the Supplier to the Customer under clauses 17.4(a) and 17.4(b) are not sub-licensable by the Customer.

**(k) Open Source Licence** - For the purpose of clause 17.8 of the Agreement, the Customer acknowledges and provides its written consent for the Supplier's use of Open Source Software in developing or enhancing any Deliverable and inserting Open Source Software into any Deliverable, provided that:

- (a) the terms of this Agreement govern the Customer's use of any Deliverable; and
- (b) the Supplier complies with all license terms of any such third party software and any Open Source Software.

Notwithstanding anything to the contrary in this Agreement, Deliverables deemed Ancillary Software may include Open Source Software, which is governed by the terms of its applicable third-party open source licences. The provisions of clause 17.8(c)(ii) of the Agreement are subject to the Customer's use of the Deliverable being in full compliance with the Agreement and the Customer not causing the outcomes listed in paragraphs (A) and (B). For the avoidance of doubt, the Supplier has no obligation to further obtain Customer's written consent with regard to the future use of Open Source Software in the Deliverables. For the purpose of the foregoing, "**Ancillary Software**" shall mean software licensed by the Supplier to Customer that is deployed on machines operated by or for Customer to facilitate operation of the Cloud Services or interoperation of the Cloud Services with other software, hardware, or services. Ancillary Software may include code that is licensed under third-party license agreements, including open source made available or provided with the Ancillary Software.

**(l) Additional Obligations** – For the purposes of clause 17.2(d), the reference to "Customer's Existing Materials" shall include Customer Data and Customer Technology. "Customer Technology" means software, methodologies, templates, business processes, documentation, or other material originally authored, invented, or otherwise created by or for the Customer (but not by or for the Supplier) for use with the Services, excluding the Services, any software licensed by the Supplier to the Customer, documentation relating to the Services, and technology and methodologies (including products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects, and documentation) created by or for, or licensed to, the Supplier and any updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related documentation."

**(m) State Records** – Clause 19.1(d)(vii) of the Agreement is deleted. The parties acknowledge that it is possible that State records may be transferred to the Supplier under this Agreement. The Customer acknowledges and agrees that insofar as State records may be included within Customer Data, the Supplier may be unaware of such inclusion and such State records will be treated in accordance with the requirements of this Agreement applicable to Customer Data generally. To the extent State records are included in the Customer Data, the Customer provides its consent to:

(i) the transfer and storage of such State records to other locations outside New South Wales but which are within Australia; and

(ii) the Supplier and/or its Related Bodies Corporate (as defined in the Corporations Act 2001 (Cth) being granted with access to such State records from locations which may be outside Australia, but only to the extent required for the purpose of providing support or otherwise facilitating the fulfillment of its obligations under this Customer Contract.

To the extent State records are included in information provided to the Supplier in respect of the administration and provision of the Services and the general operation of this Agreement, the Customer provides its consent to the transfer of State records and/or their access from such locations as are customarily used by the Supplier and its Related Bodies Corporate for the purpose of its standard business operations which may include locations outside Australia, but only to the extent required for the purpose of providing support or otherwise facilitating the fulfillment of its obligations under this Agreement.

**(n) Privacy** - The Supplier's Data Management and Protection Plan shall be deemed to be sufficient for the purposes of clause 20.2(c) so that other matters referred to in clause 20.2(c)(iii) are not required. The Data Processing Addendum is the Data Management and Protection Plan for the purposes of the Agreement.

**(o) Set Off** - Clause 24.7 (Set Off) is deleted.

**(p) GIPA Act**

(i) The Supplier provides its agreement and consent and the Customer may exercise such rights, in each case, pursuant to clauses 23(a)(iii)(B) and 39.1(a) of the Agreement, only to the extent such disclosure is required pursuant to the GIPA Act and provided the Customer has used all reasonable endeavours to minimize the disclosure required.

(ii) The parties acknowledge and agree that the Supplier is *not* providing services to the public on behalf of an agency and that this Agreement is not within the scope of section 121 of the GIPA Act and that clause 39.1(b) of the Agreement is of no effect.

(iii) Clause 39.1(e)(iv) of the Agreement is deleted. The parties also acknowledge and agree that: (A) the Supplier employs more than 10 persons; and (B) section 9(1) of the *Defamation Act 2005* (NSW) provides that a corporation which employs more than 10 persons has no cause of action for defamation in relation to the publication of defamatory matter about the corporation.

**(q) Business Contingency Plan** – Notwithstanding clauses 25.2(e), (f) and (g) or any other clause of the Agreement, the Business Contingency Plan shall not be subject to the approval of the Customer.

**(r) Termination for Convenience** - Clauses 29.2 and 29.3 of the Agreement are deleted.

**(s) Termination for Cause by the Supplier**

(i) Clause 29.4(a) is amended by inserting the following new sub-clauses after sub-clause (ii):

- “(iii) if there is any actual or alleged infringement of any third party Intellectual Property rights as a result of the Supplier’s use of the Customer Data or the Customer’s Existing Materials; or
- (iv) the Customer breaches any of the terms of the Data Processing Addendum”.

(ii) Clause 29.4(a)(ii) is amended by replacing the reference to “60 days” with a reference to “30 days”.

**(t) Suspension** – clause 30 of the Agreement is deleted.

**(u) Indemnities** – clause 34.2 is amended by replacing the reference to clause “34.1(c)” with a reference to clause 34.1(a)(i)(A). Any references to “indemnity” in clauses 34.2, 34.3 and 34.4 are replaced with a reference to “defence”. Any reference to “Indemnified Entity” in clauses 34.3 and 34.4 are replaced with a reference to “Defended Entities”.

Clause 34.1 of the Agreement is replaced with the following:

“(a) Subject to this clause 34.1, the Supplier will:

(i) defend Customer and its officers, directors, and employees (“Defended Entities”) against any Claim to the extent alleging any:

(A) ServiceNow Core Technology used in accordance with this Agreement infringes any Intellectual Property Rights of any unaffiliated third party (“**IPR Claim**”); or

(B) Supplier personnel when onsite at Customer’s premises caused death, bodily harm, or damage to tangible personal property due to their negligence or wilful misconduct; and

(ii) pay any settlement amount or court-ordered damages award under the forgoing clauses (i)(A) or (i)(B) to the extent arising from such Claim.

(b) In connection with any IPR Claim, the Supplier may:

(i) contest the Claim;

(ii) obtain claimant’s permission for Customer’s continued use of the applicable Cloud Service or ServiceNow Core Technology;

(iii) replace Customer’s access to or use of the applicable Cloud Service or ServiceNow Core Technology with substantially similar functionality that avoids the Claim; or

(iv) if the Supplier determines the foregoing clauses (i), (ii), and (iii) are commercially impracticable, terminate Customer’s access to and use of the affected Cloud Service on 60-days’ prior notice and refund any prepaid subscription fees covering that part of the applicable Term for such Cloud Service remaining after the effective date of termination.

(c) Notwithstanding the above, the Supplier has no obligation or liability for any Claim under clause 34.1(a)(i)(A) to the extent arising from:

(i) use of any ServiceNow Core Technology not expressly authorized under this Agreement, to the extent the Claim would have been avoided without such access or use;

(ii) Customer Data or Customer technology; or

(iii) use of ServiceNow Core Technology:

(A) in violation of Law;

(B) after termination under clause 34.1(b)(iv); or

(iv) modification to the ServiceNow Core Technology to Customer’s specifications or by anyone other than the Supplier or its contractors, or if combined with anything not provided by the Supplier, if the Claim would have been avoided but for such modification or combination.

For the purposes of this Agreement “ServiceNow Core Technology” means (1) the Cloud Service, third party software provided by the Supplier, the then-current Supplier documentation for the Cloud Service or third party software provided by the Supplier at <https://docs.servicenow.com>, and technology and methodologies (including products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects, and documentation) created by or for, or licensed to, the Supplier; and (2) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related documentation

**(v) Customer Indemnities** – a new clause 34.1A is inserted as follows:

**“34.1A Customer Warranties**

Customer warrants that (a) Customer Data, (b) Customer’s Existing Materials or (c) a modification to the Cloud Service made to Customer’s specifications or otherwise made by or on behalf of Customer by any person other than Supplier or a person acting at Supplier’s direction (but only if the infringement would have been avoided by use of the unmodified Cloud Service), does not infringe any intellectual property rights, misappropriate any third party trade secret, or violate any third party privacy rights.

**(w) Exclusions of Liability** – clauses 34.6(b) (iii) and (iv) of the Agreement are deleted.

**(x) Dispute Resolution** – a new clause 35.1(d) is inserted into the Agreement as follows:

“The Customer warrants that it will conduct itself in accordance with the Model Litigant Principles and Significant Litigation Directions in effect at the time of the dispute”.

**(y) Audits and Inspections.** Clause 37.2 is deleted and replaced with the following: “Any audit of the Supplier’s performance of its obligations under this Agreement shall be in accordance with the terms set out in the Data Security Addendum”.

**(aa) Customer Data** – the definition of “Customer Data” in clause 1.1 of Schedule 1 is replaced with the following:

“**Customer Data** means Customer’s electronic data that is uploaded by or for Customer or its agents, employees or contractors and processed in the Data Services, excluding ServiceNow Core Technology.

**(bb) Renewal Period** – Clause 5.2(b) is amended so that it states: “Subject to Item 43 of the Order Form, 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”.



**ANNEXURE D – DATA SECURITY ADDENDUM**

## DATA SECURITY ADDENDUM

### 1. SECURITY PROGRAM

While providing the Subscription Service, ServiceNow will ensure there is a written information security program of policies, procedures and controls aligned to the ISO27001 Series, or substantially equivalent standard, governing the processing, storage, transmission and security of Customer Data (the “**Security Program**”). The Security Program will include industry-standard practices designed to protect Customer Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. ServiceNow updates the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, provided that no such update will materially reduce the overall level of commitments or protections provided to Customer as described herein.

**1.1 SECURITY ORGANIZATION.** There will be a Chief Information Security Officer, or equivalent executive, that is designated as responsible for coordinating, managing, and monitoring the information security function, policies, and procedures.

**1.2 POLICIES.** The information security policies will be: (i) documented; (ii) reviewed and approved by management, including after material changes; and (iii) published, and communicated to personnel, and contractors, including appropriate ramifications for non-compliance.

**1.3 RISK MANAGEMENT.** There will be information security risk assessments performed as part of a risk governance program that is established with the objective to regularly test, assess and evaluate the effectiveness of the Security Program. Such assessments will be designed to recognize and assess the impact of risks and implement identified risk reduction or mitigation strategies to address new and evolving security technologies, changes to industry standard practices, and changing security threats.

### 2. CERTIFICATIONS AND AUDITS

**2.1 CERTIFICATIONS AND ATTESTATIONS.** ServiceNow will establish and maintain sufficient controls to meet certification and attestation for the objectives stated in ISO27001, ISO27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent standards) for the Security Program. At least once per calendar year, an assessment against such standards and audit methodologies by an independent third-party auditor will be obtained for environments where Customer Data is stored.

**2.2 AUDIT.** ServiceNow will allow for and contribute to audits that include inspections by granting Customer access to reasonable and industry recognized documentation evidencing the policies and procedures governing the security and privacy of Customer Data and the Security Program through a self-access documentation portal (“**ServiceNow CORE**”) and at no additional costs (“**Audit**”). The information available in ServiceNow CORE will include documentation evidencing the Security Program, inclusive of the privacy policies and procedures regarding Personal Data Processed, as well as copies of certifications and attestation reports (including audits) listed above. To the extent that Customer has not reasonably been able to satisfy its audit requirements by following the procedure outlined in this Clause, ServiceNow will provide Customer with such further assistance as may reasonably be required (in accordance with the assistance obligations described herein) to substantially satisfy such requirements.

**2.3 OUTPUT.** Upon Customer’s request, ServiceNow and Customer may schedule a mutually convenient time to discuss the Audit. In the event the Audit has any findings of material noncompliance with the Data Processing Addendum or this Data Security Addendum (“**DSA**”), then ServiceNow will promptly address such findings of noncompliance. ServiceNow may, in its sole discretion and consistent with industry and ServiceNow’s standards and practices, make commercially reasonable efforts to implement Customer’s suggested improvements noted in the Audit to improve ServiceNow’s Security Program. The Audit and the results derived therefrom are Confidential Information of ServiceNow.

### 3. PHYSICAL, TECHNICAL, AND ORGANIZATIONAL SECURITY MEASURES

#### 3.1 PHYSICAL SECURITY MEASURES.

**3.1.1. DATA CENTER FACILITIES.** The data center facilities will include: (1) physical access restrictions and monitoring that will include a combination of any of the following: multi-zone security, man-traps, appropriate perimeter deterrents (e.g. fencing, berms, guarded gates), on-site guards, biometric controls, CCTV, and secure cages; and (2) fire detection and fire suppression systems both localized and throughout the data center floor.

**3.1.2. MEDIA.** For deletion of data, an industry standard such as NIST 800-88 (or substantially equivalent) will be used for the deletion of sensitive materials, including Customer Data, before final disposition of such media.

### **3.2 TECHNICAL SECURITY MEASURES.**

**3.2.1. ACCESS ADMINISTRATION.** Access by personnel to Customer Data will be conducted in a manner that: (i) is protected by authentication and authorization mechanisms; (ii) requires personnel to be assigned a unique user account; (iii) restricts the sharing of individual user accounts; (iv) requires strong authentication with complex passwords; (v) ensures accounts are lock-out enabled; (vi) requires access over a VPN; (vii) requires access privileges be based on job requirements limited to that necessary for the applicable personnel to undertake their duties; (viii) ensures access is revoked upon termination of employment or consulting relationships; and (ix) requires access entitlements be reviewed by management quarterly.

**3.2.2. LOGGING AND MONITORING.** The production infrastructure log activities will be centrally collected, secured in an effort to prevent tampering, and monitored for anomalies by a trained security team.

**3.2.3. FIREWALL SYSTEM.** Firewall technology will be installed and managed to protect systems and inspect ingress connections. Managed firewall rules will be reviewed in accordance with then-current operating procedures, which will be reviewed no less frequently than quarterly.

**3.2.4. VULNERABILITY MANAGEMENT.** Vulnerability scans will be performed within the environment to determine potential vulnerabilities in accordance with then-current security operating procedures, which will be at least quarterly. When software vulnerabilities are revealed and addressed by a vendor patch, the patch will be obtained from the applicable vendor and applied within an appropriate risk-based timeframe in accordance with the then-current vulnerability management and security patch management standard operating procedure and only after such patch is tested and determined to be safe for installation in production systems.

**3.2.5. ANTIVIRUS.** Antivirus, anti-malware, and anti-spyware software will be updated on regular intervals and centrally logged.

**3.2.6. CHANGE CONTROL.** Changes to the environment will be reviewed to minimize risk. Such changes will be implemented in accordance with then-current standard operating procedure.

**3.2.7. CONFIGURATION MANAGEMENT.** Standard hardened configurations for the system components within the environment will be maintained using industry standard hardening guides, such as guides from the Center for Internet Security.

**3.2.8. DATA ENCRYPTION IN TRANSIT.** Industry standard encryption will be used to encrypt Customer Data in transit over public networks.

**3.2.9. DATA ENCRYPTION AT REST.** The encryption of Customer Data at rest will be determined by Customer and, if encrypted, will be encrypted as determined by Customer according to the applicable offerings.

**3.2.10. ILLICIT CODE AND SECURE SOFTWARE DEVELOPMENT.** ServiceNow will follow the secure software development and code review practices described in this section to prevent harm from malware, such as from viruses, worms, date bombs, time bombs, or shut down devices. Software will be developed using secure application development policies and procedures aligned with industry standard practices such as the OWASP Top Ten (or a substantially equivalent standard). Personnel responsible for secure application design and development will receive appropriate training regarding secure application development practices.

**3.2.11. SECURE CODE REVIEW.** A combination of static and dynamic testing of code will be performed prior to the release of such code to Customers. Vulnerabilities will be addressed in accordance with the then-current software vulnerability management program. To address vulnerabilities where code has been made available to Customers, software patches will be regularly made available to Customers.

### **3.3 ORGANIZATIONAL SECURITY MEASURES.**

**3.3.1. PERSONNEL SECURITY.** Background screening will be performed on all employees and all contractors who have access to Customer Data in accordance with applicable standard operating procedure and subject to applicable Law.

**3.3.2. SECURITY AWARENESS AND TRAINING.** Security and Privacy awareness training and education will be provided to employees and contractors who have access to Customer Data. Such training will be conducted at time of hire and at least annually throughout employment.

**3.3.3. VENDOR RISK MANAGEMENT.** Any vendor that accesses, stores, processes or transmits Customer Data will be assessed to ensure it has appropriate security and privacy controls.

**3.3.4. SOFTWARE AND ASSET INVENTORY.** An inventory of the software components (including, but not limited to, open-source software) used in the environment will be maintained.

**3.3.5. WORKSTATION SECURITY.** Security mechanisms on personnel workstations, including firewalls, anti-virus, and full disk encryption with a minimum of AES 128-bit encryption will be implemented and maintained. Personnel will be restricted from disabling security mechanisms.

## **4. SERVICE CONTINUITY**

**4.1 DATA LOCATION.** ServiceNow will host the purchased instances in data centers located in the geographic region specified on the Order Form which have attained SSAE 18 Type 2 attestations or have ISO 27001 certifications (or equivalent or successor attestations or certifications).

**4.2 DATA BACKUP.** Back-ups will be performed of all Customer Data in accordance with the then-current operating procedure available in the CORE Portal.

**4.3 DISASTER RECOVERY.** An Information Security Contingency Plan (**ISCP**) to address disaster recovery will be maintained that is consistent with industry standards for the environment and will: (i) test the ISCP at least once every year; (ii) make available summary test results that will include the actual recovery point and recovery times; and (iii) document any action plans within the summary test results to promptly address and resolve any deficiencies, concerns, or issues that prevented or may prevent the environment from being recovered in accordance with the ISCP.

**4.4 BUSINESS CONTINUITY.** A business continuity plan ("**BCP**") will be maintained to minimize the impact from an event to ServiceNow's provision and support of the Subscription Services. The BCP will: (i) include processes for protecting personnel and assets and restoring functionality in accordance with the time frames outlined therein; and (ii) be tested annually and updated based on any deficiencies identified during such tests.

## **5. MONITORING AND INCIDENT MANAGEMENT**

**5.1 INCIDENT MONITORING AND MANAGEMENT.** System events are monitored and analyzed in a timely manner in accordance with ServiceNow's current standard operating procedures. Response teams will be escalated to and engaged as necessary to address a security incident.

### **5.2 BREACH NOTIFICATION.**

**5.2.1. NOTIFICATION.** ServiceNow will report to Customer any accidental or unlawful destruction, loss, alteration, unauthorized disclosure, of or access to Customer Data ("**Breach**") without undue delay following determination by ServiceNow that a Breach has occurred.

**5.2.2. REPORT.** The initial report will be made to Customer's security or privacy contact(s) designated in ServiceNow's customer support portal (or if no such contact(s) are designated, to the primary technical contact designated by Customer). As relevant information in relation to the Breach is collected or otherwise becomes available to ServiceNow, it will provide such information without undue delay to Customer, to assist Customer to comply with its notification obligations under Data Protection Laws. In particular, to the extent reasonably possible and applicable, ServiceNow will provide Customer with the information described in Article 33 of GDPR.

**5.2.3. DATA CONTROLLER OBLIGATIONS.** Customer will cooperate with ServiceNow in maintaining accurate contact information in the customer support portal and by providing any information that is reasonably requested to resolve any security incident, including any Breaches, identify its root cause(s) and prevent a recurrence. Customer is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted Data Subjects in relation to any Breach and for providing such notice.

## **6. PENETRATION TESTS**

**6.1 BY A THIRD-PARTY.** For each family release, skilled third-party vendors will perform penetration testing on the applications on the ServiceNow platform to identify vulnerabilities. Executive reports from the penetration testing are made available to Customer in ServiceNow CORE.

**6.2 BY CUSTOMER.** Customer may request to perform, at its own expense, an application penetration test for applications in which Customer Data is stored; provided that Customer will: (i) notify ServiceNow and submit a request to schedule such a test using the Support Portal per ServiceNow's then-current penetration testing policy, and (ii) agree to ServiceNow's penetration test agreement prior to conducting such test. In the event Customer's authorized penetration testing identifies vulnerabilities that ServiceNow is able to reproduce, ServiceNow will, consistent with industry-standard practices, use commercially reasonable efforts to promptly make any necessary changes to improve the security of the Subscription Service.

## **7. SHARED SECURITY RESPONSIBILITY**

**7.1 PRODUCT CAPABILITIES.** ServiceNow provides a variety of security settings that allow Customer to configure security of the Subscription Services for their own use such as, but not limited to: (i) authenticate users before accessing the Customer's instance; (ii) encrypt passwords; (iii) allow users to manage passwords; and (iv) access instance application logs. Customer will manage each user's access to and use of the Subscription Services by assigning to each user a credential and user type that controls the level of access to the applicable Subscription Services. Customer bears sole responsibility for reviewing the Security Program and making an independent determination as to whether it meets Customer's requirements, taking into account the type and sensitivity of Customer Data that Customer provides to ServiceNow. Customer bears sole responsibility for implementing encryption and access control functionalities within the instance to protect Customer Data and assumes all liability for damages directly resulting from any decision not to encrypt Customer Data. Customer bears sole responsibility for protecting the confidentiality of each user's login and password and managing each user's access to the Subscription Services. Customer will be solely responsible for implementing the documented best practices and hardening guidelines for securing its ServiceNow instances.

**7.2 SECURITY CONTACT.** In accordance with the Customer Support Policy ([www.servicenow.com/upgrade-schedules.html](http://www.servicenow.com/upgrade-schedules.html)), Customer agrees to identify and maintain appropriate security contact(s) for all information security incident and information security-related communication within the Support Portal.

**7.3 LIMITATIONS.** Notwithstanding anything to the contrary in this DSA or other parts of the Agreement, ServiceNow's obligations herein are only applicable to the Subscription Services. This DSA does not apply to: (i) information shared with ServiceNow that is not Customer Data; (ii) data in Customer's VPN or a third-party network; and (iii) any data processed by Customer or its users in violation of the Agreement or this DSA.

**ANNEXURE E – CUSTOMER SUPPORT ADDENDUM**

## CUSTOMER SUPPORT ADDENDUM

All capitalized terms not defined in this Customer Support Addendum will have the meaning given to them in other parts of the Agreement.

### 1. CUSTOMER SUPPORT

**1.0 SUPPORT SCOPE.** Customer support is provided to resolve defects causing a nonconformity in the Subscription Service as compared to the then-current Documentation ("Customer Support"). A resolution to a defect may consist of a fix, workaround, or other relief, as ServiceNow deems reasonable. Customer Support does not include performing the following:

- implementation, configuration, integration or customization services;
- training or assistance with administrative functions;
- resolving immaterial defects;
- resolving defects due to modifications of the Subscription Service made by any person other than ServiceNow or a person acting at ServiceNow's direction; or
- resolving defects on any instance of the Subscription Service not in conformance with Section 3 (Upgrades and Updates).

**1.1 ADDITIONAL SUPPORT SERVICES.** ServiceNow may, in its sole discretion, offer supplemental Customer Support service options for an additional fee. If Customer chooses to purchase such supplemental services, the applicable additional terms and conditions will be reflected in the applicable package description referenced in Customer's associated ordering document.

**1.2 CUSTOMER SUPPORT ACCESS.** Customers can access ServiceNow's support portal <https://hi.service-now.com/> ("Support Portal") to access self-help resources and open cases 24 hours a day, 7 days a week. Customer Support personnel will address cases per the target level of effort for the given Case Priority stated in the table below. Local Time, for the purposes of the Target Level of Effort in the table below means the regional time window of Monday through Friday, 7:00AM to 7:00PM, when Customer Support personnel are addressing Customer's cases. ServiceNow will provide visibility to Customer's regional Local Time window within the Support Portal.

### 1.3 CASE PRIORITY; TARGET RESPONSE TIME; TARGET LEVEL OF EFFORT

Priority	Definition	Target Response Times	Target Level of Effort
P1	Any defect that causes an instance not to be accessible by authorized users.	60 minutes	Continuously, 24 hours per day, 7 days per week
P2	Any defect that causes a critical function to fail.	4 hours	As appropriate, Monday through Friday, 7AM to 7PM Local Time
P3	Any defect that significantly impedes work or progress.	3 business days	As appropriate, Monday through Friday, 7AM to 7PM Local Time
P4	Any defect that does not significantly impede work or progress.	4 business days	As appropriate, Monday through Friday, 7AM to 7PM Local Time

## 1.4 CUSTOMER RESPONSIBILITIES

**1.4.1.** Customer will receive from ServiceNow communications via email, phone, or through the Support Portal regarding the Subscription Service and acknowledges that access to the Support Portal may require multi-factor authentication by Customer.

**1.4.2.** Customer will appoint a reasonable number of contacts ("**Customer Authorized Contacts**") to engage Customer Support for questions and technical issues and Customer must maintain current contact information for the following authorized contacts in the Support Portal who have been trained to administer the Subscription Service:

- Primary Business Contact;
- Secondary Business Contact;
- Technical Contact;
- Support Contact;
- Primary Customer Administrator; and
- Security Contact.

## 1.5 EXCLUSIONS

**1.5.0.** Notwithstanding anything herein, the Target Response Times and Priority levels set forth above shall not modify security or privacy breach notification as set forth in the data security, data privacy and processing, or other applicable terms in Customer's underlying Agreement.

**1.5.1.** Customer shall be responsible for making appropriate personnel, including Customer's Security Contact, available continuously as needed in the event of a breach as set forth in the data security, data privacy and processing, or other applicable terms in Customer's underlying Agreement.

## 2. AVAILABILITY SLA

If Customer's production instance of the Subscription Service is Available less than 99.8% during a calendar month, Customer's exclusive remedy is to request ServiceNow issue a service credit ("**Service Credit**") to Customer for the dollar value of the number of minutes the Subscription Service was not Available in the month. Service Credits are determined at the deemed per-minute rate ServiceNow charges to Customer for Customer's use of the affected Subscription Service. Customer may request ServiceNow apply a Service Credit to the next invoice for subscription fees. Customer must request all Service Credits in writing to ServiceNow within 30 days of the end of the month in which the Availability SLA was not met. ServiceNow may delay issuing service credits until such amounts reach \$1,000 USD or equivalent currency specified in the applicable Order Form.

"**Available**" means the production instance of the Subscription Service can be accessed by authorized users during a calendar month, excluding Excused Downtime.

"**Excused Downtime**" means: **(a)** Maintenance Time of up to two hours per month; and **(b)** any time the Subscription Service is not Available due to circumstances beyond ServiceNow's control, including modifications of the Subscription Service by any person other than ServiceNow or a person acting at ServiceNow's direction, a Force Majeure Event, general Internet outages, failure of Customer's infrastructure or connectivity (including direct connectivity and virtual private network ("**VPN**") connectivity to the Subscription Service), computer and telecommunications failures and delays, and network intrusions or denial-of-service or other criminal attacks.

"**Infrastructure Modification**" means repairs, maintenance, improvements, or changes to the cloud infrastructure used by ServiceNow to operate and deliver the Subscription Service. ServiceNow will give Customer 10 days' prior notice of an Infrastructure Modification if ServiceNow, in its reasonable judgment, believes that the Infrastructure Modification will impact Customer's use of its production instances of the Subscription Service, unless, in the reasonable judgment of ServiceNow, the Infrastructure Modification is necessary to: **(a)** maintain the availability, security, or performance of the Subscription Service; **(b)** comply with Law; or **(c)** avoid infringement or misappropriation of third-party IPR.



**“Maintenance Time”** means the time the Subscription Service is not Available due to an Infrastructure Modification, Upgrade, or Update.

### 3. UPGRADES AND UPDATES

**“Upgrades”** are new Release Families applied by ServiceNow to Customer’s instances of the Subscription Service at no additional fee during the Subscription Term. A **“Release Family”** is a complete solution with new features or enhancements to the Subscription Service, including previously released Updates, if applicable. **“Updates”** are ServiceNow’s releases (including patches and hotfixes) of the Subscription Service applied by ServiceNow to Customer’s instances of the Subscription Service at no additional fee during the Subscription Term that provide problem fixes or other changes, but do not generally include new functionality. ServiceNow may provide new functionality either: **(a)** as an Upgrade, or **(b)** as different software or service for a separate fee. ServiceNow determines whether and when to develop, release, and apply any Upgrade or Update to Customer’s instances of the Subscription Service, pursuant to ServiceNow’s current Upgrade Policy, which can be found at ([www.servicenow.com/upgrade-schedules.html](http://www.servicenow.com/upgrade-schedules.html)) (or such successor site).

ServiceNow shall use reasonable efforts to give Customer 30 days’ prior notice of any Upgrade to the Subscription Service. ServiceNow shall use reasonable efforts to give Customer 10 days’ prior notice of any Update. Notwithstanding the foregoing, ServiceNow may provide Customer with a shorter or no notice period of an Upgrade or Update if, in the reasonable judgment of ServiceNow it is necessary to: **(i)** maintain the availability, security, or performance of the Subscription Service; **(ii)** comply with Law; or **(iii)** avoid infringement or misappropriation of any third-party IPR. ServiceNow is not responsible for defects on any instance of the Subscription Service not in conformance with this Section 3.

**ANNEXURE F- DATA PROCESSING ADDENDUM**

## DATA PROCESSING ADDENDUM

All capitalized terms not defined in this Data Processing Addendum (“**DPA**”) have the meaning given to them in other parts of the Agreement. The Data Security Addendum (“**DSA**”) is incorporated by reference in this DPA.

### DEFINITIONS

“**Data Controller**” means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of Processing of Personal Data.

“**Data Processor**” means the natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of the Data Controller.

“**Data Protection Laws**” means all applicable laws and regulations regarding the Processing of Personal Data.

“**Data Subject**” means an identified or identifiable natural person.

“**Personal Data**” means any information relating to a Data Subject uploaded by or for Customer or Customer’s agents, employees, or contractors to the Subscription Service as Customer Data.

“**Process**,” “**Processed**” or “**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure or destruction.

“**Sub-Processor**” means any legal person or entity engaged in the Processing of Personal Data by Data Processor.

### 1. SCOPE OF THE PROCESSING

**1.1 COMMISSIONED PROCESSOR.** ServiceNow will act as Data Processor to Customer in the performance of the Subscription Service. Customer will act as Data Controller (unless Customer is a Data Processor, in which case ServiceNow will act as a sub-processor to Customer). Each party will comply with Data Protection Laws to which it is subject in the performance of this DPA.

**1.2 INSTRUCTIONS.** The Agreement constitute Customer’s written instructions to ServiceNow. Customer may issue additional or alternate provided that such instructions are agreed in writing between Customer and ServiceNow.

### **1.3 NATURE, SCOPE AND PURPOSE OF THE PROCESSING.**

- (a) ServiceNow will only Process Personal Data in accordance with Customer’s instructions and to the extent necessary for providing the Subscription Service and the Professional Services. Details of the Processing of Customer Data conducted under this DPA are set forth in Appendix 1.
- (b) ServiceNow will: (i) not sell or share Personal Data; (ii) use Personal Data for the business purpose(s) set forth in the Agreement, and not retain, use, or disclose Personal Data, except where permitted by applicable Data Protection Laws, for any purpose other than the business purpose(s) or outside of the direct business relationship between ServiceNow and Customer; (iii) notify Customer if it determines it can no longer meet its obligations under applicable Data Protection Laws; (iv) not combine Personal Data, except to the extent permitted by applicable Data Protection Laws, with personal information that ServiceNow receives from, or on behalf of, other persons or with personal information ServiceNow collects from its own interactions with consumers; (v) by complying with the obligations set out in Section 5 of this DPA, permit Customer to take reasonable and appropriate steps to ensure ServiceNow Processes Personal Data in a manner consistent with Customer’s obligations under applicable Data Protection Laws; and (vi) work together with Customer in good faith to remediate any allegedly unauthorized use of Personal Data, if Customer reasonably believes that ServiceNow is Processing Personal Data in an unauthorized manner and provides ServiceNow with reasonable notice of such belief. As used in this Section 1.3, “business,” “business purpose,” “consumer,”

“personal information,” “sell,” and “share,” shall have the meanings ascribed to them under applicable Data Protection Laws.

## **2. DATA PROCESSOR**

**2.1 DATA CONTROLLER'S INSTRUCTIONS.** Where ServiceNow believes compliance with Customer's instructions would result in a violation of Data Protection Laws or is not in the ordinary course of ServiceNow's obligations in operating the Subscription Service or delivering Professional Services, ServiceNow will promptly notify Customer thereof.

**2.2 DATA PROCESSOR PERSONNEL.** Persons authorized by ServiceNow to Process Personal Data will be bound by appropriate confidentiality obligations.

**2.3 DATA SECURITY MEASURES.** ServiceNow will maintain appropriate technical and organizational safeguards to protect the security, confidentiality, and integrity of Customer Data, including any Personal Data contained therein, as set forth in the DSA. ServiceNow makes available many security features and controls that Customer can elect to use. Customer is responsible for implementing any optional technical and organizational measures to protect Customer Data, as described in the DSA.

**2.4 DATA PROCESSOR ASSISTANCE.** ServiceNow will assist Customer as reasonably requested by Customer to facilitate Customer's compliance with obligations under Data Protection Laws in connection with ServiceNow's Processing of Personal Data, taking into account the nature of Processing and information available to ServiceNow.

## **3. REQUESTS MADE FROM DATA SUBJECTS AND AUTHORITIES**

**3.1 REQUESTS FROM DATA SUBJECTS.** During the Subscription Term, ServiceNow will provide Customer with the ability to access, correct, rectify, erase, or block Personal Data, or to transfer or port such Personal Data, within the Subscription Service, as may be required under Data Protection Laws (collectively, “Data Subject Requests”).

**3.2 RESPONSES.** Customer will be solely responsible for responding to Data Subjects in respect of any Data Subject Requests, provided that ServiceNow will reasonably cooperate with Customer in relation to Data Subject Requests to the extent Customer is unable to fulfill such Data Subject Requests using the functionality in the Subscription Service. ServiceNow will instruct the Data Subject to contact the Customer in the event it receives a Data Subject Request directly.

**3.3 REQUESTS FROM AUTHORITIES.** In the case of a notice, audit, inquiry, or investigation by a government body, data protection authority, or law enforcement agency regarding the Processing of Personal Data, ServiceNow will promptly notify Customer unless prohibited by applicable law. Each party will cooperate with the other party by providing all reasonable information requested in the event the other party is required to produce such information to a data protection authority.

## **4. BREACH NOTIFICATION**

**4.1 NOTIFICATION.** Service now will provide breach notifications as provided in Section 5.2.1 of DSA.

**4.2 REPORT.** Service now will provide reports as provided in Section 5.2.2 of the DSA.

**4.3 DATA CONTROLLER OBLIGATIONS.** Customer will cooperate with ServiceNow to resolve any security incident as provided in Section 5.2.3 of the DSA.

## **5. CUSTOMER MONITORING RIGHTS.**

**5.1 CERTIFICATIONS AND ATTESTATIONS.** ServiceNow will maintain the certifications and attestations specified in Section 2.1 of the DSA.

**5.2 AUDIT.** ServiceNow will allow for and contribute to audits as specified in Section 2.2 of the DSA.

**5.3 OUTPUT.** ServiceNow will discuss the output of the Audit as specified in Section 2.3 of the DSA.

## 6. SUB-PROCESSORS

**6.1 USE OF SUB-PROCESSORS.** Customer authorizes ServiceNow to engage Sub-Processors appointed in accordance with this Clause 6. ServiceNow engages, as applicable, the Sub-Processors listed in <https://www.servicenow.com/content/dam/servicenow-assets/public/en-us/doc-type/legal/servicenow-sub-processors.pdf> in respect of the Subscription Services. ServiceNow (or the relevant ServiceNow Affiliate) will require all of its Sub-Processors to agree to no less protective terms as those agreed by ServiceNow under this DPA.

**6.2 NEW SUB-PROCESSORS.** Prior to ServiceNow engaging a new Sub-Processor for the Subscription Service, ServiceNow will notify Customer by email to Customer's designated contact in the ServiceNow Support Portal, or by notification within the ServiceNow Support Portal (or other mechanism used to notify its customer base). With respect to providing the notice described in the preceding sentence, ServiceNow will provide at least 30 days' prior written notice before engaging a Sub-Processor with respect to existing Subscription Services which Customer has purchased. If a new Sub-Processor is engaged to support a new Subscription Service or a new feature of an existing Subscription Service, then the notice described in this Clause will be provided at or before the time such feature or Subscription Service is made generally available. Upon written request by Customer, ServiceNow will make a summary of the data processing terms with the Sub-Processor available to Customer. Customer may request in writing reasonable additional information with respect to Sub-Processor's ability to perform the relevant Processing activities in accordance with this DPA.

**6.3 RIGHT TO OBJECT.** Customer may object to ServiceNow's proposed use of a new Sub-Processor by notifying ServiceNow if Customer reasonably determines such Sub-Processor is unable to Process Personal Data in accordance with the terms of this DPA. In the event Customer objects, ServiceNow will reasonably consider such objection and will notify Customer if it intends to use the Sub-Processor at issue ("**Processor Notice**"). If such Sub-Processor is going to be used, Customer may terminate the applicable Order Form(s) or Use Authorization(s) with respect to the Subscription Service requiring use of the Sub-Processor at issue upon written notice to ServiceNow within 30 days of the date of Processor Notice. ServiceNow will, as Customer's sole and exclusive remedy, refund to Customer any unused prepaid fees following the effective date of termination for the terminated services.

**6.4 LIABILITY.** Use of a Sub-Processor will not relieve, waive, or diminish any obligation of ServiceNow under this DPA, and ServiceNow is liable for the acts and omissions of any Sub-Processor to the same extent as if the acts or omissions were performed by ServiceNow.

## 7. INTERNATIONAL DATA TRANSFERS

**7.1 TRANSFER MECHANISM.** The transfer of Personal Data from the European Economic Area ("**EEA**"), the United Kingdom or Switzerland to a country located outside of the EEA which is not subject to an adequacy decision (a "**Data Transfer**") will be subject to the standard contractual clauses for the transfer of Personal Data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council, as annexed to Commission Implementing Decision 2021/914 ("**SCCs**"), which are incorporated into this DPA by this reference.

### 7.2 APPLICATION OF SCCs.

**7.2.1 Modules.** Module Two (Data Controller to Data Processor) will apply to a Data Transfer when Customer is a Data Controller. Module Three (Data Processor to Data Processor) will apply to a Data Transfer when Customer is a Data Processor.

**7.2.2 Optional provisions.** Where the SCCs identify optional provisions:

- (a) in Clause 7 (Docking Clause) – the optional provision applies;
- (b) in Clause 9(a) (Use of sub-processors) – Option 2 applies (and the parties will follow the process and timings agreed in the DPA to appoint sub-processors);
- (c) in Clause 11(a) (Redress) – the optional provision does not apply;
- (d) in Clause 17 (Governing law) – option 1 applies, and where the Agreement is governed by the laws of an EU Member State, the laws of that EU Member State apply; otherwise, Irish law applies; and

(e) in Clause 18(b) (Choice of forum and jurisdiction) – where the Agreement is subject to the jurisdiction of the courts of an EU Member State, the courts of that EU Member State have jurisdiction; otherwise, the courts of Dublin, Ireland have jurisdiction.

### 7.2.3 Annexes of SCCs.

(a) In Annex 1A: the data exporter(s) is the Customer and its Affiliates making the Data Transfer (the "**Data Exporter**") and the data importers are ServiceNow entities receiving the Data Transfer (the "**Data Importer**"). The full name, address and contact details for the Data Exporter and the Data Importer are set out in the Agreement, or can be requested by either party.

(b) In Annex 1B: The: relevant details are those set out in the Agreement, including Appendix 1 "Details of Processing" of this DPA.

(c) In Annex 1C: The competent supervisory authority is the supervisory authority applicable to the Customer (or, where relevant, applicable to the Customer's representative).

(d) In Annex 2: the security provisions contained in the DSA or other security related provisions in the Agreement apply.

**7.3 INTERACTION WITH THE AGREEMENT.** All notices, requests, monitoring/audit rights, conduct of claims, liability, and erasure or return of data relating to the SCCs will be provided/managed/interpreted, as applicable, in accordance with the relevant provisions in the Agreement, to the extent that such provisions do not conflict with the SCCs.

**7.4 TRANSFERS SUBJECT TO SWISS DATA PROTECTION LAW.** If there is a Data Transfer subject to Data Protection Laws of Switzerland, then the SCCs will apply with the following modifications: the competent supervisory authority in Annex 1.C under Clause 13 will be the Federal Data Protection and Information Commissioner; references to a "Member State" and "EU Member State" will not be read to prevent data subjects in Switzerland from the possibility of suing for their rights in their place of habitual residence (Switzerland); and references to "GDPR" in the SCCs will be understood as references to Data Protection Laws of Switzerland.

**7.5 TRANSFERS SUBJECT TO UK DATA PROTECTION LAW.** If there is a Data Transfer subject to Data Protection Laws of the United Kingdom, then the International Data Transfer Addendum to the SCCs ("**UK IDTA**"), as issued by the Information Commissioner in the United Kingdom will apply and is incorporated by reference into this DPA. The information needed to complete the Tables to the UK IDTA is set out in the Agreement, including Appendix 1 "Details of Processing" of this DPA.

**7.6 EXECUTION.** Notwithstanding the fact that the SCCs and/or UK IDTA are incorporated herein by reference without the signature pages of the SCCs actually being signed by the Data Exporter or Data Importer, the parties agree that its respective execution of the Agreement is deemed to constitute its execution of the SCCs and/or the UK IDTA on behalf of the Data Exporter/Data Importer (as applicable).

**7.7 ALTERNATIVE MECHANISMS.** If an alternative transfer mechanism, such as Binding Corporate Rules, is adopted by ServiceNow, or the Trans-Atlantic Data Privacy Framework (an "**Alternative Mechanism**") becomes available during the term of the Agreement, and ServiceNow notifies Customer that some or all Data Transfers can be conducted in compliance with Data Protection Laws pursuant to the Alternative Mechanism, the parties will rely on the Alternative Mechanism instead of the provisions above for the Data Transfers to which the Alternative Mechanism applies.

## **APPENDIX 1**

### **DETAILS OF PROCESSING**

1. **Subject matter.** The subject matter of the data Processing under this DPA is the Personal Data included in Customer Data.
2. **Duration.** As between ServiceNow and Customer, the duration of the data Processing under this DPA is the Subscription Term.
3. **Purpose and nature.** The purpose and nature of the data Processing under this DPA is the provision of the Subscription Service.
4. **Type of Personal Data.** Personal Data included in Customer Data which is uploaded to the Subscription Service.
5. **Categories of data subjects.** The Data Subjects could include Customer's customers, employees, suppliers, agents, partners and/or end users.

**Schedule 3 - Statement of Work Template – Not Used**



#### **Schedule 4 - Payment Schedule – Not used**

Refer to the ServiceNow Order Form for Payment Schedule

## Schedule 5 - Change Request Form

<b>Change Request number</b>	<i>[Number the Change Request to assist with tracking Change Requests and administering the Agreement.]</i>
<b>Purchase Order Number and Agreement reference</b>	<i>[Where available, insert a reference to the applicable Purchase Order number and the Agreement reference number to which the Change Request relates.]</i>
<b>Effective date for Change Request</b>	<i>[Insert the date on which the parties agree the Change Request will become effective.]</i>
<b>Details of Change Request</b>	<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>
<b>Specifications</b>	<i>[Insert any changes to the Specifications, including any additional Specifications.]</i>
<b>Plans</b>	<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>
<b>Date for Delivery and Key Milestones</b>	<i>[List any new or amended Dates for Delivery and identify whether any of these dates constitute Key Milestones.]</i>
<b>Effect on Price</b>	<i>[If applicable, specify how the Change Request will affect the Price.]</i>
<b>Nominated Personnel</b>	<i>[Specify any changes to the Nominated Personnel.]</i>
<b>Implementation</b>	<i>[Outline in sufficient detail how the Change Request will be implemented.]</i>
<b>Effect on Customer Users</b>	<i>[Outline the effect, if any, of the change to the Customer Users.]</i>
<b>Other matters</b>	<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>
<b>List documents that form part of this Change Request</b>	<i>[Insert list.]</i>

<b>Customer</b>  Name (Print):  Signature:  Date:	<b>Supplier</b>  Name (Print):  Signature:  Date:
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**Schedule 6 - Deed of Confidentiality and Privacy – Not Applicable**

## **Schedule 7 - Escrow Deed – Not Applicable**

**Schedule 8 - Performance Guarantee – Not Applicable**

## **Schedule 9 - Financial Security – Not Applicable**

**Schedule 10 - Escrow Deed – Not Applicable**

**Schedule 11 - Performance Guarantee – Not Applicable**



## **Schedule 12 - Financial Security – Not Applicable**



# Cloud Module

## Contents

<b>PART A: PRELIMINARIES.....</b>	<b>1</b>
<b>1. General.....</b>	<b>1</b>
1.1 Scope.....	1
1.2 Acknowledgements .....	1
1.3 Services Period.....	1
1.4 Variations to Cloud Services .....	1
<b>PART B: PROVISION OF CLOUD SERVICES.....</b>	<b>2</b>
<b>2. Provision and use of Cloud Services.....</b>	<b>2</b>
2.1 Customer use and access to the Cloud Services.....	2
2.2 Scope of licence .....	2
2.3 Licensing model.....	3
2.4 Performance .....	3
2.5 Backups .....	3
2.6 Records of usage and audits.....	4
2.7 Additional Cloud Services terms.....	4
<b>3. Restrictions .....</b>	<b>4</b>
<b>4. Data .....</b>	<b>5</b>
4.1 Customer Data.....	5
4.2 Supplier's security controls for viewing and accessing Customer Data .....	5
4.3 Storage and transfer of Customer Data .....	5
4.4 Change to location of Customer Data .....	6
4.5 Media decommissioning process .....	7
4.6 Data control and other requirements .....	7
<b>PART C: SUPPORT SERVICES .....</b>	<b>8</b>
<b>5. Provision of Support Services.....</b>	<b>8</b>
5.1 Application .....	8
5.2 Support Period.....	8
5.3 General .....	8
5.4 Help desk.....	8
<b>PART D: GENERAL .....</b>	<b>8</b>
<b>6. Training .....</b>	<b>8</b>
6.1 Training Services .....	8
6.2 Training Reports .....	9
<b>7. Additional and ancillary Deliverables and Services.....</b>	<b>9</b>
7.1 Provision of additional and ancillary Deliverables and Services .....	9
7.2 Requirements .....	10
<b>8. Records.....</b>	<b>10</b>
<b>9. Exceptions .....</b>	<b>11</b>
<b>Annexure A: Definitions and interpretation.....</b>	<b>12</b>

# Cloud Module

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## Background

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

## PART A: PRELIMINARIES

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### 1. General

#### 1.1 Scope

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

#### 1.2 Acknowledgements

The parties acknowledge and agree that the:

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

#### 1.3 Services Period

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

#### 1.4 Variations to Cloud Services

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

provide advance notice, the Supplier must provide the Customer with written notice of the Unilateral Variation within 24 hours of it coming into effect.

- (c) Notice under clause 1.4(b) must be provided in writing and, notwithstanding clause 39.13 (**Notices**) of the Agreement, may, if specified in the Order Form, be provided in the form and via the medium specified in the Order Form.
- (d) If requested by the Customer, the Supplier must promptly provide the Customer with all information that may be reasonably requested by the Customer to understand the purpose, scope and effect of the Unilateral Variation.
- (e) Where this clause 1.4 applies, the parties agree that it governs the process with respect to Unilateral Variations to the Cloud Services only. Where this clause does not apply, all variations to the Services must be made by following the Change Control Procedure, except to the extent otherwise expressly permitted under the Agreement (including clause 4.4 below).

## **PART B: PROVISION OF CLOUD SERVICES**

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### **2. Provision and use of Cloud Services**

#### **2.1 Customer use and access to the Cloud Services**

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

#### **2.2 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, Permitted Users may access and use the Cloud Services for the Services Period and for any purpose in connection with:
  - (i) the Customer performing its obligations, and exercising its rights, under the Agreement;

- (ii) the full use of the Cloud Services and any associated applications as contemplated under the Agreement, including, where applicable, operating, supporting, enhancing, upgrading and maintaining the Cloud Services;
- (iii) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Cloud Services and associated Deliverables or systems that may integrate or interoperate with the Cloud Services;
- (iv) the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; or
- (v) such other Permitted Purpose specified in the Order Form.

## 2.3 Licensing model

- (a) The parties agree that the licensing model specified in the Order Form applies to the Cloud Services being provided under the Agreement.
- (b) Where the Cloud Services are licensed on a User Licensing Model, the following terms apply, unless expressly stated otherwise in the Order Form:
  - (i) there is no cap on the number of Permitted Users who may access and use the Cloud Services, except where clause 2.3(b)(ii) applies; and
  - (ii) where the Order Form specifies that there is a cap on the number of Permitted Users, the Customer:
    - A. must ensure that only the number of Permitted Users specified in the Order Form (or as otherwise agreed between the parties in writing) use the Cloud Services; and
    - B. may, at its sole discretion, increase the number of Permitted Users at any time during the Services Period, subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing.
- (c) Where the Cloud Services are not licensed on a User Licensing Model, the Customer must ensure that it does not exceed any applicable consumption or other ceiling with respect to its use of the Cloud Services as specified in the Order Form (for example, storage cap). The Customer may, at its sole discretion, increase its consumption or ceiling at any time during the Services Period, subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing.

## 2.4 Performance

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

## 2.5 Backups

- (a) Unless otherwise specified in the Order Form:
  - (i) the Customer must take and maintain adequate backups of the data that is loaded into the Cloud Services; and

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

## 2.6 Records of usage and audits

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

## 2.7 Additional Cloud Services terms

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

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## 3. Restrictions

- (a) Except to the extent permitted by Law or by the Agreement, the Customer must not without the Supplier's written consent:
  - (i) remove or alter any copyright or other proprietary notices appearing in the Cloud Services;
  - (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the Cloud Services' source code other than in accordance with any applicable escrow agreement; or
  - (iii) do, or omit to do, any additional things specified in the Order Form.

- (b) Nothing in this clause 3 restricts the Customer from providing the Permitted Users with access to, and use of, the Cloud Services and any associated application(s) on the terms of this Module.

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## **4. Data**

### **4.1 Customer Data**

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

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

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

### **4.3 Storage and transfer of Customer Data**

- (a) Unless otherwise agreed by the Customer in accordance with clause 4.4, the Supplier and its Personnel must ensure that it provides the Cloud Services from data centres in NSW or the primary data centre and any secondary data centre(s) as specified in the Order Form.



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

#### **4.4 Change to location of Customer Data**

- (a) The Supplier must not (and the Supplier must ensure that its Personnel do not) change the location of any data centres to a location outside NSW or to a location other than that specified in the Order Form without:
- (i) notifying the Customer in writing at least six months prior to such proposed change or such other timeframe specified in the Order Form; and
  - (ii) obtaining the Customer's prior written consent which may be given or withheld at the Customer's sole discretion.
- (b) The Supplier must not propose changing the location of any data centres to any location that is identified as an "excluded location" in the Order Form or that would cause the Supplier to breach its obligations under the Agreement.
- (c) The Supplier must ensure that the notice it provides under clause 4.4(a) sets out:
- (i) the proposed change to location and any associated change to data centre conditions;
  - (ii) the date on which the Supplier proposes the change will occur;
  - (iii) the reason for the proposed change;
  - (iv) any impact of such changes on the Customer's or Permitted Users' ability to access, use and interact with the Cloud Services;
  - (v) the proposed data migration and security measures that the Supplier will apply; and
  - (vi) such other details as reasonably required by the Customer.
- (d) The Supplier agrees to provide all assistance reasonably requested by the Customer to assess the proposed change to the data centre location.

- (e) The Supplier acknowledges and agrees that where the Supplier or its Personnel changes the data centre location with respect to the Cloud Services:
  - (i) the Supplier has no entitlement to additional costs as a result of the data centre change (including, the costs of any data migration or backup); and
  - (ii) the change to the data centre location will be at the Supplier's sole cost.
- (f) Without limiting the Customer's termination and other rights and remedies under the Agreement and at Law, the Customer may with written notice to the Supplier and its sole election:
  - (i) immediately terminate the Agreement; or
  - (ii) remove all or any aspect of the Cloud Services from scope,where the Supplier changes the data centre location (or signals its intention to do so) without the Customer's prior written consent or otherwise fails to comply with its obligations under this clause 4.4. The Supplier will have no Claim against the Customer where the Customer exercises its rights under, or seeks to enforce, this clause 4.4.

#### **4.5 Media decommissioning process**

- (a) The Supplier must conduct a media decommissioning process prior to the final disposal of any storage media used to store Customer Data. The Supplier must ensure that:
  - (i) prior to final disposal, any storage media used to store Customer Data will be securely degaussed, erased, purged, physically destroyed, or otherwise sanitised in accordance with the requirements of the Australian Government Information Security Manual and the Customer's Policies, Codes and Standards; and
  - (ii) it complies with any additional requirements in respect of decommissioning that may be set out in the Order Form.
- (b) If requested by the Customer, the Supplier must provide the Customer with a report or certification showing that clause 4.5(a) has been complied with.

#### **4.6 Data control and other requirements**

The Supplier must:

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

## PART C: SUPPORT SERVICES

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### 5. Provision of Support Services

#### 5.1 Application

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

#### 5.2 Support Period

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

#### 5.3 General

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

#### 5.4 Help desk

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

## PART D: GENERAL

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### 6. Training

#### 6.1 Training Services

- (a) This clause 6 only applies where it is specified in the Order Form that the Supplier will provide training Services or Deliverables.
- (b) Unless otherwise specified in the Order Documents, the Supplier must:

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

## 6.2 Training Reports

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

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## 7. Additional and ancillary Deliverables and Services

### 7.1 Provision of additional and ancillary Deliverables and Services

The Supplier must supply:

- (a) any additional or related Deliverables or Services specified in the Order Documents, including (where specified):

- (i) Data Services; and
- (ii) the provision of Non-ICT Services and associated Deliverables; and
- (b) all other goods and services that are incidental or ancillary to the provision of the Deliverables and Services under this Module and that are required to ensure that the Cloud Services complies with the Specifications and other requirements of the Agreement.

## 7.2 Requirements

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

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## 8. Records

- (a) The Supplier must keep and maintain full and accurate records of all Deliverables and Services provided under this Module in accordance with the Agreement and this clause 8.
- (b) Unless otherwise specified in the Order Documents, the records must include the following details:
  - (i) any issues in relation to the Deliverables and Services that have arisen or been reported by the Customer;
  - (ii) a record of any Deliverables provided as part of the Cloud Services, including the:
    - A. date provided;
    - B. quantity provided; and
    - C. name and (where applicable) serial number of the Deliverables;
  - (iii) any repairs, replacements or other remedial action taken by the Supplier or its Personnel in relation to any Deliverables (or parts or components) that have been supplied as part of the Cloud Services;
  - (iv) any Delays associated with the provision of the Deliverables and Services and the reason for those Delays;
  - (v) any actions that the parties need to take, or decisions that need to be made, to ensure the provision of the Deliverables and Services in accordance with the requirements of the Agreement;
  - (vi) the progress of the Deliverables and Services against any Project Plan; and
  - (vii) such other records in relation to the Deliverables and Services that are specified in the Order Form.
- (c) The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 8 to the Customer's Representative in accordance with the times set out in the Order Documents or as otherwise reasonably required by the Customer.

## 9. Exceptions

- (a) The Supplier is not liable for any failure of the Cloud Services to comply with the Agreement to the extent arising as a result of:
  - (i) any Critical CSI not operating in accordance with the Agreement;
  - (ii) any misuse of the Cloud Services by the Customer;
  - (iii) the Customer's combination, operation or use of the Cloud Services with any other product, equipment, software or document of the Customer or a third party except where:
    - A. such combination, operation or use is authorised under the Agreement;
    - B. the Supplier supplied the Cloud Services on the basis that they can be combined, operated or used with the Customer's or relevant third party products; or
    - C. such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Cloud Services;
  - (iv) damage caused by the operation of the Cloud Services other than in accordance with any recommended and reasonable operating procedures specified in the Order Form and User Documentation; or
  - (v) any Virus, Denial of Service Attack or other malicious act that adversely affects the Cloud Services or associated Services and Deliverables (or any software installed on the Deliverables or connected to them), except to the extent that the Virus, Denial of Service Attack or other malicious act was:
    - A. introduced or carried out by the Supplier or its Personnel;
    - B. caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or
    - C. due to the Supplier or its Personnel breaching the Agreement, including any failure to comply with the security obligations under the Agreement.
- (b) The Customer may, at its sole discretion, request the Supplier to provide Services in respect of correcting or resolving any of the issues set out in clause 9(a) and, if so, the Supplier must provide such Services on a time and materials basis, based on the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing. However, any issue that results from one or more of the circumstances specified in clauses 9(a)(iii)A to 9(a)(iii)C or clauses 9(a)(v)A to 9(a)(v)C must be rectified at the Supplier's sole cost and in accordance with the Agreement.

## Annexure A: Definitions and interpretation

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### 1. Definitions and interpretation

#### 1.1 Definitions

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

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

**Australian Government Information Security Manual** means the Australian Government's manual of the same name available at <https://www.cyber.gov.au/acsc/view-all-content/advice/using-australian-government-information-security-manual> (or such other link as notified by the Customer to the Supplier).

**Cloud Services** means the Cloud Services identified in the Order Form, which may include:

- (c) Software as a Service;
- (d) Platform as a Service; or
- (e) Infrastructure as a Service.

**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.

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

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

**Permitted Purpose** means the use and purposes specified in clause 2.2 and any other purposes specified in the Order Form.

**Permitted Users** means:

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

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

**Support Period** means the 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 Cloud Services and as specified in the Order Form.

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

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

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

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

## 1.2 Interpretation

Unless as otherwise expressly specified, in this Module:

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