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Standing Offer Arrangement: Goods and Services (SOA)

between

Health Administration Corporation (ABN 45 100 538 161), a corporation
sole constituted by section 9 of the *Health Administration Act 1982* (NSW)
(the **Principal**)

and

[insert full legal name of the Supplier] (ABN [insert ABN of the Supplier])
(the **Supplier**)

CT SCANNERS

Contract No. HSSP_HC23_CTE898

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Key Details and Clause Matrix

Part A: Key Details

No.	Item	Clause Ref	Description or selection
Parties			
1.	Principal Details	SOA	Health Administration Corporation (ABN 45 100 538 161), a corporation sole constituted by section 9 of the <i>Health Administration Act 1982</i> (NSW).
2.	Principal's Representative	Cls 1.10 and 19.1 of the SOA	Name: <i>[Insert]</i> Address: <i>[Insert]</i> Telephone: <i>[Insert]</i> Email: <i>[Insert]</i>
3.	Supplier Details	SOA	<i>[insert full legal name of the Supplier]</i> (ABN <i>[insert ABN of the Supplier]</i>)
4.	Supplier's Representative	Cl 19.1 of the SOA	Name: <i>[Insert]</i> Address: <i>[Insert]</i> Telephone: <i>[Insert]</i> Email: <i>[Insert]</i>
Notices			
5.	Principal address and email address for the purpose of clause 18 Notices	Cl 18 of the SOA	Address: <i>[Insert]</i> Email address: <i>[Insert]</i> If nothing is stated: the address and email address are those of the Principal's Representative, as specified in these Key Details.
6.	Supplier address and email address for the purpose of clause 18 Notices	Cl 18 of the SOA	Address: <i>[Insert]</i> Email: <i>[Insert]</i> If nothing is stated: the address and email address are those of the Supplier's Representative, as specified in these Key Details.
Term			
7.	SOA Date and Expiry Date of SOA	Cl 1.4 of the SOA	The SOA Date is <i>[insert commencement date or insert 'the date on which the last of the parties signs the SOA']</i> . Expiry Date is <i>[insert, e.g. 'the date that is five years after the SOA Date']</i> .
8.	Additional Period/s	Cl 1.5 of the SOA	There is one Additional Period, which is of up to five years in length.

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Insurance			
9.	Insurance policies required to be effected by the Supplier	Cls 14.4 of the SOA and 22 of the Agreement Terms	<p>Product liability insurance Required: Yes 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 Term and at least seven years thereafter.</p> <p>Public liability insurance Required: Yes Limit of cover of at least \$20 million in respect of each occurrence, to be held for the Term.</p> <p>Professional indemnity insurance Required: Yes Limit of cover of at least \$10 million in respect of each occurrence and in the aggregate, to be held for the Term and at least seven years thereafter.</p> <p>Workers' compensation insurance Required: Yes Amount of cover: the applicable amount required by Law.</p> <p>Cyber security insurance Required: Yes Limit of cover of at least \$20 million in respect of each claim, to be held for the Term and at least seven years thereafter.</p> <p>Data security breach or wrongful disclosure and use of Personal Information insurance Required: Yes 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.</p> <p>Other insurances Other insurance(s) required: No</p>
Additional Conditions			
10.	Additional Conditions	Cls 1.12 of the SOA and 1.4 of the Agreement Terms	Not applicable.

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Part B: Clause Matrix

If the below table identifies a clause as not applicable, but the Requirements Documentation specify that such clause is applicable, or such clause applies because of the scope or other terms specified in the Requirements Documentation, such clause will apply notwithstanding the below table.

No	Item	Clause ref	Description or selection
General Terms			
1.	Quotation process	Cl 6.1 of the SOA	Does clause 6.1 of the SOA apply (i.e. are Eligible Customers permitted to issue a Request for Supplies under clause 6.1 of the SOA): <input checked="" type="checkbox"/> yes; or <input type="checkbox"/> no.
2.	Distributor/Approved Agent	Cl 3.2 of the Agreement Terms	Is the Supplier permitted to supply Supplies to the Customer under this Agreement, and otherwise perform its obligations under this Agreement, using a 'Distributor'/'Approved Agent': <input checked="" type="checkbox"/> yes, the Approved Agent is <i>[insert full legal name of the Approved Agent]</i> ABN <i>[insert ABN of the Approved Agent]</i> . <input type="checkbox"/> no.
3.	Training Services	Cl 5.4 of the Agreement Terms	Is the Supplier required to provide training Services or Deliverables: <input checked="" type="checkbox"/> yes, and clause 5.4 therefore applies; or <input type="checkbox"/> no, and clause 5.4 therefore does not apply.
4.	Deliverables on consignment	Cl 5.9 of the Agreement Terms	Is the Supplier required to provide Consignment Deliverables: <input type="checkbox"/> yes, and clause 5.9 therefore applies; or <input checked="" type="checkbox"/> no, and clause 5.9 therefore does not apply.
5.	Transition-In Services	Cl 6 of the Agreement Terms	Is the Supplier required to provide Transition-In Services: <input checked="" type="checkbox"/> yes, and clause 6 therefore applies; or <input type="checkbox"/> no, and clause 6 therefore does not apply.
6.	Acceptance Testing	Cl 13 of the Agreement Terms	Does Acceptance Testing apply to the Deliverables: <input checked="" type="checkbox"/> yes, and clause 13 therefore applies; or <input type="checkbox"/> no, and clause 13 therefore does not apply.
7.	Transition-Out Services	Cl 26 of the Agreement Terms	Is the Supplier required to provide Transition-Out Services: <input checked="" type="checkbox"/> yes, and clause 26 therefore applies; or <input type="checkbox"/> no, and clause 26 therefore does not apply.

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No	Item	Clause ref	Description or selection
Physical Deliverable Terms			
8.	Application of Physical Deliverable Terms	Cls 34 to 41 of the Agreement Terms	Is the Supplier required to provide Physical Deliverables: <input checked="" type="checkbox"/> yes, and except as provided otherwise in this Clause Matrix clauses 34 to 41 therefore apply; or <input type="checkbox"/> no, and clauses 34 to 41 therefore do not apply.
9.	Availability Period	CI 34.7 of the Agreement Terms	The Supplier's obligations under clause 34.7 with respect to the Availability Period: <input checked="" type="checkbox"/> apply; or <input type="checkbox"/> do not apply.
10.	Installation	CI 36.1 of the Agreement Terms	Is the Supplier required to Install any Physical Deliverables: <input checked="" type="checkbox"/> yes, and clause 36.1 therefore applies; or <input type="checkbox"/> no, and clause 36.1 therefore does not apply.
		CI 36.1(c) of the Agreement Terms	The Supplier's obligations under clause 36.1(c) with respect to Installation: <input checked="" type="checkbox"/> apply; or <input type="checkbox"/> do not apply.
11.	Backups	CI 36.3 of the Agreement Terms	Who is responsible for backing up data located into the Physical Deliverables: <input checked="" type="checkbox"/> the Customer, and clause 36.3(a) therefore applies; or <input type="checkbox"/> the Supplier, and clause 36.3(b) therefore applies.
12.	Support Services	CI 38.3 of the Agreement Terms	Is the Supplier responsible for providing Support Services for the Physical Deliverables: <input checked="" type="checkbox"/> yes, and clause 38 therefore applies; or <input type="checkbox"/> no, and clause 38 therefore does not apply.

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No	Item	Clause ref	Description or selection
13.	Preventative Maintenance	Cl 38.4 of the Agreement Terms	Is the Supplier responsible for providing Preventative Maintenance for the Physical Deliverables: <input checked="" type="checkbox"/> yes, and clause 38.4 therefore applies; or <input type="checkbox"/> no, and clause 38.4 therefore does not apply.
		Cl 38.4(c) of the Agreement Terms	The Supplier's obligations under clause 38.4(c) with respect to Preventative Maintenance: <input checked="" type="checkbox"/> apply; or <input type="checkbox"/> do not apply.
14.	Engineering Changes	Cl 38.5 of the Agreement Terms	Is the Supplier responsible for making Engineering Changes to any Physical Deliverables available: <input checked="" type="checkbox"/> yes, and clause 38.5 therefore applies; or <input type="checkbox"/> no, and clause 38.5 therefore does not apply.
15.	Remedial Maintenance	Cl 38.6 of the Agreement Terms	Is the Supplier responsible for providing Remedial Maintenance for the Physical Deliverables: <input checked="" type="checkbox"/> yes, and clause 38.6 therefore applies; or <input type="checkbox"/> no, and clause 38.6 therefore does not apply.
16.	Movement of Deliverables	Cl 41 of the Agreement Terms	Is the Supplier required to move and relocate Physical Deliverables when required by the Customer: <input checked="" type="checkbox"/> yes, and clause 41(a) therefore applies; or <input type="checkbox"/> no, and clause 41(a) therefore does not apply.
			Is the Customer permitted to move and relocate Physical Deliverables without reference to the Supplier: <input checked="" type="checkbox"/> yes, and clause 41(b) therefore applies; or <input type="checkbox"/> no, and clause 41(b) therefore does not apply.
Software (Non-Cloud) Terms			
17.	Application of the Software (Non-Cloud) Terms	Cls 42 to 49 of the Agreement Terms	Is the Supplier required to provide Licensed Software: <input checked="" type="checkbox"/> yes, and except as provided otherwise in this Clause Matrix clauses 42 to 49 therefore apply; or <input type="checkbox"/> no, and clauses 42 to 49 therefore do not apply.
18.	Updates and/or New Releases	Cl 44 of the Agreement Terms	The Supplier is required to provide: <input type="checkbox"/> Updates only, and clause 44 therefore applies; <input type="checkbox"/> New Releases only, and clause 44 therefore applies; <input checked="" type="checkbox"/> Updates and New Releases, and clause 44 therefore applies; or <input type="checkbox"/> neither Updates or New Releases, and clause 44 therefore does not apply.

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No	Item	Clause ref	Description or selection
19.	Software Support Services	Cl 48 of the Agreement Terms	Is the Supplier required to provide Software Support Services: <input checked="" type="checkbox"/> yes, and clause 48 therefore applies; or <input type="checkbox"/> no, and clause 48 therefore does not apply.
Cloud Services Terms			
20.	Application of the Cloud Services Terms	Cls 50 to 55 of the Agreement Terms	Is the Supplier required to provide Cloud Services: <input type="checkbox"/> yes, and except as provided otherwise in this Clause Matrix clauses 50 to 55 therefore apply; or <input checked="" type="checkbox"/> no, and clauses 50 to 55 therefore do not apply.
21.	Software Support Services	Cl 54 of the Agreement Terms	Is the Supplier required to provide Support Services for the Cloud Services: <input type="checkbox"/> yes, and clause 54 therefore applies; or <input checked="" type="checkbox"/> no, and clause 54 therefore does not apply.

Deed: Standing Offer Arrangement (SOA)

This deed is made on the SOA Date, between the parties identified in Items 1 and 3 of the Key Details.

Background

- A. The Principal and the Supplier have agreed to enter into this SOA, which sets out the terms and conditions under which the Supplier agrees with the Principal to make a standing offer to supply Supplies to Eligible Customers.
- B. Each time an Eligible Customer wishes to acquire Supplies from the Supplier it will issue the Supplier a Purchase Order in accordance with the process set out in this SOA.
- C. The issue of a Purchase Order by an Eligible Customer will give rise to a binding separate contract between the Supplier and the relevant Eligible Customer, under which the Supplier must supply the Supplies on the terms of, and subject to, the Agreement.

This Deed witnesses

1. SOA documents and operation

1.1 SOA documents

This SOA comprises the following documents and terms and conditions:

- (a) any Additional Conditions (to the extent applicable to this SOA);
- (b) the Key Details (excluding any Additional Conditions) and the Clause Matrix (page 3);
- (c) the Background section above;
- (d) clauses 1 to 19 of this SOA;
- (e) the Agreement Terms (see Attachment 1);
- (f) the Definitions Document (see Attachment 2);
- (g) the Schedule of Prices (see Attachment 4);
- (h) the Requirements Documentation (see Attachment 3);
- (i) any other schedule, attachment, annexure or document incorporated into this SOA (excluding any Supplier's Documents); and
- (j) any Supplier's Documents.

1.2 Order of precedence

In the event of any conflict or inconsistency between the documents set out in clause 1.1, 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.

1.3 Supplier's Documents

- (a) The parties acknowledge that the intent of incorporating any Supplier's Documents into this SOA, where so agreed, is to supplement and elaborate on the detail and specifications of particular Supplies and not to amend or contradict the terms set out in any of the documents or terms and conditions listed in clauses 1.1(a) to 1.1(i).
- (b) The Supplier represents that the Supplier's Documents:
 - (i) set out specific details regarding how Eligible Customers may access, use and interact with particular Supplies; and
 - (ii) may describe other elements of the Supplies which the Supplier offers to provide to an Eligible Customer, such as technical and functional specifications, service characteristics and performance standards.

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- (c) Notwithstanding the incorporation of Supplier's Documents into this SOA, 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 documents or terms and conditions listed in clauses 1.1(a) to 1.1(i) (for example, provisions in the Supplier's Documents that deal with limitations of liability will not apply, in whole, as the Agreement Terms also deal with this subject matter);
 - (ii) are inconsistent, or in conflict, with the documents or terms and conditions listed in clauses 1.1(a) to 1.1(i);
 - (iii) alter, or seek to alter, the legal obligations of, or relationship between, the Principal or an Eligible Customer and the Supplier, as set out in the documents or terms and conditions listed in clauses 1.1(a) to 1.1(i);
 - (iv) impose additional obligations or requirements on the Principal, beyond those set out in this SOA;
 - (v) impose additional obligations or requirements on the Eligible Customer, beyond those set out in the Agreement Terms or other documents forming part of the Agreement; or
 - (vi) limit any rights or remedies of the Principal or an Eligible Customer or relieve the Supplier from any of its obligations or responsibilities under the documents listed or terms and conditions in clauses 1.1(a) to 1.1(i).
- (d) Where any terms of the Supplier's Documents purport to override or otherwise vary any of the documents or terms and conditions listed in clauses 1.1(a) to 1.1(i) those terms will have no legal effect.
- (e) 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 18.

1.4 Term

This SOA commences on the SOA Date and expires on the Expiry Date, unless it is extended in accordance with clause 1.5 or terminated earlier in accordance with this SOA (**Term**).

1.5 Extension

- (a) The Principal may in its sole discretion extend the Term for periods not exceeding the Additional Period/s (up to, if any, the maximum number of renewals specified in the Key Details) by giving written notice to the Supplier before the Expiry Date.
- (b) Any extension exercised in accordance with this clause 1.5 will be on the same terms and conditions of this SOA in effect at the end of the then current Term, unless the parties agree to amend this SOA in accordance with clause 18.

1.6 Holding over

Upon the Expiry Date or (if applicable) the end of the Additional Period/s, the Principal and the Supplier may agree in writing that this SOA will continue on a temporary basis, in which case:

- (a) this SOA will continue on a quarterly basis and may be terminated by either party, by such party providing at least three months' written notice to the other party; and
- (b) the Supplier must continue to perform its obligations for the duration of any extension of the Term which is given effect under this clause 1.6.

1.7 Expiry or termination not to prejudice Agreements

For the avoidance of doubt, any expiry, termination, extension or holding over under this SOA does not in any way relieve the Supplier from any of its obligations under any Agreement that are then in existence and for clarity, the Agreement will remain in full force and effect in accordance with its terms and this SOA.

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1.8 No guarantee of work or exclusivity

The Principal is not, by executing this SOA or otherwise:

- (a) required to introduce the Supplier to any Eligible Customer;
- (b) bound to issue, or require an Eligible Customer to issue, any Purchase Order to the Supplier;
- (c) bound to engage, or require an Eligible Customer to engage, the Supplier to supply any deliverables, goods, services and/or other activities or to enter into any Agreement; or
- (d) restricted in any way from engaging any other person to supply any deliverables, goods, services and/or other activities:
 - (i) of any type, including deliverables, goods, services and/or other activities that are the same as or similar to any Supplies; or
 - (ii) at any location where, or in respect of any project that, the Supplier may be required to supply deliverables, goods, services and/or other activities.

For clarity, if the Supplier is part of a panel to which this SOA applies, the Principal may add any other supplier to such panel for any reason and via any such process determined by the Principal in its sole discretion.

1.9 No representation

Clause 1.8 applies even though the Principal may have provided the Supplier with a forecast or estimate of the Supplies that the Principal or any Eligible Customer may require at any time. The Supplier acknowledges that any forecasts or estimates do not constitute a representation of the deliverables, goods, services and/or other activities the Principal or any Eligible Customer may require.

1.10 Principal's Representative

The Principal may by written notice:

- (a) replace the Principal's Representative, in which case the Principal will appoint another person as the Principal's Representative and notify the Supplier of that appointment; and
- (b) appoint persons to exercise any of the Principal's Representative's functions under this SOA, and revoke any such appointment.

1.11 Supplier's Representative and Personnel

(a) The Supplier may by written notice to the Principal:

- (i) replace the Supplier's Representative, in which case the Supplier will appoint another person as the Supplier's Representative and notify the Principal of that appointment; and
- (ii) appoint persons to exercise any of the Supplier's Representative's functions under this SOA, and revoke any such appointment.

(b) The Supplier must ensure that the Supplier's Representative and any other Supplier Personnel who perform activities under or in connection with the SOA are suitable and appropriate persons.

(c) The Principal's Representative may, by notice in writing to the Supplier, direct the Supplier to remove the Supplier's Representative or any other Personnel of the Supplier from performing any obligations under or in connection with the SOA who, in the reasonable opinion of the Principal's Representative:

- (i) has breached any of the Policies, Codes and Standards;
- (ii) is guilty of misconduct;
- (iii) is not a suitable and appropriate person to carry out those obligations; or
- (iv) may bring the Principal or any Eligible Customer into disrepute.

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- (d) If the Principal's Representative issues a direction under clause 1.11(c), the Supplier must (at its own cost) promptly arrange for the removal of such Personnel and their replacement with Supplier Personnel who comply with the requirements of this SOA and are reasonably acceptable to the Customer.

1.12 Additional Conditions

The parties agree to comply with any Additional Conditions.

1.13 Consideration

The Principal and the Supplier each enter into this SOA in consideration of the valuable promises and benefits contained in it, including, in the case of the Supplier, the opportunity (subject to the terms of this SOA) to participate in the arrangements established under this SOA and to potentially enter into one or more Agreements with Eligible Customers in relation to the supply of Supplies.

2. Warranties and acknowledgements

The parties acknowledge and agree that clauses 28.1, 28.2 and 28.5 of the Agreement Terms apply to this SOA as if set out in full in this SOA, except that for the purposes of this SOA, references in clauses 28.1, 28.2 and 28.5 of the Agreement Terms to:

- (a) this 'Agreement' will be deemed to be references to this SOA; and
 (b) the 'Customer' will be deemed to be references to the Principal.

2.2 Further Supplier warranties and acknowledgments

Without limiting any other warranty under this SOA or any Agreement, the Supplier represents, warrants, acknowledges and undertakes to the Principal that:

- (a) it has the expertise to carry out the activities required to be performed under this SOA and each Agreement, in accordance with the Requirements Documentation;
- (b) it has satisfied itself about, and has obtained all information necessary to enable it to understand, the Principal's requirements under this SOA in so far as they relate to the Supplier's obligations under this SOA and/or each Agreement;
- (c) it did not in any way rely on:
- (i) any information, data, representation, statement or document made by the Principal, any Eligible Customer or its Personnel, or provided to the Supplier by the Principal or any Eligible Customer (or their respective Personnel); or
- (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,
- for the purposes of entering into the SOA or into any Agreement, except to the extent that any such information, data, representation, statement or document forms part of the SOA or the Agreement;
- (d) it entered into the SOA based on its own investigations, interpretations, deductions, information and determinations;
- (e) it is aware that the Principal has entered into the SOA and that Eligible Customers will enter into an Agreement relying upon the warranties, representations, undertakings and acknowledgments in this clause 2.2; and
- (f) it is not entitled to any payment under or in connection with this SOA, including in respect of discharging its obligations under the SOA.

3. Compliance

3.1 Compliance with Laws, policies and directions

While carrying out its obligations under this SOA, the Supplier must (and must ensure that its Personnel):

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- (a) acquire and maintain all Authorisations necessary for the performance of its obligations under this SOA;
- (b) ensure that, in performing its obligations under this SOA, it complies with all applicable Laws (including all applicable Australian Laws, even if the Supplier is not domiciled in Australia);
- (c) comply with the Policies, Codes and Standards; and
- (d) comply with any reasonable directions made by the Principal under this SOA.

3.2 Conflicts of Interest

The Supplier must:

- (a) promptly notify the Principal in writing if a Conflict of Interest arises or is likely to arise during the performance of its obligations under this SOA; and
- (b) take all necessary action as may be reasonably required by the Principal to avoid or minimise such a Conflict of Interest.

3.3 Corruption and unethical conduct

- (a) The Supplier must not and must ensure that its Personnel do not:
 - (i) offer any inducement or reward to any employee, agent or contractor of the Principal, an Eligible Customer or a Government Agency in connection with this SOA or any Agreement;
 - (ii) engage in corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or
 - (iii) engage in unethical behaviour.
- (b) The Supplier acknowledges and agrees that clause 3.2 and this clause 3.3 are essential terms of this SOA and accordingly any breach by the Supplier of clause 3.2 or this clause 3.3 entitles the Principal to terminate this SOA for cause.

3.4 Notification obligations relating to the Supplies

The Supplier must immediately notify the Principal in writing if:

- (a) _____ any Authority in any Australian jurisdiction:
 - (i) _____ rejects or threatens to reject any request for approval made by or on behalf of the Supplier in relation to any aspect of the Supplies; or
 - ~~(i)~~(ii) _____ raises any issues or concerns with any aspect of the Supplies; or
- (b) the Supplier or any of its Personnel experiences, becomes aware of, is required by applicable Law to report, or reports an Adverse Event or a Near Adverse Event in relation to any aspect of the Supplies, in each case anywhere in the world.

4. SOA Mechanism

4.1 Standing offer arrangement

- (a) This SOA establishes a binding standing offer between the Principal and the Supplier, under which the Supplier represents, warrants and undertakes to the Principal that the Supplier will supply the Supplies to any Eligible Customer when a Purchase Order is issued to the Supplier by an Eligible Customer in accordance with and subject to the terms of this SOA.
- (b) The Schedule of Prices identifies the Supplies, and the Requirements Documentation further identifies and sets out the specific requirements for such Supplies, that can be procured by Eligible Customers under this SOA. In order to procure Supplies under this SOA, an Eligible Customer will issue a Purchase Order in accordance with clause 5, identifying the relevant Supplies referred to in the Schedule of Prices (as further described in the Requirements Documentation) that such Eligible Customer requires to be provided by the Supplier.

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4.2 Enforcement of Agreement by the Principal as agent

- (a) The Principal and the Supplier agree that any Eligible Customer, although not a party to this SOA, obtains the benefit of, and may enforce, this SOA, and any Agreement to which it is a party, in its own name (and to the same extent as if it was a party to this SOA).
- (b) The Supplier acknowledges and agrees that:
 - (i) in entering into and obtaining the benefits, rights and remedies under this SOA, including the benefit of the Supplier's obligations and any indemnity given by the Supplier, the Principal acts on its own behalf and as trustee for each Eligible Customer;
 - (ii) the Principal may enforce the rights of each Eligible Customer under any Agreement as agent for the relevant Eligible Customer (including any rights of termination under such Agreement), even though the Principal is not a party to that Agreement in its own right;
 - (iii) the Principal is able to recover from the Supplier all Losses suffered or incurred by all Customers under or in connection with this SOA or any Agreement/s, as if those Losses were suffered or incurred by the Principal itself;
 - (iv) each Customer is entitled to separately and directly enforce against the Supplier the benefits, rights and remedies conferred on the Principal or such Customer by this SOA and/or the relevant Agreement; and
 - (v) any applicable limitations and exclusions of liability in respect of a relevant Claim (whether made by the Principal or the relevant Customer) under an Agreement will be those set out in such Agreement and such limitations and exclusions will apply to the aggregate Losses recoverable under such Agreement.

4.3 Relationship between parties and documents

The Supplier acknowledges and agrees that:

- (a) the Principal will not be liable in any way for the acts or omissions of any Eligible Customer or the 'Customer' under any Agreement or otherwise;
- (b) an Eligible Customer will not be liable for the acts or omissions of the Principal under this SOA or otherwise;
- (c) a breach by the Supplier of any Agreement is also a breach by the Supplier of this SOA; and
- (d) this SOA does not create a relationship of employment, trust, agency, joint venture or partnership between the Principal or Eligible Customer and the Supplier.

5. Orders and formation of an Agreement**5.1 Issuance of a Purchase Order**

- (a) The Supplier irrevocably offers to supply the Supplies identified in the Schedule of Prices and further identified and described in the Requirements Documentation as and when directed by any Eligible Customer(s) by the issue to the Supplier of a Purchase Order in accordance with clause 5.1(e).
- (b) The Supplier's standing offer in clause 5.1(a) will remain open for acceptance by Eligible Customers for the Term and in accordance with this SOA.
- (c) The Supplier's standing offer in clause 5.1(a) will be accepted by an Eligible Customer each time an Eligible Customer issues a Purchase Order to the Supplier in accordance with clause 5.1(e).
- (d) The Supplier must not supply any Supplies to an Eligible Customer unless the Eligible Customer has issued a Purchase Order in accordance with this clause 5.1. The Supplier has no entitlement to payment of any Prices in respect of any Supplies unless the Eligible Customer has issued a Purchase Order for such Supplies in accordance with this clause 5.1.

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- (e) During the Term, an Eligible Customer may from time to time, in its sole discretion enter into an Agreement with the Supplier by issuing a Purchase Order to the Supplier, but only in respect of Supplies that are within the scope of the Schedule of Prices and Requirements Documentation. Any such Purchase Order may be issued electronically, digitally or in hard copy.
- (f) Each Purchase Order must, as a minimum, state:
- (i) a reference to this SOA (including the contract number of this SOA, where applicable);
 - (ii) the identity of the Eligible Customer;
 - (iii) the Supplier's details;
 - (iv) a description of the required Supplies (including their quantity); and
 - (v) a description of the Prices payable for those Supplies, calculated in accordance with the Requirements Documentation, the Schedule of Prices and, where applicable, the Quote for Supplies; and
 - ~~(vi) where applicable, that the Eligible Customer will be entering a Lease Transaction to fund the acquisition of relevant Equipment,~~
- and may optionally also contain other details relevant to the Purchase Order.
- ~~(g)~~ The parties acknowledge and agree that the absence of particular details on a Purchase Order (as contemplated by clause 5.1(f)) does not render a 'purchase order' (or other similar document) as not being a Purchase Order for the purposes of this SOA.

5.2 Lease Transactions

The parties acknowledge and agree that from time to time an Eligible Customer may elect to fund the acquisition of relevant Equipment via a financing arrangement (such as a leasing arrangement), in which case:

- ~~(a) the Eligible Customer will appoint a Finance Supplier to provide finance services to the Eligible Customer under a separate agreement entered into between the Eligible Customer and the Finance Supplier;~~
- ~~(b) the Eligible Customer will implement the required arrangements with the Finance Supplier under such separate agreement to give effect to a Lease Transaction between the Eligible Customer and the Finance Supplier;~~
- ~~(c) the Finance Supplier will issue a Purchase Order to the Supplier for the relevant Equipment under this SOA on behalf of the Eligible Customer;~~
- ~~(d) such Purchase Order will be deemed to have been issued by the Eligible Customer under clause 5.1 and accordingly, the issuance of such Purchase Order will automatically give rise to an Agreement between the Eligible Customer and the Supplier in accordance with clause 5.3;~~
- ~~(e) the Eligible Customer will pay the relevant finance payments to the Finance Supplier under the separate agreement between the Eligible Customer and the Supplier;~~
- ~~(f) other than where the Supplier itself is the Finance Supplier, the Finance Supplier will pay the relevant Prices to the Supplier under the Agreement on behalf of the Eligible Customer in accordance with clause 39.3 of the Agreement Terms;~~
- ~~(g) subject to clause 39 of the Agreement Terms, the Agreement established in accordance with clause 5.3 will apply between the Eligible Customer and the Supplier in the same manner as it would have applied had the Eligible Customer not entered into a Lease Transaction (and had instead paid the Prices directly to the Supplier); and~~
- ~~(g)(h) clause 39 of the Agreement Terms will apply.~~

5.25.3 Formation of an Agreement

- (a) Each Purchase Order issued by the relevant Eligible Customer under clause 5.1 will automatically give rise to an Agreement in the form of a binding separate contract

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between the Eligible Customer and the Supplier under which the Supplier must supply the Supplies contemplated by such Purchase Order, effective from the date of issue of the Purchase Order by the Eligible Customer under clause 5.1. Each such Agreement incorporates the terms and conditions and documents referred to in clause 1.1 of the Agreement Terms (other than those terms that the Clause Matrix specifies do not apply or that otherwise do not apply by the operation of the relevant Agreement).

- (b) The Eligible Customer and the Supplier must carry out their respective obligations under each Agreement formed in accordance with clause ~~5.35.35.2~~(a) from the date on which the Agreement is deemed to be formed under that clause.

5.35.4 Requirement to provide information to the Principal

- (a) On request of the Principal or the Principal's Representative, the Supplier must promptly provide to the Principal, at no cost, copies of any Agreements entered into with any Eligible Customers and any other information reasonably requested by the Principal.
- (b) Notwithstanding any other provision of this SOA or any Agreement, the Supplier acknowledges and agrees that the Principal and Eligible Customers may make available information and materials concerning or relating to the Supplier or its performance under this SOA and any Agreement to each other and/or to any Government Agency.

5.45.5 Electronic execution

Subject to applicable Laws, each Eligible Customer may issue Purchase Orders electronically and the parties may execute this SOA and any document entered into under this SOA, electronically (including through an electronic platform) and in one or more counterparts. Notwithstanding the manner in which a document under this SOA is submitted or accepted, the terms of this SOA will apply and any click-wrap, "pop-up" or other like terms and conditions of the Supplier will have no force or effect.

6. Quotes, adding, modifying and removing Supplies and costs

6.1 Quotation process

- (a) This clause 6.1 applies unless the Clause Matrix expressly specifies that this clause 6.1 does not apply.
- (b) Without limiting clause 5.1, during the Term, an Eligible Customer may request the Supplier to provide a quote for Supplies to the Eligible Customer by submitting to the Supplier, either orally or in writing (including electronically, digitally or in hard copy), a request for Supplies (**Request for Supplies**).
- (c) A Request for Supplies must:
- (i) detail the Supplies required by the Eligible Customer, including any details that are to apply to those Supplies, together with applicable milestones and timeframes relevant to the supply of the relevant Supplies; and
 - (ii) request the Supplier to provide to the Eligible Customer a quote in respect of the supply of those Supplies.
- (d) The Supplier must provide a written quote to the relevant Eligible Customer within five Business Days of the Request for Supplies (or such longer period agreed by the Eligible Customer and the Supplier in writing), specifying the total amount payable by the Eligible Customer for the provision of the required Supplies, calculated by reference to the Requirements Documentation and the Schedule of Prices (**Quote for Supplies**).
- (e) The Supplier acknowledges and agrees that:
- (i) unless otherwise expressly specified in the Schedule of Prices, the prices and rates set out in the Schedule of Prices are fixed for the Term; and
 - (ii) in respect of any Supplies that are within the scope of any prices or rates set out in the Schedule of Prices, subject to clause 11.2, the Supplier must

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not charge a lower or higher price to any Eligible Customer (under this SOA or any other contract or arrangement) other than in accordance with clause 11.2.

- (f) Upon receipt of a Quote for Supplies provided in accordance with clause 6.1(d), the Eligible Customer may in its sole discretion:
- (i) reject the Quote for Supplies, in which case the Quote for Supplies has no further effect;
 - (ii) request a revised Quote for Supplies, or more information in relation to the existing Quote for Supplies, in which case the Supplier must submit a revised or augmented written Quote for Supplies within two Business Days of the Eligible Customer's request under this clause 6.1(f)(ii) (or such longer period agreed by the Eligible Customer and the Supplier in writing), and such revised or augmented Quote for Supplies will be deemed to be the 'Quote for Supplies' for the purposes of clause 6.1(d); or
 - (iii) accept the Quote for Supplies and enter into an Agreement with the Supplier by issuing a Purchase Order in relation to the subject matter of the Quote for Supplies in accordance with the procedure in clause 5.1, in which case, the Quote for Supplies will be deemed to be incorporated into the Requirements Documentation and Schedule of Prices for the purposes of the Agreement formed in relation to such Purchase Order.
- (g) For the avoidance of doubt:
- (i) a Quote for Supplies will not be binding on the Eligible Customer unless and until the Eligible Customer issues a Purchase Order in accordance with clause 5.1; and
 - (ii) an Eligible Customer may issue a Purchase Order under clause 5.1 without having issued a Request for Supplies or followed the process under this clause 6.1.

6.2 Additional Supplies Tender Process

- (a) Without limiting the Principal's rights, from time to time during the Term (but no more than once in any 12 month period), the Principal may conduct a tender process involving the Supplier and any other third parties (including by way of an open market tender) in respect of any deliverables, goods, services and/or other activities that the Principal may wish the Supplier to supply under this SOA, which are not at such time required to be supplied by the Supplier under this SOA (for example, new or upgraded parts or consumables) (referred to in this clause as an **Additional Supplies Tender Process**).
- (b) The Supplier acknowledges and agrees that the Supplier's participation in any Additional Supplies Tender Process may be subject to terms and conditions specified in relevant documentation issued by the Principal to the Supplier in respect of such Additional Supplies Tender Process.
- (c) The Principal may in its sole discretion accept or reject (in whole or in part) the Supplier's response to any Additional Supplies Tender Process.
- (d) If the Principal accepts (in whole or in part) the Supplier's response to an Additional Supplies Tender Process by notice in writing to the Supplier:
 - (i) the Schedule of Prices and Requirements Documentation will be deemed to be amended to include details and Prices for the relevant Supplies included in that part of the response that has been accepted by the Principal;
 - (ii) other than the amendments contemplated in clause 6.2(d)(i) or expressly agreed in writing by the Principal, no other amendments will apply to this SOA or any Agreement; and
 - (iii) the Supplier must supply the relevant Supplies included in that part of the response that has been accepted by the Principal to all Eligible Customers that issue a Purchase Order to the Supplier in accordance with clause 5.1.

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6.3 Further Tender Options

- (a) At any time during the Term, the Principal may request discounted pricing in respect of Supplies, for a specified scope of work (for example, a project involving a volume of supplies) (a **Further Tender Option**).
- (b) The Supplier may in its sole discretion elect whether or not to provide discounted pricing in response to a Further Tender Option.
- (c) If the Principal notifies the Supplier in writing that it accepts the Supplier's pricing under a Further Tender Option, then the Price for the relevant Supplies in respect of the scope of work the subject of the Further Tender Option must reflect the Price specified in the Supplier's response to the Further Tender Option.
- (d) If the Supplier receives, from any Eligible Customer other than the Principal, a request for the Supplier to conduct a Further Tender Option (or any other similar process) or otherwise provide a discount for any Supplies, the Supplier must notify the Principal in respect of such request and must not participate in such Further Tender Option or offer any such discount unless agreed in writing by the Principal.

6.4 New accessories, consumables etc.

- (a) If, during the Term, the Supplier makes available on a general commercial basis any accessories, consumables or other 'optional items' related to the Supplies, then, as soon as reasonably practicable after it makes such deliverables, goods, or services available on a general commercial basis the Supplier must notify the Principal in writing of such and provide details of how the Supplier proposes to make available such deliverables, goods, services and/or other activities under this SOA (including how the Requirements Documentation and Schedule of Prices would be changed to include such deliverables, goods, services and/or other activities).
- (b) The Supplier agrees to provide the Principal with any information reasonably requested by the Principal to assess the Supplier's proposal under clause 6.4(a).
- (c) The Principal may, in its sole discretion, accept or reject the Supplier's proposal provided under clause 6.4(a) and if the Principal accepts such proposal or the Principal and the Supplier otherwise reach agreement on the inclusion of such deliverables, goods, services and/or other activities within this SOA, then the parties will execute a Change Request to include such deliverables, goods, services and/or other activities in this SOA.
- (d) The Principal may in its sole discretion remove any particular type(s) of Supplies from this SOA at any time by providing written notice to the Supplier. Any such removal will not affect any Agreement which has been entered into prior to the date of such removal.

6.5 Costs

The Supplier is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated in this SOA (including clauses 4, 5 and 6) and the Supplier is not entitled to make, and the Principal and any Eligible Customer will not be liable upon, any Claim in respect of such costs.

7. Transition

Without limiting any obligations of the Supplier under an Agreement, the Supplier must provide the Principal all information and assistance as reasonably requested by the Principal from time to time to ensure that:

- (a) on and from the SOA Date, the supply of the Supplies is transitioned to the Supplier in a smooth and orderly manner; and
- (b) on expiration or termination of this SOA, the supply of the Supplies is transitioned from the Supplier to an alternate supplier (which may be the Principal, an Eligible Customer or a third party supplier) in a smooth and orderly manner.

8. Foreign Exchange

- (a) Subject to clause 8(b), if any Prices for Supplies are specified in a foreign currency (i.e. a currency other than Australian Dollars) in the Schedule of Prices (**FX Supplies**):
- (i) the Principal may convert the Price for such Supplies to Australian Dollars, by reference to the applicable Exchange Rate on the date of submission of the Tender Response (or when the relevant Prices were otherwise agreed), and may specify the relevant Australian Dollar amount in the Schedule of Prices;
 - (ii) if an Eligible Customer issues a Purchase Order for FX Supplies, such Purchase Order may refer to the relevant Australian Dollar amount for such Prices as specified in the Schedule of Prices;
 - (iii) if a Purchase Order specifies the Prices for FX Supplies in Australian Dollars, the Supplier will be entitled to adjust the Prices payable by an Eligible Customer for FX Supplies in an invoice by converting foreign currency Prices specified in the Schedule of Prices to Australian Dollars using the Exchange Rate applicable on the date on which the relevant Eligible Customer issued the Purchase Order to the Supplier; and
 - (iv) unless otherwise specified in the Schedule of Prices or the Purchase Order, the entire Price (i.e. 100% of the Price) will be deemed to be subject to relevant foreign exchange adjustments to the extent foreign exchange adjustments apply under this clause 8.
- (b) As an alternative to the process set out in clause 8(a), an Eligible Customer may from time to time elect to pay the relevant Prices for FX Supplies in the relevant foreign currency specified in the Schedule of Prices, in which case:
- (i) the Prices payable for the FX Supplies will be as stated in the Schedule of Prices;
 - (ii) the Purchase Order issued by the relevant Eligible Customer will refer to the Prices payable for the FX Supplies in the Schedule of Prices and to the applicable foreign currency; and
 - (iii) the Supplier must issue an invoice to the Eligible Customer in the relevant foreign currency and in the amount specified in the Customer's Purchase Order.
- (c) In this clause 8, **Exchange Rate** means the relevant exchange rate published by Reserve Bank of Australia (or such other major Australian bank nominated from time to time by the Principal or the Eligible Customer) as at the date of the adjustment.

9. KPIs and KPI action plans

9.1 Requirement to meet KPIs

The Supplier must comply with the KPIs as may be amended in accordance with this SOA.

9.2 Action plan

- (a) The Supplier acknowledges and agrees that the Principal may:
- (i) direct the Supplier to submit an action plan to remedy any non-compliances of the Supplier with the KPIs, within the time required by the Principal and addressing the matters identified by the Principal; and
 - (ii) review any action plan submitted by the Supplier and, within 15 Business Days of the submission (or resubmission as the case may be) by the Supplier of the action plan (or such longer period as reasonably required by the Principal in the circumstances):
 - A. approve the action plan; or
 - B. reject the action plan.

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- (b) The Supplier must implement and comply with any action plan approved by the Principal in accordance with this clause 9.2.
- (c) If the Principal gives the Supplier a notice rejecting an action plan under clause 9.2(a)(ii)B, the Supplier must, within 5 Business Days (or any longer period agreed by the Principal in writing), prepare a revised version of the action plan which addresses all of the amendments and issues required by the Principal.
- (d) The parties must repeat the process in this clause 9.2 until the Principal approves the action plan or terminates the SOA.
- (e) Where the period referred to in clause 9.2(a)(ii) elapses without the Principal approving or rejecting the action plan, the Supplier must submit to the Principal a written reminder notice identifying the action plan in respect of which it requires a decision by the Principal.

10. Reporting and meeting requirements

10.1 Performance Report

- (a) The Supplier must issue a report to the Principal's Representative within 14 days of the end of each calendar quarter and in the form, and in any template, prescribed by the Principal (**Performance Report**) which:
 - (i) lists each Agreement formed under the SOA and provides a summary of the Supplies under each Agreement;
 - (ii) provides:
 - A. an analysis of the performance of the Supplier in meeting the requirements of each Agreement (including the KPIs and Service Levels in respect of each Agreement);
 - B. details of the following events or circumstances, in so far as they have arisen in respect of any Agreement in the relevant reporting calendar quarter:
 - 1. any entitlement for the relevant Eligible Customer to receive Service Credits or any other similar credit;
 - 2. issues or disputes between the Supplier and the Eligible Customer(s) under each Agreement, regardless of whether or not a Dispute Notice has been issued;
 - 3. any material breaches by the Supplier under each Agreement, including references to the clauses of the Agreement that were breached (or allegedly breached) and the status of each such matter; and
 - 4. any breach (or alleged breach) by the Supplier of its security obligations under any Agreement and any actual, alleged or suspected Information Security Incident or relevant security or data breaches experienced by the Supplier under an Agreement (regardless of whether that breach is material or not); and
 - C. details of:
 - 1. continuous improvement measures that have been implemented by the Supplier in the previous quarter; and
 - 2. the results of any customer satisfaction surveys (or similar) that have been performed in the previous quarter;
 - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements;

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- (iv) reports on whether the Supplier has implemented any previous action plan and, if not, the extent of the non-compliance;
 - (v) details the expenditure of each Agreement (together with a breakdown of the number of units, quantity and cost of the Deliverables and Services under each Agreement) in a manner that tracks expenditure made over time and the usage of such expenditure in performing each Agreement, and that identifies any applicable discounts, credits, rebates, research grants, education grants, donations and any other benefits received or provided by or on behalf of the Supplier in connection with such Agreement; and
 - (vi) provides any further information set out in any template provided by the Principal or otherwise requested by the Principal (including with respect to the SME Policies and the Aboriginal Procurement Policy).
- (b) The Supplier acknowledges and agrees that the Principal may review each Performance Report to assess the level of compliance by the Supplier with the KPIs.
 - (c) The Supplier acknowledges and agrees that the Principal may make available any Performance Report to any Eligible Customer (including the head of any Eligible Customer and any responsible Minister of an Eligible Customer).

10.2 Other reports

- (a) In addition to the Performance Report, the Supplier must provide the following reports and information (collectively, along with the Performance Report, referred to as the **Supplier's Reports**) to the Principal:
 - (i) every two years following the SOA Date (or as otherwise reasonably required by the Principal from time to time):
 - A. a written or electronic report outlining the Supplier's compliance with the SME Policies and the Aboriginal Procurement Policy; and
 - B. information the Principal requests in order to perform financial assessments in relation to the Supplier; and
 - (ii) reports containing such other information as the Principal may reasonably require from time to time in performing its role as the administrator of the SOA and in monitoring the Supplier's performance under the SOA or under any Agreement (including any Supplies).
- (b) If required by the Principal, the Supplier must procure that any third party original manufacturer/publisher of Supplies provides reports directly to the Principal, outlining details of all Supplies and other deliverables, products and/or services provided to any Eligible Customers that were originally manufactured/published by such third party (for clarity, provided whether under this SOA or under any other agreement or arrangement between any Eligible Customer and the Supplier or a third party).

10.3 Meetings

If required by the Principal, the Supplier must meet with the Principal each calendar quarter or otherwise on the request of the Principal, to monitor and review the Supplier's performance under each Agreement and, if required by the Principal, monitor and review the Supplier's compliance with any action plan issued or submitted under clause 10.1. The parties agree that meetings may be held by video or teleconference if required by the Principal.

11. Innovation, improvement and competitive pricing

11.1 Innovation and improvement

- (a) The Supplier acknowledges and agrees that the purpose of the Service Level and KPI requirements is to ensure a minimum level of performance by the Supplier, with the aim of continuous improvement in meeting the stated Service Level and KPI requirements (including measurable improvements in value, efficiency and

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productivity year on year), thereby increasing the benefits to the Principal and the Eligible Customers during the Term.

- (b) Without limiting the Supplier's obligations under this SOA or any Agreement, the Supplier must continuously throughout the Term:
- (i) perform its obligations in accordance with Best Industry Practice;
 - (ii) take reasonable steps to improve the Supplies under this SOA and each Agreement and the manner in which it performs its obligations under each of them, including by:
 - A. maintaining a level of currency, knowledge and technology that allows the Eligible Customers to take advantage of technological and process advancements;
 - B. identifying and applying proven techniques and tools utilised by the Supplier or in the Supplier's industry that would benefit the Principal or any Eligible Customer either operationally or financially;
 - C. implementing programs, practices and measures designed to improve the Supplier's levels of performance, including any programs, practices and measures as stated in any Agreement;
 - D. implementing relevant technological improvements and advancements; and
 - E. identifying and implementing efficiencies in the supply chain;
 - (iii) if reasonably requested by the Principal report on the performance of its obligations under clauses 11.1(b)(i) and 11.1(b)(ii); and
 - (iv) notify the Principal of any change to the performance of its obligations under this SOA or any Agreement which, if implemented, would give rise to an improvement, innovation or time or cost saving and if required by the Principal, issue a Change Request in respect of that change.

11.2 Other Eligible Customer Pricing

- (a) Without limiting clause 6.1(d), but subject to clauses 11.2(b) and 11.3 below, the Supplier must not supply or offer to supply the same or similar goods and services to the Supplies (in whatever volume, and whether under or in connection with this SOA or any other agreement or arrangement) to an Eligible Customer for a price less than the applicable Price set out in the Schedule of Prices (including by way of rebate or other incentive).
- (b) Should the Supplier wish to supply or offer to supply the same or similar goods and services to the Supplies (in whatever volume and whether under or in connection with this SOA or any other agreement or arrangement) to an Eligible Customer for a price less than the applicable Price set out in the Schedule of Prices (including by way of rebate or other incentive) then it must either:
 - (i) first seek, and obtain, the Principal's prior written permission to do so, by submitting to the Principal a written request detailing the nature, quality, quantity and timing of the proposed supply, stating that the request is a 'clause 11.2 request', and identifying the proposed prices and reasons why the Supplier seeks to supply for a price less than the applicable Price set out in the Schedule of Prices; or
 - (ii) notify the Principal and immediately revise the Prices payable by Eligible Customers under or in connection with this SOA to reflect the lower price offered to the relevant Eligible Customer (which must reflect any rebate or other incentive), such that all Eligible Customers have the benefit of the lower pricing.
- (c) The Principal will not unreasonably withhold or delay its consent under clause 11.2(b)(i).

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- (d) If the Supplier fails to comply with clause 11.2(b), the relevant Prices payable by Eligible Customers in the Schedule of Prices will be automatically reduced with immediate effect to reflect the lower price offered to the relevant Eligible Customer (including to reflect any rebate or other incentive), such that all Eligible Customers have the benefit of the lower pricing on an ongoing basis.
- (e) The parties acknowledge and agree that any adjustments to the Prices payable by Eligible Customers under this SOA which are made in accordance with the terms and conditions of this SOA apply automatically and without the need to implement such revisions in accordance with the Change Control Procedure or any other applicable mechanism for giving effect to variations to this SOA. However, if required by the Principal from time to time, the Supplier must promptly and in good faith vary this SOA to reflect such adjustments.
- (f) For clarity, the obligations of the Supplier in this clause 11.2 apply to the prices supplied or offered by the Supplier to Eligible Customers, but do not place any obligation on the Supplier to ensure that its subcontractors or down-stream suppliers:
 - (i) comply with the requirements of this clause 11.2; or
 - (ii) sell any goods and services to any person (including, for example, directly to Eligible Customers) for any particular price.

11.3 Commonwealth Government Prostheses List

- (a) Unless otherwise expressly set out in the Schedule of Prices, the Supplier must ensure that the Prices payable by Eligible Customers for Deliverables do not exceed the prices (if any) for such Deliverables on the Commonwealth Government Prostheses List.
- (b) The Supplier acknowledges and agrees that:
 - (i) the Principal has the right to continuously monitor compliance with clause 11.3(a) throughout the Term; and
 - (ii) if the Supplier fails to comply with clause 11.3(a), the relevant Prices payable by Eligible Customers for the relevant Deliverables in the Schedule of Prices will be automatically reduced with immediate effect to reflect the lower price specified for such Deliverable on the Commonwealth Government Prostheses List, such that all Eligible Customers have the benefit of the lower pricing on an ongoing basis.

11.4 Price revisions

- (a) Subject to clauses 11.4(b) and 11.4(c), either party may from time to time request a change to the Prices applicable to this SOA (including as set out in or incorporated into the Schedule of Prices) for any Supplies, by providing written notice to the other party (**Price Revision Request**).
- (b) If the Supplier issues a Price Revision Request, the Supplier must provide, as part of such Price Revision Request:
 - (i) the specific changes to the Prices that are being sought as part of the Price Revision Request, in Australian Dollars;
 - (ii) a detailed justification and explanation of the reason for the Price Revision Request; and
 - (iii) any relevant supporting documentation.
- (c) The Supplier must not issue a Price Revision Request that relates to an increase to the relevant Prices for Supplies, within 12 months of the date that:
 - (i) the relevant Supplies were first included in the Requirements Documentation;
 - (ii) the pricing for any Supplies was last changed; or
 - (iii) a Price Revision Request for any Supplies was last issued by either party.

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- (d) The Principal may in its sole discretion accept or reject any Price Revision Request issued by the Supplier.
- (e) Other than to the extent the Supplier is required under this SOA to accept a Price Revision Request or otherwise revise the Prices, the Supplier may in its sole discretion determine how to respond to a Price Revision Request issued by the Principal, including whether to accept or reject any such Price Revision Request.
- (f) The Supplier must issue a notice in writing to the Principal accepting or rejecting a Price Revision Request issued by the Principal within 30 days of receipt of such Price Revision Request.
- (g) If a Price Revision Request is accepted by the Principal in accordance with clause 11.3(d), or by the Supplier in accordance with clause 11.4(f), the Schedule of Prices will be deemed to be amended to reflect such Price Revision Request but such amendments will not apply to any Agreement that is already in effect, unless otherwise agreed in writing between the Supplier and the relevant Customer.
- (h) Nothing in this clause 11.4 limits the Principal's rights under any other provision of this SOA (including clause 6).

12. Benchmarking

- (a) Notwithstanding any other provision of this SOA and without limiting the Principal's rights under this SOA, the Supplier acknowledges and agrees that the Principal may, in its sole discretion and from time to time, disclose the Payment Particulars and any other pricing related information to any Other Public Body.
- (b) The Principal may from time to time in its sole discretion compare the Prices payable by Eligible Customers for Supplies under or in connection with this SOA (including in the SOA) with the prices payable to the Supplier by any Other Public Body for equivalent goods, deliverables or other items.
- (c) If any of the Prices payable by Eligible Customers for Supplies under or in connection with this SOA (including in the Schedule of Prices) exceed the prices payable to the Supplier by any Other Public Body for equivalent goods, deliverables or other items:
 - (i) the Supplier must, on the request of the Principal, meet with the Principal to discuss in good faith how the Prices payable by Eligible Customers for Supplies under or in connection with this SOA (including in the Schedule of Prices) will be reduced to reflect an appropriate lower price; and
 - (ii) if at least 10 Business Days have elapsed since the commencement of discussions under clause 12(c)(i) and the Principal is not satisfied with the outcome of such discussions, the Principal may issue a notice in writing informing the Supplier that the relevant Prices payable by Eligible Customers in the Schedule of Prices will be automatically reduced with immediate effect to reflect the lower price payable by the relevant Other Public Body, such that all Eligible Customers have the benefit of the lower pricing on an ongoing basis (for clarity, such notice is binding on the Supplier and will result in the Prices being automatically reduced on an ongoing basis).

13. Performance Guarantee

- (a) The Principal may, in its sole discretion at any time during the Term, by issuing a notice in writing to the Supplier, direct the Supplier to arrange for a guarantor approved in writing by the Principal, to enter into a performance guarantee:
 - (i) in respect of this SOA and/or any Agreements formed under this SOA (as identified in the Principal's notice);
 - (ii) in favour of the Principal and/or Eligible Customer(s) that is/are the counterparty to any Agreement(s) identified in clause 13(a)(i); and
 - (iii) in a form and on terms and conditions prescribed by the Principal (**Performance Guarantee**).

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- (b) The Supplier must comply with a direction under clause 13(a) within 15 Business Days of the date of the Principal's notice.
- (c) The Supplier is responsible for the costs that it incurs in complying with its obligations under this clause 13.

14. Other requirements

14.1 Confidentiality

The parties acknowledge and agree that clause 20 of the Agreement Terms applies to this SOA as if set out in full in this SOA, except that for the purposes of this SOA:

- (a) the word 'Agreement' in clause 20(a)(ii) is deleted and replaced with the words '*SOA (and, where Confidential Information has been received or come into possession in relation to the subject matter of an Agreement, to exercise its rights or perform its obligations in respect of that Agreement)*';
- (b) the word 'Customer' in clause 20(a)(iii)B is deleted and replaced with the words '*Principal or any Eligible Customer*'; and
- (c) all remaining references in clause 20 of the Agreement Terms to:
 - (i) this 'Agreement' will be deemed to be references to this SOA; and
 - (ii) the 'Customer' will be deemed to be references to the Principal.

14.2 Intellectual Property

- (a) Each party will retain its Intellectual Property Rights pre-existing as at the SOA Date (for the purposes of this SOA, **Existing Material**) and nothing in this SOA assigns or transfers the Existing Material of one party to another. Neither party may assert or bring any Claim for ownership of any or all of the other party's Existing Material.
- (b) Title and ownership of Intellectual Property Rights in all material developed or created or required to be developed or created under this SOA by:
 - (i) the Supplier (**Supplier New Material**) will vest immediately upon its creation in the Supplier; and
 - (ii) by or on behalf of the Principal (other than by the Supplier) (**Principal New Material**) will vest immediately upon its creation in the Principal.
- (c) The Supplier grants to the Principal and any Eligible Customer a perpetual, irrevocable, non-exclusive, worldwide, transferrable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate and distribute any of the Supplier's Existing Material and Supplier New Material, for any purpose in connection with the Principal and any Eligible Customer performing their obligations, and exercising their rights, under or in connection with this SOA and under any Agreement, and carrying out their functions and activities or those of any Authority, including any statutory requirements concerning State records or audit.
- (d) The rights and licences granted by the Supplier under clause 14.2(c) are sub-licensable by the Principal or Eligible Customer (on the same terms, for the same period and for the same purposes as set out in clause 14.2(c)), without charge, including to any:
 - (i) contractor, subcontractor or outsourced service provider (subject to such persons being under reasonable obligations of confidentiality owed to the Principal, Eligible Customer or another Government Agency) acting on behalf of, or providing products and/or services for the benefit of, the Principal, Eligible Customer or other Government Agency; or
 - (ii) Government Agency.
- (e) The Principal grants to the Supplier, a non-exclusive, non-transferable, revocable, worldwide, royalty-free licence to use the Principal New Material, to the extent required for the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this SOA or any Agreement.
- (f) The Supplier represents, warrants and undertakes that:

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- (i) it has all necessary Intellectual Property Rights required to carry out its obligations under the SOA; and
 - (ii) the Supplier's performance of its obligations under the SOA will not infringe any Intellectual Property Rights or Moral Rights.
- (g) Clause 15 of the Agreement Terms takes priority over this clause 14.2 to the extent the operation of any Agreement gives rise to a conflict or inconsistency between the operation of clause 15 of the Agreement Terms and this clause 14.2.

14.3 Return or destruction of Principal Data, Confidential Information and intellectual property

Subject to any requirements at Law applicable to the parties, on the expiry or termination of this SOA, the Supplier and its Personnel must cease to access and, at the Principal's election, securely return or destroy, the Principal's Confidential Information, Existing Materials, New Materials and other Materials that comprise the Principal's Intellectual Property Rights, together with the Principal Data. Within five Business Days of a request of the Principal, the Supplier must provide a written certification to the Principal confirming that the Supplier and its Personnel have complied with this clause 14.3.

14.4 Insurance

Without limiting the requirements of any Agreement, the Supplier must:

- (a) effect and maintain the insurances set out in the Key Details as well as comply with the specific insurance requirements of each Agreement; and
- (b) prior to each annual renewal of each insurance policy and otherwise within 10 Business Days of a request from the Principal, provide the Principal with:
 - (i) a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Principal) confirming that all insurance policies required by this SOA are current and that the insurance has the required limits of cover; and
 - (ii) any information reasonably requested by the Principal regarding the policies for each of the insurances required to be held and maintained by the Supplier under this SOA (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).

14.5 Audits and inspections

- (a) The Principal or its nominee (which may be an advisor, consultant or other third party engaged by the Principal) may conduct audits and inspections:
 - (i) of the Supplier's and its Personnel's performance of its obligations under this SOA, including the:
 - A. Supplier's and any subcontractor's operational practices and procedures as they relate to this SOA;
 - B. accuracy of the Supplier's Reports; and
 - C. Supplier's and its Personnel's compliance with its other obligations under this SOA; and
 - (ii) for the purpose of an inspection, examination or audit undertaken by or on behalf of the Auditor-General in accordance with its legislative powers to assess the expenditure of public money related to this SOA.
- (b) For the purpose of conducting an audit or inspection under this clause 14.5, the Principal, the 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;

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- (ii) to the extent relating to the Supplier's activities or obligations under this SOA or to any Supplies, access, inspect and copy documents (including the Supplier's Reports), 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 obligations under this SOA, 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 Principal will accompany its notice under clause 14.5(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) Principal 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 SOA or any Agreement, or the Principal forming, on a reasonable basis, a view that such breach may have occurred; and
 - (ii) Principal 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 Principal or its nominee in carrying out an audit under this clause 14.5.
- (f) Each party must bear its own costs of executing its rights under, or complying with, this clause 14.5.
- (g) The Principal and its nominee must, in conducting an audit or inspection under this clause 14.5:
- (i) 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 14.1; and
 - (ii) 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 any Supplies (unless such person is otherwise approved by the Supplier, acting reasonably).
- (h) Without limiting any rights or remedies of the Principal, if an audit shows that the Supplier has breached, or is in breach of, this SOA, the Supplier must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Principal.
- (i) This clause 14.5 survives for the Term and a period of seven years following the termination or expiry of this SOA.

14.6 Business continuity and contingency

- (a) The Supplier must have reasonable business continuity and contingency measures and procedures in place to ensure business continuity and no disruption to the Principal and Eligible Customers.
- (b) If required under the Requirements Documentation or otherwise requested by the Principal from time to time, the Supplier must, within the timeframe stated in the Requirements Documentation, or otherwise within six months of the Principal's request, have in place (and prepare and implement, if not already in existence) a Business Contingency Plan for the approval of the Principal (**Business Contingency Plan**).
- (c) 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 performance of this SOA and any Agreement;

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- (ii) comply with the security standards, requirements and certifications required by this SOA (including the Agreement Terms); and
 - (iii) include any other details specified in the Requirements Documentation or as otherwise reasonably required by the Principal.
- (d) 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 SOA and any Agreement (including those in existence at the SOA Date or notified by the Principal to the Supplier in writing).
- (e) The Business Contingency Plan must be reviewed and tested by the Supplier at least annually. The Supplier must provide the results of any review or test of its Business Contingency Plan to the Principal upon request.
- (f) 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 Principal for approval.
- (g) The Supplier must comply with the latest Business Contingency Plan that has been approved in writing by the Principal.
- (h) On the occurrence of a Disaster, the Supplier must immediately:
- (i) notify the Principal's Representative in writing that a Disaster has occurred; and
 - (ii) implement any measures set out in the Business Contingency Plan and such other measures as reasonably required by the Principal to mitigate and respond to the Disaster.

14.7 Privacy

The Supplier must comply with all Privacy Laws in performing its obligations under this SOA.

14.8 Management Fees

Where the Tender refers to a 'Management Fee', 'Fee for Service' or similar as being payable ~~by the Supplier~~ to the Principal, ~~the Supplier must unless the Principal elects by notice in writing to the Supplier to obtain payment of~~ the relevant amount/s directly from a relevant Eligible Customer/s, the Supplier must:

- (a) ensure that the relevant amount payable to the Principal is specified on all applicable quotations issued to Eligible Customers;
 - (b) collect the relevant amount payable to the Principal from each relevant Eligible Customer under each relevant Agreement;
 - (c) hold the relevant amount payable to the Principal on trust for the Principal;
 - (d) pay the relevant amount/s to the Principal promptly (and in any event within 7 days of receipt from each relevant Eligible Customer) and in accordance with the requirements of the Principal (notified to the Supplier from time to time by the Principal); and ~~must~~
- ~~(a)~~(e) provide such information to the Principal as requested by the Principal from time to time to substantiate the relevant amounts payable ~~by the Supplier~~ to the Principal.

15. Suspension

- (a) The Principal 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 under this SOA, at any time. Any such suspension will be effective on and from the date specified in the Principal's direction.
- (b) The Supplier must comply with any direction issued by the Principal under clause 15(a).
- (c) The Supplier will not be entitled to make any Claim against the Principal arising out of or in connection with the suspension under this clause 15.

16. Termination or expiry

16.1 Termination or expiry of this SOA

- (a) Without prejudice to any of the Principal's other rights, the Principal may, at any time for its sole convenience and for any reason, by written notice to the Supplier, terminate this SOA effective from the date stated in the Principal's notice, or if no such time is stated, at the time the notice taken to be received by the Supplier in accordance with this SOA.
- (b) Subject to clauses 16.1(c) and 16.1(d), the Principal will not be liable for any Claim arising out of or in connection with any termination of this SOA under clause 16.1.
- (c) The Principal and the Supplier agree that if this SOA expires or is terminated, the separate Agreements formed under this SOA will not be affected and must be fulfilled in accordance with the terms of the relevant Agreement, unless the parties otherwise agree in writing.
- (d) Termination of this SOA will not prevent either party from relying on rights accrued under the SOA prior to such termination.

16.2 Termination of an Agreement

The parties agree that the expiry or termination of any Agreement will not affect the operation of this SOA or the operation of any other Agreement.

17. Dispute resolution

The parties agree to resolve any dispute between them that arises out of, or in connection with, this SOA in accordance with clause 30 of the Agreement Terms, except that for the purposes of this SOA:

- (a) references in clause 30 of the Agreement Terms to:
 - (i) this 'Agreement' will be deemed to be references to this SOA; and
 - (ii) the 'Customer' will be deemed to be references to the Principal;
- (b) for the purposes of clause 30.1(b) of the Agreement Terms, the Principal will always be involved in the dispute resolution process.

18. General provisions

The parties acknowledge and agree that clause 33.1 and clauses 33.5 to 33.20 of the Agreement Terms apply to this SOA as if set out in full in this SOA, except that for the purposes of this SOA:

- (a) references in clause 33.1 and clauses 33.5 to 33.20 of the Agreement Terms to:
 - (i) this 'Agreement' will be deemed to be references to this SOA; and
 - (ii) the 'Customer' will be deemed to be references to the Principal;

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- (b) clause 33.1 of the Agreement Terms will apply to any:
- (i) information provided to the Principal or any Eligible Customer (including Supplier Information and Supplier's Reports); and
 - (ii) information that relates to the Supplier's obligations under this SOA or any Agreement,
- and the Principal and any Eligible Customer will be permitted to exercise the Principal's rights under clause 33.1 of the Agreement Terms; and
- (c) the release and indemnity in clause 33.1(e)(iv) of the Agreement Terms applies in favour of the Principal, each Eligible Customer and the State of New South Wales;
- (d) clause 33.8(b)(i) of the Agreement Terms will be replaced with the following:
- '(i) clauses 2, 14.1, 14.2, 14.3, 14.4 (to the extent that it relates to professional indemnity insurance), 14.5, 14.6, 16.1(d), 17 and this clause 18; and'*
- (e) clause 33.14(b) will be amended by replacing the words *'Purchase Order and the Supplier's address and email address is that set out in the SOA'* with the words *'Key Details'*.

19. Definitions and interpretation

19.1 Definitions

In this SOA, unless the contrary intention appears, capitalised terms have the meaning given in the Definitions Document.

19.2 Interpretation and Discretion

The parties acknowledge and agree that clauses 56.2 and 56.3 of the Agreement Terms apply to this SOA as if set out in full in this SOA, except that for the purposes of this SOA:

- (a) references in clauses 56.2 and 56.3 of the Agreement Terms to:
 - (i) this 'Agreement' will be deemed to be references to this SOA; and
 - (ii) the 'Customer' will be deemed to be references to the Principal;
- (b) the words 'this Agreement' in clause 56.2(g)(vii) of the Agreement Terms are deleted and replaced with the words 'the Schedule of Prices'.

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Executed as a deed

SIGNED, SEALED AND DELIVERED as a deed for and on behalf of the **Principal**, 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

SIGNED, SEALED AND DELIVERED as a deed by the **Supplier** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

 Signature of Secretary/other Director

 Name of Secretary/other Director in full

 Date

 Signature of Director or Sole Director and Secretary

 Name of Director or Sole Director and Secretary in full

 Date

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Attachment 1 - Agreement Terms

Key sections/parts:

- (a) ~~PART A: PRELIMINARIES~~ ~~PART A: PRELIMINARIES~~ (clauses 1 to 4);
- (b) ~~PART B: SUPPLIES~~ ~~PART B: SUPPLIES~~ (clauses 5 to 15);
- (c) ~~PART C: DATA AND SECURITY~~ ~~PART C: DATA AND SECURITY~~ (clauses 16 to 20);
- (d) ~~PART D: FEES AND PAYMENT~~ ~~PART D: FEES AND PAYMENT~~ (clause 21);
- (e) ~~PART E: RISK ALLOCATION AND MANAGEMENT~~ ~~PART E: RISK ALLOCATION AND MANAGEMENT~~ (clauses 22 to 32); and
- (f) ~~PART F: GENERAL PROVISIONS~~ ~~PART F: GENERAL PROVISIONS~~ (clause 33);
- (g) ~~PART G: PHYSICAL DELIVERABLE TERMS~~ ~~PART G: PHYSICAL DELIVERABLE TERMS~~ (clauses 34 to 41);
- (h) ~~PART H: SOFTWARE (NON-CLOUD) TERMS~~ ~~PART H: SOFTWARE (NON-CLOUD) TERMS~~ (clauses 42 to 49); and
- (i) ~~PART I: CLOUD SERVICES TERMS~~ ~~PART I: CLOUD SERVICES TERMS~~ (clauses 50 to 55); and
- (j) clause 56 (Definitions and Interpretation).

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Agreement Terms (Provision of Goods and Services)

Parties Customer and Supplier (as defined in the Definitions Document)

Background

- A. The Principal and the Supplier have entered into the Standing Offer Arrangement, which sets out the terms and conditions under which the Supplier agrees with the Principal to make a standing offer to supply Supplies to Eligible Customers.
- B. The Customer is an Eligible Customer and has issued a Purchase Order to the Supplier in accordance with the process set out in the SOA, for the procurement of Supplies by the Customer from the Supplier. Accordingly, a binding 'Agreement' has been formed between the Customer and the Supplier on the terms and conditions of this Agreement and under which the Supplier must supply the Supplies.
- C. This Agreement contains the terms and conditions on which the Supplier agrees to supply the Supplies.
- D. The Supplier has represented to the Customer that it has the relevant skills and experience to supply the Supplies.
- E. The Customer has agreed to appoint the Supplier, on a non-exclusive basis, to supply the Supplies, subject to the Supplier's ongoing compliance with the terms and conditions of this Agreement, and the Supplier has agreed to accept that appointment.

PART A: PRELIMINARIES

1. Agreement documents and order of precedence

1.1 Agreement documents

This Agreement comprises the following documents and terms and conditions:

- (a) any Additional Conditions (to the extent applicable to this Agreement)
- (b) the Key Details (to the extent applicable to this Agreement, but excluding any Additional Conditions) and the Clause Matrix;
- (c) clauses 1 to 33 and clause 56 (to the extent applicable);
- (d) clauses 34 to 55 (to the extent applicable);
- (e) the Definitions Document;
- (f) the Schedule of Prices;
- (g) the Requirements Documentation;
- (h) all applicable Plans;
- (i) any other schedule, attachment, annexure or document incorporated into this Agreement (excluding any Supplier's Documents);
- (j) the Purchase Order; and
- (k) any Supplier's Documents.

1.2 Order of precedence

In the event of any conflict or inconsistency between the documents set out in clause 1.1, 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 (except that to the extent a Purchase Order expressly amends this Agreement, such amendments will take precedence over this Agreement).

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1.3 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 on the detail and specifications of particular Services and Deliverables and not to amend or contradict the terms set out in any of the documents or terms and conditions listed in clauses 1.1(a) to 1.1(j).
- (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 Supplies; and
 - (ii) may describe other elements of the Supplies which the Supplier offers to provide to the Customer, such as technical and functional specifications, service characteristics and performance standards.
- (c) Notwithstanding the incorporation of Supplier's Documents into this Agreement or the SOA, 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 documents or terms and conditions listed in clauses 1.1(a) to 1.1(j) (for example, provisions in the Supplier's Documents that deal with limitations of liability will not apply, in whole, as the Agreement Terms also deal with this subject matter);
 - (ii) are inconsistent, or in conflict, with the documents or terms and conditions listed in clauses 1.1(a) to 1.1(j);
 - (iii) alter, or seek to alter, the legal obligations of, or relationship between, the Customer and the Supplier, as set out in the documents or terms and conditions listed in clauses 1.1(a) to 1.1(j);
 - (iv) impose additional obligations or requirements on the Customer, beyond those set out in the documents or terms and conditions listed in clauses 1.1(a) to 1.1(j); or
 - (v) limit any rights or remedies of the Customer or relieve the Supplier from any of its obligations or responsibilities under the documents or terms and conditions listed in clauses 1.1(a) to 1.1(j).
- (d) Where any terms of the Supplier's Documents purport to override or otherwise vary any of the documents or terms and conditions listed in clauses 1.1(a) to 1.1(j), those terms will have no legal effect.
- (e) 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 33.7.

1.4 Additional Conditions

The parties agree to comply with any Additional Conditions.

2. Purchasing Supplies by Purchase Order

2.1 Supplies

The Supplier must supply all Supplies (including any Services or Deliverables specified in this Agreement) on the terms of this Agreement.

2.2 Formation of Agreement

Each Purchase Order issued by the Customer in accordance with the process set out in the SOA will automatically give rise to a binding separate contract between the Customer and the Supplier, effective from the date of issue of the Purchase Order by that Customer in accordance with the SOA, on the terms of this Agreement.

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2.3 Electronic execution

Subject to applicable Laws, the Customer may issue Purchase Orders electronically and the parties may execute any document entered into under this Agreement (including Change Requests), 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 will have no force or effect.

2.4 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 Supplies or to meet any minimum spend level under this Agreement; and
- (b) the Supplier is not an exclusive supplier of the Supplies (nor activities or items 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 supply activities or items which are the same as, or similar to, the Supplies.

3. Relationship

3.1 General

- (a) The parties must perform their respective roles and responsibilities as set out in this Agreement.
- (b) The Supplier further acknowledges and agrees that, given this Agreement is entered into under the SOA, the Customer may appoint or delegate the enforcement of any of its rights from time to time under this Agreement to the Principal.

3.2 Distributor / Approved Agent

- (a) This clause 3.2 applies only where the Clause Matrix specifies that the Supplier may supply Supplies to the Customer under this Agreement, and otherwise perform its obligations under this Agreement, using a 'Distributor'/'Approved Agent'. For clarity, the terms 'Distributor' and 'Approved Agent' are used interchangeably in this Agreement and have the same meaning.
- (b) The Supplier may supply Supplies to the Customer under this Agreement, and otherwise perform its obligations under this Agreement, using the Approved Agent.
- (c) The Supplier appoints the Approved Agent as the Supplier's legal agent for the purposes of:
 - (i) performing the Supplier's obligations (but not exercising the Supplier's rights) under this Agreement; and
 - (ii) collecting amounts payable by the Customer under this Agreement, on behalf of the Supplier,

and the Supplier must do all things necessary (including executing all documents) to give effect to the foregoing.
- (d) The Supplier represents, warrants and undertakes to the Customer that the Approved Agent is and will remain appointed as the Supplier's legal agent, and is properly authorised to fulfil its role as a legal agent of the Supplier, in accordance with this clause 3.2, for the Term.
- (e) The parties acknowledge and agree that:
 - (i) the Approved Agent is deemed to be a subcontractor of the Supplier for the purposes of this Agreement;

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- (ii) notwithstanding that the Approved Agent is a subcontractor of the Supplier, the Supplier remains fully liable and responsible for the acts and omissions of the Approved Agent and the performance of all of the Supplier's obligations under this Agreement;
- (iii) the Customer has rights to deal with the Approved Agent (including to disclose Confidential Information of the Supplier to the Approved Agent), as if the Approved Agent was the Supplier;
- (iv) any amounts paid or payable by the Customer to the Approved Agent under or in connection with this Agreement are deemed to be amounts paid or payable to the Supplier for the purposes of calculating the Supplier's liability cap under clause 29.5(a) and the Customer's liability cap under clause 29.5(b); and
- (v) any and all amounts paid to the Approved Agent by or on behalf of the Customer under or in connection with this Agreement will be:
 - A. in full and final settlement of the relevant amount owing to the Supplier under or in connection with this Agreement; and
 - B. deemed to have been paid to the Supplier for the purposes of this Agreement,

and the Supplier hereby irrevocably waives any rights to claim such amounts from the Customer, even where the Approved Agent does not pay such amounts to the Supplier.
- (f) The Supplier must ensure that, within 10 Business Days of the Commencement Date, the Approved Agent has executed a deed poll on the terms and conditions of Annexure B (Approved Agent Deed Poll) and that such executed deed poll has been provided to the Customer.

4. Term

4.1 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.

4.2 Renewal Period

- (a) Where a Renewal Period applies, 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 the Key Details), by giving the Supplier a notice in writing prior to the end of the then current Term (or such other notice period as may be specified in the Purchase Order).
- (b) Any Renewal Period exercised in accordance with clause 4.2(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 33.7.

PART B: SUPPLIES

5. Supply of the Supplies

5.1 General

The Supplier must supply the Supplies in accordance with the timeframes, Specifications and requirements of this Agreement.

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5.2 Customer Supplied Items

- (a) Other than any CSI or any items expressly specified in this Agreement to be provided by an Other Supplier in connection with this Agreement, the Supplier must provide all necessary Materials and resources to supply the Supplies 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 expressly identified as 'CSI' in the Purchase Order or Requirements Documentation;
 - (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 Supplies or any other use (except to the extent this Agreement 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 5.7 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 this Agreement; 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 this Agreement;
 - (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 supplying the Supplies 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

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- (vii) if specified in this Agreement, reimburse the Customer for the costs of the CSI as stated in this Agreement, and pay those costs in accordance with the timeframes for payment set out in this Agreement 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 5.2.

5.3 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 supply of the Supplies.
- (c) 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 Supplies 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; and
 - (iv) comply with any additional requirements with respect to Other Suppliers or interfacing arrangements as specified in this Agreement or as reasonably required by the Customer from time to time.

5.4 Training Services

- (a) This clause 5.4 only applies where it is specified in the Clause Matrix that the Supplier will provide training Services or Deliverables.
- (b) The Supplier must:
 - (i) provide training Services and any training materials at the times and in accordance with the requirements specified in this Agreement; and
 - (ii) prepare and submit to the Customer's Representative for approval, by the date specified in this Agreement, 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;

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- C. specify the responsibilities of both parties in connection with the training, including any CSI 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 this Agreement.
- (c) For clarity, the training Plan is a Document Deliverable. Clause 7 therefore applies to the training Plan, including any updates to it.
- (d) Training will occur at the location(s) specified in this Agreement or such other location(s) nominated by the Customer in writing.
- (e) Within five Business Days of the completion of any training that involves the Customer's Personnel obtaining any certifications, accreditations or similar, the Supplier must provide to the Customer:
- (i) a copy of any applicable certificates or similar documents evidencing that such certification, accreditation or similar has been obtained by the relevant Personnel of the Customer; and
 - (ii) a report outlining the names of any Personnel who have obtained such certification, accreditation or similar.
- (f) Without limiting clause 5.4(e), where specified in this Agreement, 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 this Agreement, 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 this Agreement.
- (g) 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 this Agreement.

5.5 Project management

- (a) If requested by the Customer from time to time, the Supplier must submit a project plan for the Customer's approval, setting out the manner in which, and times by which, the Supplier must supply the Supplies (**Project Plan**). Once approved, the Supplier must supply the Supplies in accordance with that Project Plan and any amended version of the Project Plan agreed by the parties in writing from time to time.
- (b) For clarity, the Project Plan is a Document Deliverable. Clause 7 therefore applies to the Project Plan, including any updates to it.

5.6 Delays

- (a) Time is of the essence in the performance of the Supplier's obligations (including as to the supply of the Supplies) under this Agreement.
- (b) The Supplier must manage supply of the Supplies, including to:
- (i) anticipate and identify actual and/or 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

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- (ii) take all necessary steps within its reasonable control to avoid or mitigate those actual and/or potential Delays.
- (c) The parties must keep each other informed of anything that they become aware of which is likely to cause a Delay.

5.7 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 5.7.
- (b) To request an extension of time under clause 5.7(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 requested in days, together with the basis for calculating that period.
- (c) Where the Supplier requests an extension of time under clause 5.7(b) and that Delay has arisen:
 - (i) because of:
 - A. the Customer's breach of this Agreement;
 - B. the Customer's failure to provide any Critical CSI; or
 - C. 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;
 - (ii) because of an event not within the scope of clause 5.7(c)(i), but which was beyond the reasonable control of the Supplier and could not have been reasonably mitigated or worked around by the Supplier or its Personnel, the Customer will reasonably consider such an extension of time; or
 - (iii) because of an event not within the scope of clauses 5.7(c)(i) or 5.7(c)(ii), the Customer may grant, decline or impose conditions on the granting of such request in its sole discretion.
- (d) In respect of any extension of time granted by the Customer, 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.
- (e) Whether or not the Supplier has made, or is entitled to make, a request for an extension of time under clause 5.7(a), the Customer may, in its sole discretion, at any time by written notice to the Supplier, unilaterally extend a Date for Delivery, Key Milestone or other timeframe under this Agreement 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 Agreement Sum, unless separately agreed pursuant to an agreed Change Request.
- (f) Notwithstanding clause 30.1, where:
 - (i) any dispute or difference arises between the parties in relation to this clause 5.7 or its subject matter; and

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- (ii) a project management committee or other governance forum, which meets at least monthly, is provided for in this Agreement,

then the party claiming that the dispute or difference has arisen must not issue a Dispute Notice pursuant to clause 30.1(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.

5.8 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 Agreement Sum, 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 Supplies, as a result of that Delay,
(Additional Supplies);
 - (ii) must accompany any advice under clause 5.8(a)(i) with sufficient supporting evidence to substantiate the calculation of its proposed changes to the Agreement Sum 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 9, in respect of the Additional Supplies referred to in clause 5.8(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 5.8(c)), the Supplier is not required to perform any of the Additional Supplies unless the Change Request is approved by the Customer.
- (c) Nothing in clause 5.8(b) will prevent the parties reaching some other written agreement in relation to the Additional Supplies, for example, the Supplier performing aspects of the Additional Supplies on an urgent and/or interim time and materials basis, subject to the subsequent formalisation of a detailed Change Request.

5.9 Deliverables on consignment

General

- (a) This clause 5.9 applies unless the Clause Matrix expressly specifies that this clause 5.9 does not apply.
- (b) The Customer may require the Supplier to provide Consignment Deliverables by:
 - (i) stating in this Agreement that Consignment Deliverables are required and incorporating the details required in Annexure C into this Agreement; or
 - (ii) from time to time, issuing a Consignment Deliverables Order Document to the Supplier,

in which case clauses 5.9(c) to 5.9(z) apply to the relevant Consignment Deliverables.

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Supply and delivery

- (c) Promptly following:
- (i) where clause 5.9(b)(i) applies, the Commencement Date; or
 - (ii) where clause 5.9(b)(ii) applies, the date on which the Consignment Deliverables Order Document is issued to the Supplier,
- the Supplier must deliver and supply to the Customer on consignment, and the Customer must hold on consignment, the Consignment Deliverables at the Consignment Location.
- (d) Notwithstanding any other provision of this Agreement, the Supplier must not issue an invoice for, and the Customer is not liable to pay, the Agreement Sum for Consignment Deliverables until the date contemplated in clause 5.9(p).
- (e) If a Minimum Consignment Quantity applies to a Consignment Deliverable, the Supplier must ensure that the Customer holds the applicable Minimum Consignment Quantity of such Consignment Deliverable at all relevant times, provided that if the Customer uses relevant Consignment Deliverables and purchases such Consignment Deliverables in accordance with clause 5.9(o) the Supplier will be provided a reasonable period of time to replenish such Consignment Deliverables so that the Customer holds the Minimum Consignment Quantity.
- (f) The Supplier must ensure that all Consignment Deliverables are suitably packed (for transit and storage), clearly marked and delivered to the Consignment Location or otherwise in accordance with the reasonable instructions given by the Customer.
- (g) The Supplier must ensure that all Consignment Deliverables delivered to the Customer are accompanied by a delivery docket and other necessary documentation detailing the description and quantity of Consignment Deliverables and referencing that the Consignment Deliverables are on consignment.
- (h) The parties acknowledge and agree that delivery of the Consignment Deliverables in accordance with this clause 5.9 will be at no additional cost to the Customer.

Storage and handling

- (i) Following delivery of the Consignment Deliverables by the Supplier to the Consignment Location, the Supplier must not move or remove the Consignment Deliverables from the Consignment Location unless permitted in accordance with this Agreement, or with the prior written consent of the Customer.
- (j) The Customer must handle and store the Consignment Deliverables with all due care and skill so as to maintain them in satisfactory condition and must use reasonable efforts to protect the Consignment Deliverables from any loss or damage.
- (k) The Customer must store the Consignment Deliverables at the Consignment Location:
 - (i) in accordance with the reasonable labelling, storage and other manufacturer conditions (if any) supplied with the Consignment Deliverables; and
 - (ii) in so far as is reasonably practicable and at no cost to the Supplier, separately from other goods of the Customer or any third party in a manner that permits the Consignment Deliverables to be identified as property of the Supplier.
- (l) Upon request of the Customer from time to time, the Supplier must arrange for the collection and return to the Supplier of any or all Consignment Deliverables (at the Supplier's own cost).

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Ownership, title and risk

- (m) Notwithstanding any other provision of this Agreement (including clause 35):
- (i) ownership of, and title in, Consignment Deliverables will remain with the Supplier until the Customer issues a purchase order for the relevant Consignment Deliverables in accordance with clause 5.9(o), at which point title and ownership in that Consignment Deliverable will immediately transfer to the Customer. The Supplier represents, warrants and undertakes that, at the time title to a Consignment Deliverable passes to the Customer pursuant to this clause, the Consignment Deliverable is free from any lien, security interest, mortgage or other encumbrance;
 - (ii) subject to clause 5.9(m)(iii), the risk of loss and damage to the Consignment Deliverables remains with the Supplier until their delivery to the Consignment Location, after which the Customer is responsible for any loss or damage caused to the Consignment Deliverables; and
 - (iii) the risk of loss to the Consignment Deliverables:
 - A. returned to the Supplier; or
 - B. arising from Consignment Deliverables exceeding their use-by or expiry dates,
 in all circumstances remains with the Supplier.

Use of Consignment Deliverables

- (n) As and when required, the Customer may in its sole discretion use each Consignment Deliverable. In doing so, the Customer must use any Consignment Deliverables that have an expiry date on a first-expiring, first-out basis.

Purchase orders and payment

- (o) As soon as practicable after the use by the Customer of a Consignment Deliverable, the Customer must provide a purchase order to the Supplier for such Consignment Deliverable (including by detailing the product description, product reference/code, quantity used and the Agreement Sum corresponding to that Consignment Deliverable). The Supplier may then issue the Customer a Correctly Rendered Invoice for such Deliverable and the Customer will then pay the Agreement Sum specified for such Consignment Deliverable in such invoice in accordance with the terms and conditions of this Agreement.
- (p) Other than in respect of the application of clause 5.9(m), the date on which the Customer issues a purchase order to the Supplier under clause 5.9(o) will be deemed to be the date on which the relevant Deliverable/s are delivered to the Customer under this Agreement (and are no longer 'Consignment Deliverables'). For clarity, all of the terms and conditions in this Agreement applying to Deliverables (other than clause 5.9(m)) will apply to such Deliverables, as if such Deliverables were delivered to the Customer on the date the Customer issued such purchase order to the Supplier under clause 5.9(o).

Replacement of Consigned Deliverables

- (q) The Customer may from time to time by notice in writing, in its sole discretion, require the Supplier to provide additional Consignment Deliverables to replace Consignment Deliverables that have been used, damaged, destroyed or that exceeded their use-by or expiry dates.
- (r) Each notice in writing issued by the Customer under clause 5.9(q) must, at a minimum, specify:
- (i) the date of the notice;

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- (ii) the quantity and product description of the Consignment Deliverables ordered for replacement;
 - (iii) the Agreement Sum for each Consignment Deliverable; and
 - (iv) a delivery date for the Consignment Deliverables, being a reasonable period from the date of the notice.
- (s) Subject to clause 5.9(t), the Supplier may in its sole discretion accept or reject an order issued under clause 5.9(q) by notice in writing to the Customer within 2 days after receipt of the Customer's notice. If the Supplier does not do so, the Supplier will be deemed to have accepted the order.
- (t) The Supplier must accept an order issued by the Customer under clause 5.9(q) where the order has been made to maintain the Minimum Consignment Quantity held by the Customer.
- (u) If the Supplier accepts (or is deemed to have accepted) an order under clauses 5.9(s) or 5.9(t), the Supplier must supply the Consignment Deliverables ordered under that accepted order in accordance with this Agreement and, on the Customer's request, promptly remove any Consignment Deliverables that are being replaced, at no additional cost to the Customer.
- Inspection of Consignment Deliverables*
- (v) Upon giving reasonable (and in any event at least 30 days') prior notice to the Customer, the Supplier may at an agreed time (and in any event no less than every six months) inspect the Consignment Location to:
- (i) audit and verify the contents, quality and condition of the Consignment Deliverables and their conditions of storage;
 - (ii) where Consignment Deliverables have an expiry date, establish that rotation of Consignment Deliverables is occurring on a "first-expiring, first-out" basis; and
 - (iii) ensure that the quantity of Consignment Deliverables are adequate to provide for current usage (including by satisfying any agreed Minimum Consignment Quantity).
- (w) The Supplier must comply with any directions, policies, procedures or other requirements of the Customer during any inspection performed under clause 5.9(v).
- (x) As part of any inspection performed under clause 5.9(v), the Supplier must make a written record showing the Consignment Deliverables' quantities, quality and condition. The Supplier must ensure that such written records are signed by both parties and that a copy of the signed record is provided to the Customer. The Supplier must immediately notify the Customer in writing of any discrepancy between the quantities of Consignment Deliverables counted and those expected to be held by the Customer, or any discrepancy in the quality or condition of any Consignment Deliverable. For the purpose of this clause 5.9(x), the Supplier agrees to waive its rights with respect to any discrepancy if no such notification is given by the Supplier to the Customer within 7 days following the inspection.
- (y) Following inspection of the Consignment Deliverables by the parties as provided for in clause 5.9(v), any Consignment Deliverables which are no longer within their use-by or expiry date must be removed and replaced by the Supplier at no cost to the Customer. A record of any Consignment Deliverables removed for such replacement must be prepared by the Supplier and signed by the parties before removal and a similar record prepared by the Supplier and signed by the parties on delivery of the replacement Consignment Deliverables.
- (z) The Supplier must, at its cost, provide to the Customer's staff appropriate training and all information necessary for the safe storage, handling and use of the Consignment Deliverables.

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5.10 Liquidated Damages

- (a) This clause 5.10 applies if this Agreement 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, this Agreement 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 Purchase 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 the applicable Agreement Sum, as may be specified in this Agreement.
- (c) The Supplier acknowledges that the Liquidated Damages payable under this clause 5.10 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, such Liquidated Damages 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 5.10.
- (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:
 - (i) the breach or negligence of the Customer;
 - (ii) the unavailability or failure of any Critical CSI;
 - (iii) the acts or omissions of an Other Supplier; or
 - (iv) any other circumstances (if any) that the Requirements Documents expressly specify will relieve the Supplier from its obligations relating to payment of Liquidated Damages.

5.11 Site

- (a) The Supplier may from time to time be required to supply the Supplies at the locations or sites specified in this Agreement or by the Customer (**Site**).
- (b) The Supplier must supply the Supplies at the Site to the extent specified in this Agreement and in any event, to the extent required to supply the Supplies (such as Installation). In addition to complying with any requirements set out in this Agreement, the Supplier must ensure that its Personnel attend the Site only at the times nominated by the Customer from time to time, and subject to such conditions as may be nominated by the Customer from time to time.
- (c) 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 this Agreement or otherwise notified to the Supplier by the Customer; and
 - (ii) on the Date for Delivery and between the hours stated in this Agreement or as otherwise agreed in writing between the parties (if no hours are stated in this Agreement and the parties have not agreed in writing to the hours for delivery, the Supplier must deliver the Deliverables during Business Hours).
- (d) Where specified in this Agreement, the Customer must prepare the Site to enable the supply and Installation of the Deliverables. The Site must be prepared in accordance with any requirements specified in this Agreement or as otherwise reasonably determined by the Customer.

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- (e) 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 supplying the Supplies 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.
- (f) Any failure of the Supplier to do any of the matters mentioned in clause 5.11(e) will not relieve the Supplier of its obligations to supply the Supplies in accordance with this Agreement.
- (g) The Customer:
 - (i) is not obliged to:
 - A. provide the Supplier with sole access to the Site;
 - B. provide the Supplier with any parking, office space or other materials at the Site; or
 - C. carry out any work or provide any facilities or Materials to the Supplier (other than CSI) which may be necessary to enable the Supplier to obtain adequate access to supply the Supplies; and
 - (ii) may engage Other Suppliers to work upon, or in the vicinity of, the Site at the same time as the Supplier.
- (h) In supplying the Supplies, the Supplier must (and must ensure that its Personnel):
 - (i) when on the Site:
 - A. keep the Site clean and tidy and free of refuse; and
 - B. comply with the Customer's Site access requirements, policies and/or procedures, and all reasonable directions of the Customer;
 - (ii) minimise disruption or inconvenience to:
 - A. the Customer, occupiers, tenants and potential tenants of the Site in their occupation, use of or attendance at any part of the Site; and
 - B. others having a right of access to the Site;
 - (iii) at all reasonable times give the Customer's Representative, the Customer and any person authorised by the Customer access to the Supplies located at, or being provided at, the Site (as applicable) or any location where the Supplies are being supplied; and
 - (iv) facilitate the Customer's supervision, examination or assessment of the Supplies at the Site or any location where the Supplies are being supplied.
- (i) The Supplier acknowledges and agrees that notwithstanding that it or its Personnel may be granted access to a Site, the grant of such access does not provide the Supplier or any of its Personnel possession of, or a lease or licence to, any Site.

5.12 Help desk

- (a) If this Agreement 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 this Agreement.
- (b) Without limiting the Supplier's obligations under this Agreement, 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 this Agreement; and

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- (ii) ensure the help desk is provided by Personnel who are sufficiently qualified and experienced to resolve and escalate issues.

5.13 Tender Response

- (a) If directed by the Customer, the Supplier must comply with the Tender Response to the extent that any matter or thing addressed in the Tender Response is not provided for in this Agreement.
- (b) Where the Tender or the Tender Response is capable of assisting in ascertaining the meaning of a particular provision of this Agreement, the Customer may rely on the Tender and/or the Tender Response to:
 - (i) confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in this Agreement and the purpose or object underlying this Agreement; and/or
 - (ii) determine the meaning of a provision of this Agreement when the provision is ambiguous or obscure.
- (c) To the extent that there is any conflict between this Agreement and the Tender or the Tender Response, the conflict will be resolved by giving priority to this Agreement.
- (d) To the extent that there is any conflict between the Tender and Tender Response, the conflict will be resolved by giving priority to the Tender.
- (e) For the purposes of this Agreement, references in the Tender and the Tender Response to 'respondent', 'tenderer' or similar are deemed to be references to the Supplier.

6. Transition-In

6.1 Application

This clause 6 applies if it is specified in the Clause Matrix that the Supplier is required to provide any Transition-In Services as part of the Supplies.

6.2 Transition-In Plan

- (a) If this Agreement specifies that a Transition-In Plan must be prepared with respect to the Supplies, by the date specified in this Agreement, 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 7 therefore applies to the Transition-In Plan, including any updates to it.

6.3 Transition-In Services

- (a) The Supplier must supply any Transition-In Services specified in this Agreement or in any Transition-In Plan that is developed pursuant to clause 6.2.
- (b) The Transition-In Services must be provided by the Supplier for the period specified in this Agreement. Where no period is specified in this Agreement, 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.

7. Document Deliverables

7.1 General

- (a) The process in this clause 7.1 applies to all Document Deliverables (which, for clarity, 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 7 and by the dates specified in this Agreement.
- (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 Supplies; and
 - (v) comply with any applicable Specifications and any other requirements in this Agreement.

7.2 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 this Agreement 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 this Agreement.
- (b) The Customer will accompany any rejection under clause 7.2(a)(ii)B with a description of why the relevant Document Deliverable does not comply with this Agreement.
- (c) A Document Deliverable does not fail to comply with 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 7.1(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 7.2(a)(ii)B, the Supplier must, within five Business Days (or any alternative timeframe set out in this Agreement or otherwise agreed between the parties in

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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 7.2 until the Customer approves each Document Deliverable in accordance with clause 7 or terminates this Agreement.
- (f) Where the period referred to in clause 7.2(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.

7.3 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.

7.4 User Documentation

- (a) The Supplier must, at its sole cost, provide the User Documentation to the Customer and the Customer's Representative.
- (b) The User Documentation must be supplied in an electronic format and by the time specified in this Agreement or, where no timeframe is specified, where reasonably required by the Customer.
- (c) Where the Customer 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 in such format 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 7.1(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.

8. 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 written notice (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

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- (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 Supplies 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 30.

- (b) The Supplier must ensure that facilities for the repair of the Deliverables are available for the Warranty Period.
- (c) 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.
- (d) If, prior to the expiry of the Warranty Period, the Supplier identifies a Defect or a notice is given under clause 8(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.
- (e) Without limiting any right or remedy of the Customer, in the event that the Supplier does not remedy any Defects in accordance with this Agreement, the Customer may exercise any of its rights at Law or under this Agreement, including remedying the Defect itself or having the Defect remedied by a third party at the Supplier's cost.
- (f) 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.
- (g) If multiple Defects are identified, the Customer may request the Supplier to prioritise the rectification of any or all such Defects, and the Supplier must comply with any such request. However, for clarity, any prioritisation must remain consistent with any applicable Service Levels.
- (h) 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 that their functionality was materially decreased or impaired due to a Defect.
- (i) 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 notice or instruction of the Customer under this Agreement.
- (j) 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.

9. Change Control Procedure

9.1 Change Requests

- (a) Either party may request a variation to the Supplies, including:
- (i) varying the Specifications or the nature, quality or scope of the Supplies, the sequence or time in which they are performed or substituting alternative Materials (if applicable);
 - (ii) increasing, decreasing, omitting, deleting or removing any Supplies;
 - (iii) varying the CSI and/or any responsibilities or dependencies attributable to the Customer; and/or
 - (iv) any change resulting in the Supplier providing services and/or deliverables that are materially different to the Supplies specified in this Agreement,
- (Change Request).**
- (b) Except to the extent expressly specified in this Agreement, 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 9 is followed.

9.2 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 Annexure A (or such other form required 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 Agreement Sum 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 supply the Supplies 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 9.

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9.3 Acknowledgements

The parties acknowledge and agree that:

- (a) the Change Control Procedure does not apply to changes to the Agreement Terms or the Additional Conditions, which must be effected in accordance clause 33.7;
- (b) the Customer does not need to follow the Change Control Procedure with respect to the Customer's exercise of its unilateral right to reduce the scope of this Agreement pursuant to clause 24;
- (c) the Customer is not obliged to pay the Supplier for implementing any Change Request unless the parties have complied with this clause 9;
- (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 Supplies, the Customer may thereafter either supply those Supplies itself or employ or engage third parties to do so;
- (f) the Customer may, in its sole discretion, agree to 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.

10. Personnel

10.1 Supplier's Personnel

- (a) The Supplier must ensure that all of its Personnel engaged or employed by the Supplier in supplying the Supplies:
 - (i) are aware of, and comply with, the Supplier's obligations under this Agreement as if they were the Supplier;
 - (ii) prior to supplying any part of the Supplies, 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 applicable Best Industry Practice.
- (b) On the Customer's request or as part of any audit conducted pursuant to clause 32.2, the Supplier must promptly provide the Customer or its nominee with evidence that the obligations under this clause 10.1 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 Customer may, acting reasonably and in its sole discretion, give notice in writing requiring the Supplier to remove any of its Personnel from work in respect of this Agreement, together with its reasons for removal. The Supplier must (at its own cost) promptly arrange for the removal of such Personnel and their replacement with Supplier Personnel reasonably acceptable to the Customer.

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- (e) The Supplier must ensure that it (and where appropriate, its outgoing Personnel) effects a process that:
 - (i) minimises any adverse impact on, or delay in, the supply of the Supplies; 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 supply of the Supplies; and
 - B. the detail of any outstanding issues in relation to the Supplies, for which any of the outgoing Supplier's Personnel were responsible.
- (f) The process for transition to the replacement Personnel by the Supplier must be performed as expeditiously as possible with regard to the Supplies, the Dates for Delivery and other timeframes under this Agreement, and to the reasonable satisfaction of the Customer.
- (g) The Supplier must properly manage its Personnel resourcing (including any planned absences) to maintain a sufficient level of Personnel engaged or employed in the supply of the Supplies (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 Supplies are supplied in accordance with this Agreement.
- (h) If required by the Customer, the Supplier must ensure that any of the Supplier's Personnel who have, or may have, access to the Customer Environment:
 - (i) undertake information security training in accordance with Best Industry Practice; and
 - (ii) comply with all reasonable directions and requirements of the Customer (including any requirements for such Personnel to obtain security checks and undertake any specific information security and other training).

10.2 Deed of Confidentiality and Privacy

- (a) At the request of the Customer's Representative, the Supplier's Personnel involved in the supply of the Supplies (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 of confidentiality and privacy in a form required by the Customer (**Deed of Confidentiality and Privacy**).
- (b) The Deed of Confidentiality and Privacy 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 to supply the Supplies or being provided with access to the Customer's Confidential Information or Personal Information.

10.3 Subcontracting

- (a) The Supplier must not subcontract any of its obligations under this Agreement, other than to the extent this Agreement expressly permits the Supplier to subcontract its obligations (or such subcontracting is otherwise pre-approved by the Principal in writing). The Principal's consent to the use by the Supplier of permitted subcontractors may be withheld or given on such conditions as specified in this Agreement or otherwise notified by the Principal to the Supplier in writing.
- (b) Without limiting the Supplier's obligations under clause 10.3(a), the Supplier acknowledges and agrees that subcontractors of the Supplier for the purposes of this Agreement include any:
 - (i) original manufacturer or developer of Supplies;

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- (ii) distributor or other third party involved in the delivery or distribution of Supplies; or
 - (iii) other third party involved in the supply of the Supplies.
- (c) If the Principal consents to the engagement of any subcontractor on a conditional basis, then the Supplier must comply with those conditions when it engages that subcontractor.
- (d) A permitted subcontractor may not further subcontract the relevant obligations to another person without the Principal's prior written consent.
- (e) The Principal may, by written notice to the Supplier, revoke its consent to any permitted subcontractor if the Principal, acting reasonably, has concerns about that permitted subcontractor's or its personnel's:
 - (i) supply of the Supplies; or
 - (ii) compliance (or ability to comply) with the terms of this Agreement.
- (f) Where practicable to do so, the Principal must engage in reasonable advance consultation with the Supplier in relation to its concerns regarding a permitted subcontractor's (or its other Personnel's) performance or compliance, including whether those concerns may be otherwise addressed or remediated, before the Principal gives a notice of revocation under clause 10.3(e).
- (g) The Supplier is solely responsible for managing its supply chains and any risks in its supply chains, including ensuring any permitted subcontractor complies with clause 12.
- (h) Any subcontracting by the Supplier does not relieve the Supplier of any of its obligations under this Agreement.
- (i) The Supplier must ensure that each of its subcontractors complies with all of the terms and conditions of this Agreement to the extent that they are relevant to the subcontractor and must implement a binding contract with its subcontractors requiring its subcontractors to do so. The Supplier must provide evidence to the Principal that the Supplier has complied with this clause 10.3(i).
- (j) 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.
- (k) The Supplier acknowledges and agrees that the Principal and the Customer are entitled to communicate and otherwise deal directly with the Supplier's subcontractors, without reference to the Supplier.
- (l) If specified in this Agreement or if required by the Principal 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 in favour of the Customer or the Principal on terms consistent with, and no less onerous than, the parts of this Agreement applicable to the subcontractor's activities.

10.4 Background checks

- (a) The Supplier must:
 - (i) prior to involving any of its Personnel in supplying the Supplies, undertake all necessary background checks of those Personnel to ensure that they are fit and proper to supply the Supplies; and
 - (ii) monitor and assess its Personnel throughout their involvement in the supply of the Supplies to ensure that they remain fit and proper to supply the Supplies.
- (b) Without limiting the generality of clause 10.4(a), if required by the Customer from time to time, the Supplier must:
 - (i) carry out any specific background checks as requested by the Customer, including criminal record and "Working with Children" checks; and

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- (ii) provide the results of those checks to the Customer's Representative 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 supply of the Supplies, 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 Principal 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 10.4.

10.5 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 10.5(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.

10.6 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 10.6(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 10.6.
- (d) The parties agree that the restrictions in this clause 10.6 are necessary to protect the legitimate interests of each party.

11. Compliance

11.1 Compliance with Laws and directions

While supplying the Supplies, the Supplier must:

- (a) acquire and maintain all Authorisations necessary for the supply of the Supplies;
- (b) ensure that the Supplies 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 this Agreement.

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11.2 Further compliance obligations

- (a) Without limiting the generality of clause 11.1, the Supplier represents, warrants and undertakes to the Customer that:
- (i) the Supplies will comply with, and that the Supplier will:
 - A. comply with;
 - B. hold all required licences, consents and permits in accordance with; and
 - C. ensure that the Services and Deliverables (including any software) comply with:

all Laws, including, in relation to Medical Devices or where otherwise applicable, the *Therapeutic Goods Act 1989* (Cth), the *Therapeutic Goods Regulations 1990* (Cth), the *Therapeutic Goods (Medical Devices) Regulations 2002* (Cth), the Therapeutic Goods Administration's *Australian Regulatory Guidelines for Medical Devices*, the Therapeutic Goods Administration's *Medical Device Cyber Security Guidance for Industry*; and
 - (ii) the Services and Deliverables (including any software) will (on an ongoing basis), to the extent required by applicable Law, be:
 - A. registered on the Australian Register of Therapeutic Goods (**ARTG**);
 - B. fit for the purposes for which it is registered, listed or included (as appropriate) on the ARTG; and
 - C. labelled in accordance with all applicable Laws and any therapeutic goods orders made or approved under or in connection with the *Therapeutic Goods Act 1989* (Cth).
- (b) The Supplier must:
- (i) obtain all required approvals from, and hold and maintain all required consents, licences and permits required by, an Authority with respect to the Supplies;
 - (ii) to the extent required by Law, hold and maintain a Good Manufacturing Practice licence and a Conformity Assessment Certificate (as defined in the *Therapeutic Goods Act 1989* (Cth)) to manufacture therapeutic goods in accordance with the *Therapeutic Goods Act 1989* (Cth);
 - (iii) immediately notify the Customer in writing if:
 - A. any Authority in any Australian jurisdiction:
 - 1. rejects or threaten to reject any request for approval made by or on behalf of the Supplier in relation to any aspect of the Supplies; or
 - ~~1.2.~~ raises any issues or concerns with any aspect of the Supplies; or
 - B. the Supplier or any of its Personnel experiences, becomes aware of, is required by applicable Law to report, or reports an Adverse Event or a Near Adverse Event in relation to any aspect of the Supplies, in each case anywhere in the world; and
 - (iv) comply with its obligations under clause 11.11.

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11.3 Policies, Codes and Standards

- (a) Without limiting the generality of clause 11.1, the Supplier must (and must ensure that its Personnel), in performing its obligations under this Agreement, comply with all Policies, Codes and Standards.
- (b) The Supplier:
- (i) must comply with the Aboriginal Participation Plan;
 - (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 Customer 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.

11.4 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, Codes 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;
 - (iv) irrespective of the cost of complying with the Policy Change:
 - A. the Supplier's compliance with its obligations under clause 11.1 would involve the Supplier complying with that Policy Change in any event; or
 - B. the Policy Change reflects a change that applies in the Customer's or the Supplier's industry generally or a change that applies to any other customer of the Supplier,
- then the Supplier must comply with the Policy Change at no additional cost to the Customer.
- (b) If neither clauses 11.4(a)(iii) nor 11.4(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 costs and expenses notified to it under clause 11.4(b)(i) being incurred, 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;

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- B. reject the incurrence of the costs and expenses notified to it under clause 11.4(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.

11.5 Work health and safety

- (a) Without limiting the Supplier's obligations under any other provision of this Agreement, the Supplier must:
 - (i) 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);
 - (ii) 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;
 - (iii) 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 Supplies;
 - (iv) insofar as the Supplier, in supplying the Supplies, is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty;
 - (v) 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
 - (vi) comply with any additional work health and safety requirements specified in this Agreement or as otherwise reasonably required by the Customer from time to time.
- (b) If requested by the Customer from time to time, the Supplier must require its Personnel to sign the NSW Health Code of Conduct acknowledgment form, acknowledging that they have read and understood the NSW Health Code of Conduct (as published by NSW Health from time to time).

11.6 Work health and safety where Supplies include construction work

- (a) This clause applies where construction work forms part of the Supplies.
- (b) In this clause 11.6, 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:

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- A. the Supplier supplies the Supplies 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.

11.7 The environment

Where applicable to the supply of the Supplies, the Supplier must:

- (a) supply all Supplies 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; and
- (b) ensure that it and its Personnel comply with all applicable environmental Laws and follow all applicable New South Wales Government policies and guidelines, including with respect to hazardous substances.

11.8 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 supply of the Supplies; 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 requiring the Supplier to resolve the Conflict of Interest, then the Customer will be entitled to terminate this Agreement under clause 24.1(f).

11.9 Corruption and unethical conduct

- (a) The Supplier must not and must ensure that its Personnel do not:
 - (i) offer any inducement or reward to any employee, agent or contractor of the Principal, an Eligible Customer or a Government Agency in connection with this Agreement, the SOA or any agreement made under the SOA;
 - (ii) engage in corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or
 - (iii) engage in unethical behaviour.
- (b) The Supplier acknowledges and agrees that if the Supplier breaches this clause 11.9, the Customer will be entitled to terminate this Agreement under clause 24.1(f).

11.10 Heavy Vehicle Law

- (a) Without limiting any of the Supplier's obligations under or in connection with the Heavy Vehicle Law, to the extent heavy vehicles are used in supplying the Supplies, the Supplier:
 - (i) acknowledges that it is a primary duty holder under the COR Laws (i.e. 'Chain of Responsibility Laws') with responsibility for developing COR Systems;
 - (ii) must ensure that:

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- A. any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
 - B. operators carrying freight containers have a valid container weight declaration; and
 - C. drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (iii) must proactively provide reasonable assistance to enable the Customer (and any of the Customer's Personnel) to satisfy its duties and responsibilities under the COR Laws;
 - (iv) must obtain and maintain, and ensure that each of its Personnel obtain and maintain, all Authorisations required to enable the applicable activity, function or task to be undertaken lawfully;
 - (v) must undertake any audits or monitoring as requested by the Customer to demonstrate compliance with this clause 11.10; and
 - (vi) represents, warrants and undertakes that it is familiar with, and has the capability and resources to comply with, the COR Laws and ensure that its Personnel comply with the COR Laws.
- (b) The parties acknowledge and agree that whether a vehicle is a 'heavy vehicle' will be determined in accordance with the Heavy Vehicle Law.

11.11 Recall notice

- (a) If a recall notice is issued in respect of any Deliverables (including by any Authority, the Supplier, or any contractor, manufacturer or supplier of the Deliverables), the Supplier must immediately notify the Principal and the Customer in writing and unless otherwise required by the Customer and at the election of the Customer, the Supplier must (without limiting the Supplier's obligations or the Customer's other rights or remedies under this Agreement):
- (i) cease the supply of the Deliverables subject to the recall notice;
 - (ii) at a time nominated by the Supplier, and agreed to by the Customer, remove the Deliverables from the Customer's premises and replace the Deliverables as appropriate at the Supplier's cost; and
 - (iii) immediately refund any moneys paid in advance for the Deliverables (if applicable),
- and any extra costs or expenses incurred by the Customer arising out of or in connection with the recall or this clause 11.11 will be a debt due and payable from the Supplier to the Customer.
- (b) If the Supplier fails to comply with clauses 11.11(a)(i) or 11.11(a)(ii), then the Customer may (without limiting the Supplier's obligations or the Customer's other rights or remedies under this Agreement) have the Deliverables that are within the possession of the Customer and that are subject to the recall notice delivered to the Supplier at the Supplier's risk and expense. The Customer may then:
- (i) purchase from another supplier/s substitute goods of the kind and quality ordered; or
 - (ii) where it is not possible or practicable to purchase from another supplier substitute goods of the kind and quality ordered, purchase goods of a superior kind and quality to the Deliverables,
- and any extra costs or expenses incurred by the Customer arising out of or in connection with the recall or this clause 11.11 will be a debt due and payable from the Supplier to the Customer.

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- (c) Without limitation, the Supplier must comply with the Therapeutic Goods Administration's *Uniform Recall Procedure for Therapeutic Goods*, to the extent relevant or applicable.

12. Modern Slavery

12.1 Compliance

- (a) 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.
- (b) 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.

12.2 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
 - (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 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 12.

12.3 Subcontracts

In respect of any subcontracts that relate to the Supplies, 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 Modern Slavery provisions that are reasonably consistent with the provisions in this clause 12.

12.4 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

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Supplier and any requirements of any relevant Authority, including any relevant New South Wales Procurement Board code/guidance.

- (b) Any action taken by the Supplier under clause 12.4(a) will not affect any rights of the Customer under this Agreement, including its rights under clause 24.1.

13. Acceptance Testing

13.1 General

- (a) This clause 13 applies, unless the Clause Matrix specifies that Acceptance Testing does not apply. If the Clause Matrix specifies that Acceptance Testing does not apply, then clause 36.2 will still apply to the Deliverables.
- (b) Where this clause 13 applies, this clause 13 will apply in relation to the supply of any Deliverables that are not Documents.
- (c) Where the parties have agreed further details as to the form or the conduct of Acceptance Tests in this Agreement, those details apply in addition to this clause 13.

13.2 Information required for Acceptance Testing

The Supplier must provide to the Customer a full description of the program and procedures for Acceptance Testing, including copies of all:

- (a) necessary certification as required under this Agreement, under any Law or in accordance with Best Industry Practice; and
- (b) Installation results and quality assurance test documents.

13.3 Testing by Supplier

- (a) On completion of Installation in respect of any Deliverable (or component therefore) requiring Installation, and otherwise before delivery by the Supplier to the Customer of any Deliverable (or any component thereof) the Supplier must:
- (i) carry out the tests in accordance with any Test Plan and 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 this Agreement, 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 13.3; 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 13.3.

13.4 Other testing requirements

- (a) The Supplier must supply all instruments, phantoms and other items, including disposable or consumable items and materials required for demonstrations, training and testing.

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- (b) The Supplier must provide suitably qualified and competent Supplier Personnel to conduct all testing.

13.5 Testing by the Customer

- (a) The Supplier must permit the Customer to carry out any inspection and testing of any component or item of the Deliverables, including manufactured components, machinery and other Equipment, at the Customer's sole discretion, during installation.
- (b) The Customer may carry out Acceptance Tests in respect of each Deliverable and the Supplier must provide all reasonable assistance required by the Customer in connection with the Customer's Acceptance Testing.
- (c) If the Customer carries out Acceptance Tests, the Customer must conclude the Acceptance Tests in accordance with any timeframes specified in this Agreement or, where no timeframes are specified, within a time reasonably determined by the Customer.
- (d) 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.
- (e) Neither the full or partial Acceptance of any Deliverable nor any exercise by the Customer of any option or other right under this clause 13 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.
- (f) 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 this Agreement.
- (g) Where the period referred to in clause 13.5(f) 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.
- (h) If:
- (i) the Customer:
 - A. deploys a Deliverable for use by Customer Users; and
 - B. uses such Deliverable for the Customer's live operational purposes,

(in each case, other than for testing purposes), before the Customer Accepts such Deliverable; and
 - (ii) the Supplier has complied with:
 - A. its obligations under clause 13.3; and
 - B. any other obligations of the Supplier under the Requirements Documentation relating to testing,

the relevant Deliverable will be deemed to be Accepted by the Customer.

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13.6 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 13.6(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 Agreement Sum 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 within 20 Business Days after the date the Customer provides notice in writing to the Supplier requiring the Supplier to remedy such Defect (or such other time as agreed between the parties in writing), immediately terminate this Agreement or reduce its scope pursuant to clause 24.1(f).
- (b) If the Supplier receives a notice under clauses 13.6(a)(i) or 13.6(c)(i), the Supplier must, at its cost, within 20 Business Days (or such other time as 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 13.6(b);
 - (ii) Accept the Deliverable subject to a reduction in the Agreement Sum 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 13.6(a)(ii); or
 - (iii) immediately terminate or reduce the scope of this Agreement pursuant to clause 24.1(f).
- (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 13.6. 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.

13.7 Effect of Acceptance Certificate

An Acceptance Certificate will constitute Acceptance for the purposes of this clause 13, 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.

14. Performance**14.1 Service standards and Service Levels**

- (a) The Supplier must supply the Supplies in a manner that meets or exceeds any Service Levels or, if none are specified in this Agreement, in a timely and efficient manner taking into account the Supplier's obligations under this Agreement.
- (b) Unless otherwise specified in this Agreement, 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 14.
- (c) The Supplier's liability under clause 14.1(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.

14.2 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 14.5;
 - (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 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 this Agreement, 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 this Agreement (such as Service Credits or termination rights).

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- (c) The parties acknowledge and agree that any Service Credits calculated in accordance with this Agreement:
- (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 Agreement Sum, 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.

14.3 Performance reports

Separate to and without limiting any reporting obligations of the Supplier under the SOA, 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 this Agreement) report on the performance and availability of the Supplies in respect of the immediately preceding month, including detail relating to:

 - ~~(i) the quantity of Supplies supplied to the Customer;~~
 - ~~(ii) the total Agreement Sum paid by the Customer in respect of that reporting period and cumulatively over the Term to date, (with a break-down that is tracked over time and usage), including any applicable discounts, credits, rebates, research grants, education grants, donations and other benefits provided or received by or on behalf of the Supplier in connection with this Agreement; and~~
 - ~~(iii) any other matters specified in this Agreement;~~~~
- ~~(b) a monthly report of the Supplier's performance against any Service Levels, including any accrued Service Credits;~~
- ~~(c)(a) the additional reports specified in this Agreement for the time period specified in these documents (which may include, where so specified, access to real time or near real time reporting capability) that this Agreement requires the Supplier to provide to the Customer; and~~
- ~~(b) 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,~~

in each case in accordance with the requirements (including timeframes) specified by the Customer.

14.4 Performance reviews

- (a) If it is stated in this Agreement that the parties must conduct a service and performance review of the Supplier's performance under this Agreement, or if otherwise required by the Customer from time to time, then the parties must conduct such reviews at the intervals, and in accordance with any requirements set out in this Agreement (or as otherwise as reasonably required by the Customer).
- (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. Given this Agreement is made under the SOA, either party may request the involvement of the Principal in any review.

14.5 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, supply the Supplies in accordance with the performance standards and requirements specified in this Agreement.

14.6 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 this Agreement or as otherwise required by the Customer from time to time.
- (b) The parties agree that meetings may be held by video or teleconference if required by the Customer.

15. Intellectual Property**15.1 Ownership of Existing Materials**

The parties agree that nothing in this Agreement will affect the ownership of the Intellectual Property Rights in any Existing Materials.

15.2 Licence to use Existing Materials

- (a) The Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate, exploit 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 Supplies 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 exercising, of the functions or powers of the Customer, a Government Agency or the Crown, including any statutory requirements concerning State records or auditing.
- (b) The rights and licences granted by the Supplier to the Customer under clause 15.2(a) are sub-licensable by the Customer (on the same terms, for the same period and for the same purposes as set out in clause 15.2(a)), 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) acting on behalf of, or providing products and/or services for the benefit of, the Customer or a Government Agency; or
 - (ii) Government Agency.
- (c) 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.

15.3 Ownership of New Materials

Where the Supplier creates New Materials in supplying the Supplies, the ownership of all Intellectual Property Rights in those New Materials vests in, or is transferred or assigned to, the Supplier immediately on creation.

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15.4 Customer licence to use Supplier owned New Materials

- (a) The Supplier grants to the Customer an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate, exploit 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 Supplies 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 exercising, of the functions or powers of the Customer, a Government Agency or the Crown, including any statutory requirements concerning State records or auditing.
- (b) The rights and licences granted by the Supplier to the Customer under clause 15.4(a) are sub-licensable by the Customer (on the same terms and for the same purposes as set out in that clause) 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.

15.5 Licence term

Except where otherwise expressly specified in the Requirements Documentation or in the Cloud Services Terms, Physical Deliverable Terms or the Software (Non-Cloud) Terms (as applicable), the licences granted under clauses 15.2 and 15.4 will be perpetual in relation to the purposes specified in those clauses.

15.6 Third party Intellectual Property Rights

The Supplier must, in respect of any Third Party Components included in any Deliverables or any third party Intellectual Property Rights used in the production of Deliverables, or otherwise required by the Customer to receive the Services:

- (a) ensure that it procures for the Customer, and provides to the Customer a licence to the relevant third party Intellectual Property Rights, on terms no less favourable than the terms set out in this clause 15, the Cloud Services Terms, Physical Deliverable Terms and the Software (Non-Cloud) Terms (as applicable);
- (b) ensure that it obtains all necessary consents from all authors of all 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;
- (c) 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

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

15.7 Open Source Software

The Supplier must ensure that the use (by the Supplier, the Customer, Customer Users or any third party) of any Open Source Software provided or made available by or on behalf of the Supplier, or the incorporation of any Open Source Software into any Deliverable, 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;
- (b) diminish the Supplier's obligations or the Customer's rights under this Agreement;
or
- (c) result in the Customer being exposed or subject to any additional licence terms or other terms or obligations, other than those terms and obligations expressly set out in this Agreement.

15.8 Prohibited activities

The licences granted to the Customer under clauses 15.2 and 15.4 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.

15.9 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 15, including by executing (or procuring the execution of) any required documents or effecting any required registrations.

15.10 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. supply the Supplies; and
 - B. enable the Customer and each Customer User (or other permitted licensee) to use the requisite Supplies in the manner envisaged by this Agreement; and
 - (ii) its supply of the requisite Supplies to the Customer, and the Customer's, Customer Users' (and other permitted licensees') use of such Supplies 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 15) 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.

15.11 Replacement of Deliverables

Without limiting the Customer's rights under clause 29.1(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 Supplies on terms no less favourable than those set out in this Agreement;

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- (b) promptly replace or modify the Supplies so that the alleged infringement ceases and the replaced or modified Supplies provide 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.

PART C: DATA AND SECURITY

16. Customer Data

16.1 Obligations in relation to Customer Data

- (a) This clause 16 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 supply of the Supplies 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, supply of the Supplies 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 persons 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 16.1(d) and manage and safeguard Customer Data in accordance with all other requirements of this Agreement.

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16.2 Security of Customer Data

- (a) The Supplier must comply with the security requirements set out or referred to in this Agreement (**Information Security Requirements**) in its supply of the Supplies.
- (b) The Supplier must establish, maintain, enforce and continuously improve its safeguarding 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.

16.3 Location of Customer Data

Unless otherwise agreed in writing by the Principal, 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.

16.4 Backup of Customer Data

- (a) If specified in this Agreement 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 or as otherwise reasonably required by the Customer by notice to the Supplier.
- (b) Where clause 16.4(a) applies, the Supplier must check the integrity of all backup Customer Data annually (or at such other time required by this Agreement).

16.5 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 supply of the Supplies 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 this Agreement). 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.

16.6 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 this Agreement); 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;

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- (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 a manner that maintains the relationships and integrity of those copies of the Customer Data.

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

- (a) Unless otherwise specified in this Agreement, 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 16.7(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 supplying the Supplies (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 16.7(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 (in a human readable, commonly accepted format which does not require the Customer to purchase additional licences it does not already hold or, in respect of records originally provided by the Customer, in the same format as the records were originally provided by the Customer).
- (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 this Agreement specifies 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 27.1.

16.8 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 16.
- (b) Where applicable, the Supplier must comply with any additional obligations relating to Customer Data as may be specified in this Agreement.
- (c) For clarity, nothing in this clause 16 relieves the Supplier of its obligations under clause 17.

17. Privacy

17.1 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 supplying the Supplies;
 - (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 (for clarity, any such consent and any such conditions do not limit the Supplier's and its Personnel's obligations to comply with this Agreement);
 - (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;
 - (v) protect the Personal Information from unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Agreement;
 - (vi) if it becomes aware that there has been an actual, alleged or suspected Information Security Incident involving Personal Information:
 - A. comply with clause 19;
 - B. comply with any reasonable direction (including as to timeframes) from the Customer with respect to that breach (which may include, for example, notifying any affected individuals of the breach of privacy, assisting the Customer to notify any affected individuals of the breach of privacy, managing the breach or assisting the Customer to manage the breach); and
 - C. take all reasonable steps to prevent such breach from recurring; and
 - (vii) notify the Customer as soon as reasonably possible if the Supplier is approached by any privacy commissioner or other Authority concerning any Personal Information.
- (b) Where the Supplier is required by Law to produce or disclose any information or to develop or provide any response or explanation to an Authority in relation to any incident (including any privacy breach) concerning the handling, management, safekeeping or protection of any Personal Information in connection with this Agreement, it must (to the extent such action is permitted by Law), provide notice to the Customer as soon as reasonably possible of the nature and content of the information to be produced or disclosed and, prior to providing a response to the Authority or disclosing any Personal Information, engage in reasonable consultation with the Customer regarding its proposed response or explanation.

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17.2 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 and at such other times as reasonably required by the Customer to address an Information Security Incident or breach of this Agreement.
- (e) The Supplier must comply with the latest version of the Data Management and Protection Plan and provide the latest copy of that Plan to the Customer's Representative on request.

17.3 No limitation of obligations

Nothing in this clause 17 is intended to limit any obligations that the Supplier has at Law with respect to privacy and the protection of Personal Information.

18. Security

18.1 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 Supplies; 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 18, "**control**" includes controlling, managing, processing, generating, capturing, collecting, transferring, transmitting, deleting and destroying.

18.2 Supplier's security obligations

- (a) The Supplier must (and must ensure that the Supplies) comply with:
 - (i) clauses 18 and 19;
 - (ii) the SPRs and the SCRs; and

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- (iii) the security standards and requirements set out or referred to in this Agreement,

provided that, where different provisions of the above address standards or requirements in respect of the same subject matter, the Supplier must (and must ensure that the Supplies) comply with the higher standard or requirement.

- (b) The Supplier must, without limitation, ensure that the Supplier and its Personnel, if and when on the Customer's premises or when accessing Customer Data, CSI or any of the Customer's facilities, computer systems and information, comply with all reasonable requirements and directions of the Customer (including agreeing to obtain any security checks required by the Customer and complying with any obligation or requirement imposed by Law).
- (c) 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 18; and
- (ii) the standards or requirements specified in this Agreement, **(Security Program)**, provided that, where this Agreement separately addresses standards in respect of the same subject matter, the Security Program must reflect the higher standard.
- (d) The Security Program must be designed to:
- (i) monitor, audit, detect, identify, report and protect against Information 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 supplying the Supplies;
- (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 Supplies;
- (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 Supplies and protects data in accordance with this Agreement.
- (e) Without limiting its obligations under clause 18.2(a), the Supplier must ensure its Security Program complies, and is consistent, with the Policies, Codes and Standards (to the extent applicable to security).
- (f) 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 18.2 and is in accordance with Best Industry Practice.
- (g) The Supplier must have, obtain and maintain from the Commencement Date, and for the duration of the supply of the Supplies, the security certifications specified or referenced in this Agreement or the SPRs from an accredited, independent, third party register or accredited, independent third party certification body. Unless otherwise specified in this Agreement or the SPRs (as applicable), the certifications must be updated at least annually and must comply with any specific certification requirements set out in this Agreement or the SPRs (as applicable).

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- (h) Without limiting this clause 18.2, the Supplier must comply with any additional security obligations or standards specified in this Agreement.

18.3 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 this Agreement 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 18 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 Supplies;
 - (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 this Agreement, 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 required to be performed under this Agreement) 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 this Agreement; 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 Supplies. 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 minimum extent needed to prevent the Supplier's non-compliance.
- (c) Without limiting clause 10.1(a)(ii), the Supplier must run initial and annual mandatory security awareness training for all of the Supplier's Personnel involved in supplying the Supplies under this Agreement and ensure that those Personnel have completed the initial training prior to supplying the Supplies.
- (d) At the Customer's request, the Supplier must implement any audit findings or recommendations arising from an audit conducted under clause 18.3(a) and reasonably demonstrate to the Customer the implementation of such findings and recommendations.

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- (e) The parties acknowledge and agree that this clause 18 does not limit any obligation of the Supplier under the SPRs.

18.4 Technical Security Assessment

- (a) Subject to clause 18.4(b), if required by the Customer from time to time at any time during the Term, the Supplier must permit the Customer to conduct Technical Security Assessment(s) of the Supplier Environment.
- (b) The Customer will be permitted to conduct a Technical Security Assessment under clause 18.4 no more frequently than annually, other than where the relevant Technical Security Assessment is:
- (i) required by the Customer in connection with a material change is made to the Supplier Environment (including after any upgrade, software, application, functionality, feature, module, application architecture, design, network topology or network placement is introduced to the Supplier Environment); or
 - (ii) a Vulnerability Scan.
- (c) The Supplier must:
- (i) cooperate reasonably and in good faith in relation to any Technical Security Assessment undertaken by the Customer;
 - (ii) comply with the Customer's reasonable directions in relation to any Technical Security Assessment undertaken by the Customer; and
 - (iii) not delay, hinder or prevent the Customer from undertaking any Technical Security Assessment.
- (d) In this clause 18.4:
- (i) **Supplier Environment** means the combination of hardware, software, systems and network infrastructure and services used by the Supplier from time to time, including those which are comprised in (or used in the provision of) the Services or Deliverables;
 - (ii) **Technical Security Assessment** means security testing of the Supplier Environment (which may include penetration testing, secure configuration review, source code review, Vulnerability Scans and similar tests); and
 - (iii) **Vulnerability Scan** means technical inspection of the potential points of exploit on a computer or network to identify security weaknesses. A vulnerability scan detects and classifies system weaknesses in computers, networks and communications equipment and predicts the effectiveness of existing countermeasures.

19. Information Security Incidents

19.1 Notification of Information Security Incidents

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

- (a) notify the Customer and, for Information Security Incidents that are classified by the Customer as having a major or potentially major impact or where otherwise directed by the Customer, also notify the Principal given this Agreement is made pursuant to the SOA; and
- (b) provide to the Customer, to the extent known at the time, the date of the Information Security Incident and a description of the Information Security Incident.

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19.2 Actions required in relation to an Information Security Incident

- (a) Where the:
- (i) Supplier becomes aware of any Information Security Incident; or
 - (ii) Customer notifies the Supplier that the Customer reasonably believes an Information Security Incident has occurred or is about to occur,
- then, the Supplier must, as soon as possible (but in any case within the timeframe reasonably required by the Customer, taking into account the complexity and severity of the Information Security Incident):
- (iii) investigate and diagnose the Information Security Incident;
 - (iv) manage and contain the Information Security Incident and mitigate the impact of the Information Security Incident (working on a 24 x 7 basis if required);
 - (v) investigate and take steps to identify the root cause of the Information Security Incident, seek to understand the risks posed by the Information Security Incident, and identify how these risks can be addressed; and
 - (vi) develop and adopt a remediation Plan addressing the rectification of, and the prevention of the future recurrence of the facts and circumstances giving rise to, the Information Security Incident (**Remediation Plan**).
- (b) The Supplier must:
- (i) within 48 hours after the Supplier's initial awareness or notification of the Information Security Incident in accordance with clause 19.1(a), provide to the Customer, to the extent known at that time:
 - A. a list of actions taken by the Supplier to mitigate the impact of the Information 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 Information Security Incident; and
 - C. the estimated time to resolve the Information Security Incident;
 - (ii) promptly on the Customer's request, provide copies of the results of the Supplier's analysis and the Remediation Plan to the Customer;
 - (iii) provide any assistance reasonably required by the Customer or any Authority in relation to any criminal, regulatory or other investigation relating to the Information Security Incident;
 - (iv) promptly update the Remediation Plan to address any concerns reasonably raised by the Customer, following which the Supplier must implement the Remediation Plan in accordance with the timeframes agreed by the Customer;
 - (v) following implementation of the Remediation Plan, provide evidence to the Customer verifying that the remediation activities in the Remediation Plan have successfully resolved the underlying cause of the Information Security Incident (for example, by sharing the results of relevant penetration tests or vulnerability scans); and
 - (vi) review and learn from the Information Security Incident to improve security and data handling practices and prevent future Information Security Incidents from occurring.
- (c) For clarity, nothing in this clause 19:

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- (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 Information Security Incidents.

20. 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 except:
 - 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. any subcontractor of the Supplier;
 - 2. the Principal or responsible Minister (given this Agreement is made under the SOA); or
 - 3. 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 Supplies without the prior written consent of the Customer, except as required by Law.
- (c) This clause 20 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

21. Payment and invoicing

21.1 Agreement Sum

- (a) In consideration for the supply of the Supplies in accordance with this Agreement, the Customer agrees to pay to the Supplier the Agreement Sum set out in the Payment Particulars, subject to any additional discounts, rebates, credits, research

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grants, education grants, donations 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 supply of the Supplies and its other obligations under this Agreement.

- (b) The Agreement Sum and any rates or charges specified in the Payment Particulars will be fixed for the Term, unless otherwise expressly specified in the Schedule of Prices or Purchase Order.

21.2 Invoicing

- (a) The Supplier must invoice the Customer at the time stated in the Purchase Order 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 Supplies are provided to the Customer in accordance with this Agreement.
- (b) The Supplier must:
- (i) issue Correctly Rendered Invoices to the Customer leveraging such method of delivery as notified to the Supplier by the Customer from time to time (which, for clarity, may include the Supplier being required to use an electronic invoice solution nominated by the Customer from time to time);
 - (ii) ensure that its Invoice is a valid tax invoice for the purposes of the GST Law;
 - (iii) together with any Invoice provided under clause 21.2(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
 - (iv) provide any further details in regard to an Invoice that are set out in this Agreement or reasonably required by the Customer.

An 'electronic invoice solution' is a software solution for the sending by the Supplier and receipt by the Customer of a 'digital invoice'. A 'digital invoice' is an invoice that is in a digital, structured and secured format. For clarity, the sending of an invoice (including in PDF format) via the post or email does not comprise an electronic invoice solution.

21.3 Payment

- (a) Subject to the Supplier satisfying any conditions precedent to payment specified in this Agreement or the SOA, the Customer will pay any Correctly Rendered Invoice:
- (i) by electronic funds transfer to the bank account details notified to the Customer by the Supplier as part of the Customer's standard supplier onboarding process; and
 - (ii) subject to clause 21.3(b), 30 days following receipt of the Correctly Rendered Invoice, or such other time as specified in this Agreement.
- (b) Subject to the Supplier satisfying any conditions precedent to payment specified in this Agreement or the SOA, where the Supplier issues a Correctly Rendered Invoice in accordance with the Customer's nominated electronic invoicing solution in accordance with clause 21.2(a), the Customer will use its best endeavours to prioritise, process and pay such Correctly Rendered Invoice by a shorter period than the period contemplated by clause 21.3(a)(ii) as notified by the Customer to the Supplier from time to time.
- (c) The making of a payment is not an acknowledgment that the Supplies have been provided in accordance with this Agreement.

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- (d) 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.

21.4 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.

21.5 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 21.5 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 21.5 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.

21.6 Taxes

- (a) Subject to clause 21.6(b), the Agreement Sum is inclusive of, and the Supplier is responsible for paying, all Taxes levied or imposed in connection with the supply of the Supplies 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; and
 - (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.

21.7 Prices under the SOA

Without limiting any other warranty under this Agreement, the Supplier represents, warrants and undertakes to the Customer that the Agreement Sum payable by the Customer under this Agreement does not and will not exceed the relevant Prices stated or otherwise determined in accordance with the SOA (including in the Schedule of Prices).

PART E: RISK ALLOCATION AND MANAGEMENT**22. Insurance**

- (a) Unless otherwise specified in Item 9 of the Key Details, 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 supply of the Supplies;
 - (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 supply of the Supplies 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 supply of the Supplies and for at least seven years thereafter; and
 - (v) such other insurances as specified in Item 9 of the Key Details.
- (b) Without limiting clause 22(a), where specified in Item 9 of the Key Details, 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 9 of the Key Details), to be held for the duration of the supply of the Supplies; 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 22(a) and 22(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).

23. Financial Security

- (a) If required under the Tender or this Agreement, the Supplier must provide a financial security in the amount stated and in a form and on terms and conditions 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 the Tender or this Agreement.
- (b) If the Agreement Sum payable for the Supplies is increased pursuant to this Agreement (including due to a Change Request approved under clause 9), the Customer may, acting reasonably, direct the Supplier to provide additional security

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in an amount that is proportionate to the increase in Agreement Sum, 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 following the termination or expiry of this Agreement (or such other period specified in this Agreement);
 - (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.
- (d) Unless otherwise expressly specified in the Tender or this Agreement, the Supplier will be responsible for the costs that it incurs in complying with its obligations under this clause 23.

24. Termination

24.1 Termination for cause by the Customer

The Customer may (in its sole discretion) immediately terminate this Agreement or reduce its scope for cause 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:
 - (i) fails to meet the timeframes for supply of Supplies under this Agreement;
 - (ii) indicates to the Customer or the Principal that the Supplier will be unable to meet such timeframes;
 - (iii) cancels or seeks to cancel a Purchase Order applicable to this Agreement;
 - (iv) fails to supply any of the Supplies required to be supplied under this Agreement; or
 - (v) indicates to the Customer or the Principal that the Supplier will be unable to supply any of the Supplies required to be supplied under this Agreement;
- (d) if the Supplier or any parent company of the Supplier involved in the supply of the Supplies undergoes a Change in Control or Other Changes, without the Customer's prior written consent;
- (e) if an Adverse Event or a Near Adverse Event occurs that arises out of or in connection with the Supplies, other than where such event was caused directly as a result of the Customer's negligence or breach of this Agreement;
- (f) in any of those circumstances specified in clauses 11.8(b), 11.9(b), 13.6(a)(iii), 13.6(c)(iii), 31.4 and 34.2(g) or as otherwise set out in this Agreement, including the Additional Conditions;
- (g) if the Principal has terminated, or has rights to terminate, the SOA for cause; or
- (h) if the Customer and/or any other Eligible Customer has terminated, or has rights to terminate, any other 'Agreement' formed under the SOA for cause,

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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.

24.2 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) Subject to clause 24.2(c), if the Customer terminates this Agreement or reduces its scope under clause 24.2(a), the Supplier:
 - (i) must take all reasonably practicable steps to mitigate the costs referred to in clause 24.2(b)(ii); and
 - (ii) subject to substantiation by the Supplier, will be entitled to payment for:
 - A. work carried out prior to the time of termination or reduction in scope; and
 - B. 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, but in no case will the total amount payable to the Supplier be more than the total Agreement Sum that would have been payable by the Customer had this Agreement not been terminated.
- (c) If the Customer terminates this Agreement or reduces its scope under clause 24.2(a) and amounts have been pre-paid by the Customer in respect of the period after the termination or reduction (as applicable), the amounts payable by the Customer under clause 24.2(b) will be reduced by such pre-paid amounts. For clarity, if amounts that have been pre-paid by the Customer in respect of the period after the termination or reduction (as applicable) exceed the amounts payable by the Customer under clause 24.2(b), the Supplier must refund the excess amount to the Customer promptly (and in any event within 10 Business Days of the effective date of termination or reduction (as applicable)).
- (d) The Supplier must, within 10 Business Days of a request of the Customer issued from time to time, provide the Customer written notice of the applicable termination for convenience fees which are payable at any particular period during the Term, in which case the Supplier is not entitled to recover any additional amounts if the Customer exercises its termination for convenience rights (including with respect to reduction) in respect of such period.
- (e) To the fullest extent permitted by Law, the Customer's sole obligation and entire liability to the Supplier, in respect of the termination or reduction in scope of this Agreement, is limited to the Supplier's entitlements under this clause 24.2. The Supplier is not entitled to make any Claim against the Customer in the termination or reduction of scope of this Agreement, other than for the amount payable under this clause 24.2.

24.3 Consequences of reduction of scope

If the Customer exercises its right to reduce the scope of this Agreement pursuant to clause 24, the parties agree that the Agreement Sum will be reduced proportionately and in accordance with any methodology specified in the Payment Particulars.

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24.4 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 21.4;
 - 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 24.4(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 15.8 or 20; 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 licensed 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 24.4 exhaustively sets out the Supplier's rights to terminate this Agreement.

24.5 Dispute resolution

For clarity, the processes described in clause 30 are independent of, may be undertaken contemporaneously with, and do not constrain or delay, a party exercising its rights under this clause 24.

24.6 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.

25. Suspension and state of emergency

25.1 Suspension

- (a) The Customer may direct the Supplier in writing to:
- (i) suspend the supply of; and/or
 - (ii) after a suspension has been instructed, re-commence the supply of,
- all or part of the Supplies, 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 25.1.
- (c) If a suspension under this clause 25 is instructed by the Customer as a result of any breach by the Supplier, the Supplier's failure or delay in carrying out any of its

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obligations in accordance with this Agreement or because of any event of the kind described in clause 24.1, 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 25.1 other than for the reasons described in clause 25.1(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 25.1(d)(i).

25.2 State of emergency

- (a) The Supplier acknowledges that:
- (i) during a state of emergency, such as an outbreak of influenza pandemic, the *State Emergency and Rescue Management Act 1989* (NSW) provides emergency management personnel with powers to order people to leave premises or facilities;
 - (ii) the Customer's response may be to shut down public areas within any health service, hospitals or clinics or limit public access to hospitals for the duration of the state of emergency; and
 - (iii) the Customer will not be liable for:
 - A. any costs incurred by the Supplier in areas closed or limited access during the state of emergency;
 - B. any damage suffered resulting from reasonable actions of the Customer's Personnel or emergency management personnel during the state of emergency;
 - C. any other adverse impacts to the Supplier during the state of emergency; or
 - D. any Claim by the Supplier or its Personnel in connection with the circumstances described in this clause 25.2.
- (b) Without limitation, the Customer may appoint or delegate the enforcement of any or all of its rights from time to time under this clause 25 to the Principal in accordance with clause 3.1(b).

26. Transition-Out Services

26.1 Application of this clause

This clause 26 applies if it is specified in the Clause Matrix that the Supplier is required to provide Transition-Out Services as part of the Supplies.

26.2 Transition-Out Plan

- (a) If this Agreement specifies that a Transition-Out Plan must be prepared by the Supplier with respect to the Supplies, by any date specified in this Agreement, 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 7, a plan setting out how the Supplier will effect:

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- (i) the orderly disablement of the supply of the Supplies; or
 - (ii) where applicable, the transfer of the supply of the Supplies under this Agreement to the Customer or a third party, including complying with the obligations set out in this clause 26.2.
- (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 this Agreement; 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 this Agreement).
- (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 7 therefore applies to the Transition-Out Plan, including any updates to it.

26.3 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 this Agreement or that are necessary to ensure the smooth transition of the Supplies 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.

27. Consequences of expiry or termination

27.1 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 this Agreement or agreed between the parties in writing).

27.2 Confidential Information and intellectual property

Subject to clauses 20 and 27.1 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

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

Within five Business Days of a request of the Customer, the Supplier must provide a written certification to the Customer confirming that the Supplier and its Personnel have complied with this clause 27.2.

28. Warranties

28.1 Mutual warranties

The Customer and the Supplier each represent, warrant and undertake 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.

28.2 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.

28.3 Warranties in relation to Supplies

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

- (a) it has the expertise to supply the Supplies;
- (b) it has satisfied itself of the nature and extent of the Supplies and its obligations under this Agreement;
- (c) it has satisfied itself as to the availability and suitability of the Materials, labour and resources necessary to perform its obligations under this Agreement;
- (d) it did not in any way rely on:
 - (i) 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
 - (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

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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;

- (e) it entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations;
- (f) it is aware that the Customer has entered into this Agreement relying upon the warranties given by the Supplier under this Agreement;
- (g) the Supplies will be supplied:
 - (i) with due skill, care and diligence, in an efficient, proper, regular and timely manner and in a manner that promotes the achievement of any Customer objectives specified in this Agreement;
 - (ii) to a high standard and in accordance with Best Industry Practice;
 - (iii) by Supplier's Personnel who meet the Personnel requirements under this Agreement (including in clause 10);
 - (iv) in a manner that is safe to both people and the environment;
 - (v) in a manner that minimises any disruption, interference or inconvenience to the Customer or its operations, Personnel and Other Suppliers;
 - (vi) to enable all Deliverables to operate in accordance with this Agreement, and to meet the Acceptance Criteria applicable to them;
 - (vii) to ensure that all timeframes under this Agreement are met, including all Key Milestones and Dates for Delivery;
- (h) the Supplies (including Deliverables repaired or replaced or Services re-performed under this Agreement) will meet, and be carried out in accordance with, the requirements of all applicable Laws, and this Agreement; and
- (i) in respect of Deliverables, at the time of delivery and during the Warranty Period, the Deliverables will:
 - (i) other than to the extent expressly specified in the Requirements Documentation or Purchase Order, be new and unused;
 - (ii) be of good and merchantable quality and fit for their intended purposes;
 - (iii) be free from damage, Defects or omissions, including in materials, workmanship, design and performance;
 - (iv) be in good working order and condition;
 - (v) be safe to people and the environment;
 - (vi) have a Useful Life of a length specified in this Agreement and in any event commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier;
 - (vii) conform to any description, model number and the sample provided by the Supplier;
 - (viii) comply with this Agreement;
 - (ix) have been tested and verified, in accordance with Best Industry Practice, to be free from any Viruses;
 - (x) be properly, safely and securely packaged and labelled for identification, including in relation to country of origin and either the date of manufacture or the use-by-date, and otherwise be in accordance with any packaging requirements set out in this Agreement;

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- (xi) unless a specific model is identified in this Agreement, comprise the most recent model or version of the relevant Goods that are available at the time of supply;
- (xii) be compatible and interoperable with the Customer Environment (to the extent specified in this Agreement) and not detrimentally affect the operation or performance of the Customer Environment or any part thereof; and
- (xiii) be compatible and interoperable with the operating system and any Licensed Software that is set out in this Agreement and was pre-installed on, or provided with the Deliverable at the Commencement Date.

28.4 Third party warranties

Without limiting any other warranty or obligation of the Supplier under this Agreement, the Supplier must ensure that the Customer receives all standard manufacturer and other third party warranties in relation to the Deliverables and must assign the benefit of such warranties to the Customer, effective from the date of delivery of the Deliverables to the Customer.

28.5 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 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.

29. Indemnities and liability

29.1 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 11.1(a) or 11.1(b) (Compliance with Laws and directions), 11.2 (Further compliance obligations), 16.1 (Obligations in relation to Customer Data), 16.2 (Security of Customer Data), 17 (Privacy), 18 (Security), 19 (Information Security Incidents) or 20 (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 Supplies or associated with the Supplies, or any breach by the Supplier of the warranties in clause 15.10;
- (d) of the Supplier's or its Personnel's fraud, recklessness, Wilful Misconduct or unlawful or negligent acts or omissions;
- (e) abandonment or repudiation by the Supplier of its obligations under this Agreement; or
- (f) liability for workers' compensation, payroll tax and remuneration payable by the Supplier in accordance with the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) or *Industrial Relations Act 1996* (NSW) or other similar legislation in force from time to time.

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29.2 Third Party IP Claims

In relation to Claims of the kind referred to in clause 29.1(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 this Agreement 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 Supplies; 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.

29.3 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.

29.4 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.

29.5 Liability cap

- (a) Subject to clause 29.5(c), the liability of the Supplier 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 an amount that is equal to the greater of:
 - (i) two times the total aggregate fees paid or payable* by the Customer under this Agreement and by Eligible Customers (including the Customer) under all Purchase Orders entered into under the SOA;
 - (ii) \$2,000,000; and
 - (iii) the amount to which the Supplier is, or would have been, entitled to be indemnified or otherwise recover under a contract of insurance, if the Supplier:

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- A. effected, maintained and otherwise complied with its obligations to insure under the SOA and this Agreement;
- B. complied with such contract of insurance; and
- C. fully enforced its rights under such contract of insurance.

**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.

- (b) The liability of the Customer under this Agreement (other than with respect to the Customer's obligation to pay the Agreement Sum payable 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 an amount that is equal to the greater of:
 - (i) two times the fees paid or payable by the Customer under this Agreement in the 12 month period prior to the first event giving rise to liability of the Customer under this Agreement; and
 - (ii) \$50,000.
- (c) The Supplier's liability under this Agreement is uncapped, and the limitation of liability set out in clause 29.5(a) does not apply in relation to liability arising:
 - (i) under any of the indemnities in clause 29.1; or
 - (ii) in respect of any of the matters referenced in that clause.

29.6 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 29.6(a) will preclude a party from recovering:
 - (i) any 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 where the Customer is the recovering party:

 - (ii) any Loss against which the Supplier is required to indemnify the Indemnified Entities under clause 29.1, to the extent such Loss relates to monies, amounts or liabilities owed, due, paid or payable, or obligations owed, to a third party; and
 - (iii) 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 29.6(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 Supplies;
 - C. engaging labour resources to reload any lost or corrupt data to the extent caused or contributed to 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 Supplies);

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- D. activities undertaken by, or on behalf of, the Customer in connection with the mitigation of Loss;
- E. costs associated with the hiring and engagement of new Personnel of the Customer to address or manage any breach or negligent act or omission the Supplier;
- F. costs arising from the loss of or corruption to data; and
- G. reasonable and substantiated expenditure incurred in respect of:
 - 1. crisis management; and/or
 - 2. public relations arising out of or in connection with crisis management.

29.7 Status of Losses recoverable

Without limiting the Loss recoverable by the Customer under or in connection with this Agreement, subject to the terms of this Agreement (including this clause 29), all Loss that is sustained, suffered or incurred by the Indemnified Entities as a result of a breach by the Supplier of its obligations under this Agreement will be a debt due and payable from the Supplier to the Customer.

29.8 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 29.8 only apply to the extent permitted by Law.

29.9 Mitigation

The Supplier's obligation to indemnify the Indemnified Entities against Loss under clause 29.1 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.

30. Dispute resolution

30.1 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 30.1 to 30.3.
- (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 Principal is to be involved in the dispute resolution process (**Dispute Notice**). The party issuing a Dispute Notice must provide a copy of such Dispute Notice to the Principal at the same time as it provides the Dispute Notice to the other party.
- (c) Nothing in this clause 30 limits the ability of either party to commence legal action against the other party for urgent interlocutory relief.

30.2 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,

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within the period specified in clause 30.2(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.

30.3 Other measures for resolving the dispute

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 commence court proceedings to determine the dispute. Nothing in this clause limits the ability of the parties to refer a dispute to any method of alternative dispute resolution as may be agreed by the parties in writing from time to time.

30.4 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 30.1 to 30.3 has been complied with in relation to the dispute.

30.5 Costs

Each party will bear its own costs in respect of complying with this clause 30.

30.6 Continue to perform

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

31. Intervening Events

31.1 Intervening Events

Subject to clauses 31.2 and 31.3, non-performance by a party of any obligation required by this Agreement to be performed by that party, as a result of an Intervening Event, will, during the time, and to the sole extent that such performance is prevented, wholly or in part, by that Intervening 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.

31.2 Notification and diligence

A party which is, by reason of an Intervening 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 Intervening Event;
 - (ii) the date of commencement of the Intervening 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 Intervening Event notice; and
 - (iii) where possible, the means proposed to be adopted to remedy or abate the Intervening Event;
- (b) use all reasonable diligence and employ all reasonable means to remedy or abate the Intervening Event as expeditiously as possible;
- (c) resume performance as expeditiously as possible after termination of the Intervening Event or after the Intervening Event has abated to an extent which permits resumption of performance;
- (d) notify the other party when the Intervening 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.

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31.3 Liability not relieved

An Intervening 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 Business Contingency Plan required under the SOA, or breach of this Agreement (which was not caused by the Intervening Event) was 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 Intervening Event.

31.4 Prolonged Intervening Event

If an Intervening Event prevents or inhibits the Supplier's performance of any obligation required to be performed under this Agreement for 14 days or more, then the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 24.1(f).

32. Reports and audits

32.1 Records and reports

- (a) The Supplier must keep and maintain true and accurate records and accounts of:
 - (i) all of the Supplies supplied under this Agreement;
 - (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,

in accordance with this Agreement, including this clause 32.1.
- (b) Unless otherwise specified in this Agreement, the records must include the following details:
 - (i) any issues in relation to the Supplies that have arisen or been reported by the Customer;
 - (ii) a record of all Deliverables (including all parts and components) provided to the Customer, including the:
 - A. date provided;
 - B. quantity provided; and
 - C. name and (where applicable) serial number of the Deliverables provided;
 - (iii) any repairs, replacements or other remedial action taken by the Supplier or its Personnel in relation to any Deliverables (or parts or components);
 - (iv) any Delays associated with the supply of the Supplies 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 supply of the Supplies in accordance with the requirements of this Agreement;
 - (vi) the progress of the Supplies against any Project Plan; and
 - (vii) such other records in relation to the Supplies that are specified in this Agreement.
- (c) The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 32.1 to the Customer's Representative in accordance with the times set out in this Agreement or as otherwise reasonably required by the Customer.

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~~(d) Without limiting clauses 32.1(a), 32.1(b) or 32.1(c), the Supplier must provide the Customer with quarterly reports containing details of the Supplier's compliance with the SME Policies and the Aboriginal Procurement Policy.~~

32.2 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 this clause 32, 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 Supplies, 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 Supplies, 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 32.2(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 32.2.
- (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

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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 32.2(f)(ii), each party must bear its own costs of executing its rights under, or complying with, this clause 32.

32.3 Conduct of audits and inspections

The Customer and its nominee must, in conducting an audit or inspection under this clause 32:

- (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 20; 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 Supplies (unless such person is otherwise approved by the Supplier, acting reasonably).

32.4 Survival

This clause 32 survives for the Term and a period of seven years following the termination or expiry of this Agreement.

PART F: GENERAL PROVISIONS

33. General

33.1 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 33.
- (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 supply of the Supplies;
 - (ii) information collected by the Supplier from members of the public to whom it supplies, or offers to supply, any aspect of the Supplies; and
 - (iii) information received by the Supplier from the Customer to enable it to supply the Supplies.
- (c) For the purposes of clause 33.1(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) Subject to clause 33.1(c), the Supplier must provide copies of any of the information referred to in clause 33.1(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 33.1, 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

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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 14.3);

- (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 when 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.

33.2 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.

33.3 Customer Group, Customer Users and third party rights

- (a) Without limiting the definition of Customer User(s) in the Definitions Document, the parties acknowledge and agree that the Customer Users include each of the following:
 - (i) the employees, officers, agents and subcontractors of each member of the Customer Group; and
 - (ii) any other person, or category of persons, identified in this Agreement as a Customer User.
- (b) The Supplier acknowledges and agrees that:
 - (i) the Supplies must be supplied by the Supplier to, and for the benefit of, each member of the Customer Group and each Customer User, and that each member of the Customer Group and each Customer User may access and make use of the Supplies;
 - (ii) the supply of the Supplies may impact a member of the Customer Group or a Customer User, even though that member of the Customer Group or Customer User is not a party to this Agreement;
 - (iii) in entering into and obtaining the benefits, rights and remedies under this Agreement, including the benefit of the Supplier's obligations and any indemnity given by the Supplier, the Customer acts on its own behalf and as trustee for each member of the Customer Group and each Customer User, and such benefits, rights and remedies may be fully and effectively

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enforced by the Customer on behalf of each member of the Customer Group and each Customer User;

- (iv) any Losses sustained, incurred or suffered by any member of the Customer Group or any Customer User arising from any breach of this Agreement, or any other act or omission (including negligence), by the Supplier are deemed to be the Losses of, and recoverable by, the Customer for the purposes of this Agreement, as if those Losses were sustained, incurred or suffered by the Customer itself; and
 - (v) any Claim it makes under, arising out of or relating to this Agreement must be made against the Customer, and not against any other member of the Customer Group or any Customer User.
- (c) Notwithstanding any other provision of this Agreement or the SOA, the Customer is permitted to supply, distribute or otherwise supply the Supplies to any member of the Customer Group and obtain a payment in return for such.

33.4 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 Supplies 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 Supplies 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 Agreement Sum.

33.5 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.

33.6 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.

33.7 Variation

Except as expressly contemplated by the terms of this Agreement, no variation to this Agreement is effective unless made in writing and executed by each party.

33.8 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) 8, 12, 15, 16, 17, 18, 20, 22(a)(iv), 24.5, 25.2, 27, 28.4, 29.9, 32 and this clause 33; and
 - (ii) any other provisions that are expressed to or which by their nature survive termination or expiry.

33.9 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.

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33.10 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.

33.11 Cumulative rights

Except as expressly provided in this Agreement, 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.

33.12 Further assurances

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

33.13 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 33.13(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 33.13(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 33.13.
- (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.

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33.14 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 33.14, the Customer's address and email address is that set out in the Purchase Order and the Supplier's address and email address is that set out in the SOA, unless the party has notified a changed address in writing, then the Notice 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); and
 - (ii) in the case of email:
 - A. production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;
 - B. where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and
 - C. where a delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender must use an alternative method of giving that notice in accordance with this clause 33.14.

33.15 Construction

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

33.16 Expenses

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

33.17 English language

All communications between the parties and all documentation provided in connection with this Agreement and the Supplies must be in the English language.

33.18 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.

33.19 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 33.19.

33.20 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 33.20(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, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort or otherwise.

PART G: PHYSICAL DELIVERABLE TERMS

34. Supply**34.1 General**

- (a) Except where otherwise specified, clauses 34 to 41 apply where it is specified in the Clause Matrix that the Supplier will provide Physical Deliverables.
- (b) The Supplier must supply and deliver the Physical Deliverables and related Deliverables (and perform all incidental services relating to such Physical Deliverables and related Deliverables) in accordance with its obligations under this Agreement.
- (c) No substitution or modification of the Physical Deliverables or any component of the Physical Deliverables may be made by the Supplier prior to delivery without the written consent of the Customer.
- (d) If any Physical Deliverable has been previously tested, then the Supplier must ensure that any Physical Deliverable of the same type that is provided to the Customer in the future is identical to the tested Physical Deliverable, unless otherwise agreed to by the Customer.

34.2 Pre-delivery testing

- (a) This clause 34.2 does not limit any obligation of the Supplier under this Agreement.
- (b) The Supplier must test the Physical Deliverables prior to delivery in accordance with its established procedures and in accordance with any requirements of this Agreement to ensure that the Physical Deliverables:
 - (i) are suitable for sale, installation and commissioning;
 - (ii) comply with the requirements of this Agreement and the SOA;
 - (iii) will satisfy the Acceptance Criteria; and
 - (iv) do not comprise any components or parts (including firmware) that may adversely affect the integrity, security, safety or stability of the Customer Environment.
- (c) The Supplier must promptly provide the Customer with details of the test specifications and certification that the Physical Deliverables have been tested and has satisfied those specifications.

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- (d) The Customer may from time to time require the Supplier to perform pre-delivery tests in respect of the Physical Deliverables that are in addition to the tests required under clause 34.2(b), but in such circumstances the Customer will be liable for any additional costs of the Supplier incurred in performing such additional tests to the extent such additional costs are agreed in writing by the Customer in advance. The Supplier must conduct the additional tests in accordance with the Customer's requirements as soon as practicable. On satisfactory completion of the additional testing, the Supplier must promptly provide certification to the Customer that the Physical Deliverables satisfied the additional test criteria.
- (e) Upon request of the Customer, the Supplier must permit the Customer and/or its authorised representative to observe any and all pre-delivery tests performed with respect to the Physical Deliverables.
- (f) The Customer may itself, or permit its authorised representative to, inspect and test any component of the Physical Deliverables, including manufactured components, machinery and other equipment at any time prior to delivery.
- (g) If, on reasonable grounds, the Customer considers that the tests conducted pursuant to this clause 34.2 reveal that a Physical Deliverable:
 - (i) does not conform to the requirements of this Agreement or the SOA;
 - (ii) does not satisfy the Acceptance Criteria;
 - (iii) incorporates any components or parts (including firmware) that may adversely affect the integrity, security, safety or stability of the Customer Environment; or
 - (iv) does not conform with prior representations made by the Supplier,
 the Customer may, at its sole discretion, elect to terminate this Agreement or reduce its scope pursuant to clause 24.1(f).

34.3 Environment

The Supplier must ensure that any Physical Deliverable will not, in normal operating conditions, emit fumes, liquids or electromagnetic radiation (other than to the extent electromagnetic radiation is an inherent part of the operation of the relevant Physical Deliverable and is required for the proper functioning of the Physical Deliverable) which could be detrimental to persons, the environment or the operation of other equipment.

34.4 Supply and delivery

- (a) The Supplier must deliver the Physical Deliverables, related Deliverables and Documentation to the Site in accordance with this Agreement (including the Delivery timeframe).
- (b) The Supplier must:
 - (i) ensure that all Physical Deliverables and related Deliverables are safely and securely packaged in a manner that will prevent (to the extent reasonably practicable) any:
 - A. loss or damage to the Physical Deliverables and related Deliverables during transit and delivery; and
 - B. unauthorised access or tampering;
 - (ii) ensure that all packaging for the Physical Deliverables and related Deliverables is clearly marked and labelled in accordance with all applicable Laws and any other requirements specified in this Agreement; and
 - (iii) on delivery:
 - A. sight the staff identification tag of the Customer Personnel taking delivery of the Physical Deliverables and related Deliverables;

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- B. obtain the signature, full name, designation and staff number (if applicable) of the Customer Personnel taking delivery of the Physical Deliverables and related Deliverables (**Proof of Delivery**) and keep the Proof of Delivery for the Term and 12 months thereafter; and
- C. supply the Customer with:
 - 1. a delivery note that specifies all items and quantities included in the delivery and such other details specified in this Agreement;
 - 2. User Documentation and all necessary instructions to enable the proper and safe operation of the Physical Deliverables; and
 - 3. such other documents or information (including test results) set out in this Agreement.
- (c) On request of the Customer from time to time, the Supplier must promptly provide each requested Proof of Delivery to the Customer.
- (d) The Supplier is solely responsible for all Physical Deliverable and related Deliverable packaging and delivery costs, including any freighting, shipping and postal costs, expenses and Taxes and including the costs associated with returning any Physical Deliverables and related Deliverables wrongly supplied.

34.5 Inability to supply

Without limiting any obligations of the Supplier under this Agreement or any right or remedy of the Customer, if the Supplier is unable to supply the Physical Deliverables for any reason, then if requested by the Customer, the Supplier must arrange for the supply of equivalent items from an alternative supplier so as to meet the requirements of this Agreement (including the Date for Delivery). In such circumstances:

- (a) the Supplier must liaise with the Customer to ensure that the alternative Physical Deliverable is compliant with this Agreement, are otherwise acceptable to the Customer and meets the Customer's requirements (determined in the Customer's sole discretion); and
- (b) any additional cost in arranging and procuring an alternative supply is to be borne by the Supplier.

34.6 Defects on arrival

- (a) If the Customer discovers that any Physical Deliverable contains any Defects or is "dead on arrival", then the Customer may notify the Supplier's Representative in writing of the relevant Defect and the Supplier must, at its sole cost, promptly:
 - (i) arrange for the return of the defective Physical Deliverable; and
 - (ii) replace the defective Physical Deliverable with Physical Deliverable that contains no Defects.
- (b) Nothing in this clause 34.6 limits any warranties in relation to the Physical Deliverables or other Deliverables or the parties' rights and obligations under clause 8.

34.7 Availability Period

- (a) Unless otherwise specified in the Clause Matrix, during the Availability Period, the Supplier must, without limiting any other obligation of the Supplier under this Agreement:
 - (i) continue to provide the Physical Deliverables and any associated Machine Code (including any Materials and upgrades necessary to ensure the continued operation of the Physical Deliverables in accordance with this Agreement);

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- (ii) offer an appropriate substitute product for the Customer's consideration, if for any reason any Physical Deliverable (including model or type) is no longer available (**Substitute Product**); and
- (iii) where required, continue to provide support (both technical and clinical).
- (b) Unless otherwise agreed by the Customer in writing, the Substitute Product must:
 - (i) be of equivalent (or better) quality and functionality to the Physical Deliverable that is no longer available;
 - (ii) to the extent practicable, meet the requirements of this Agreement; and
 - (iii) be listed in the Schedule of Prices and Requirements Documentation.
- (c) The Supplier acknowledges and agrees that:
 - (i) a Substitute Product will not be deemed accepted by the Customer until accepted in writing by the Customer in accordance with the Change Control Procedure; and
 - (ii) the Customer is under no obligation to accept any Substitute Product and may, in its sole discretion, reject a Substitute Product for any reason.
- (d) The Supplier represents, warrants and undertakes that, for the Availability Period, it will maintain or ensure that there is a sufficient inventory of Materials, spare parts and replacements to ensure that it is able to comply with clause 34.7(a).
- (e) If the Supplier intends to cease supplying spare parts for any Physical Deliverable after the expiration of the Availability Period, the Supplier must give the Customer's Representative at least 6 months' advance notice (or such other period agreed by the parties in writing) and provide the Customer with an opportunity to purchase such spare parts as the Customer requires for the purpose of continuing maintenance of the Physical Deliverable. The Supplier's obligations under this clause 34.7(e) will continue for 12 months after the expiry of the Availability Period.
- (f) Without limiting any other obligation of the Supplier under this Agreement, during the Availability Period, the Supplier must make available to the Customer all bug-fixes, updates, releases and other software that are required to correct any security vulnerabilities or weaknesses identified in the Physical Deliverables.
- (g) This clause 34.7 will survive the termination or expiration of this Agreement.

35. Title and risk

35.1 Title

- (a) Title to Physical Deliverables, or part thereof, (excluding Intellectual Property Rights) passes to the Customer upon the earlier of:
 - (i) delivery to the Site; or
 - (ii) payment for the Physical Deliverable, or part thereof.
- (b) The Supplier represents, warrants and undertakes that, at the time title to a Physical Deliverables (or part thereof, as applicable) passes to the Customer pursuant to clause 35.1(a), the Physical Deliverable (or part thereof, as applicable) is free from any lien, security interest, mortgage or other encumbrance.

35.2 Risk

- (a) Until risk passes to the Customer in accordance with clause 35.2(b), the Supplier will bear the risk of, and indemnify the Customer against, any loss or damage to the Physical Deliverables (including any unfixed goods and Materials intended for incorporation into any Physical Deliverable but not yet incorporated).
- (b) Risk in each Physical Deliverable will pass to the Customer upon delivery to the Customer in accordance with this Agreement.

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- (c) If any Physical Deliverable is collected or returned (for example, for repair), risk in that Physical Deliverable will revert to the Supplier when the Physical Deliverable is collected by, or on behalf of, the Supplier or when the Physical Deliverable is delivered to a carrier for return to the Supplier.

36. Physical Deliverable Installation

36.1 Installation

- (a) This clause 36.1 applies where it is specified in the Clause Matrix that the Supplier will Install any Physical Deliverable.
- (b) The Supplier must Install the Physical Deliverable and all associated parts and components in accordance with the timeframes and requirements in this Agreement or such other timeframes and requirements agreed between the parties in writing.
- (c) Unless otherwise specified in the Clause Matrix, the Supplier must:
- (i) unpack and carefully inspect the Physical Deliverable for any Defects or damage;
 - (ii) connect, Install and integrate the Physical Deliverable and its relevant components with the Customer Environment in accordance with this Agreement;
 - (iii) perform all cutting away, coring, drilling, placing of sleeves and other preparatory work necessary for the installation of the Physical Deliverable;
 - (iv) adequately protect floor coverings and other surfaces where the Physical Deliverable or other equipment or materials are unloaded, unpackaged, transported and installed to prevent damage to those surfaces;
 - (v) ensure that all aspects of the Supplies in relation to Installation are performed securely, safely and in accordance with the work health and safety requirements specified in this Agreement;
 - (vi) following Installation:
 - A. carry out verification checks (and any Acceptance Tests) to ensure that the Physical Deliverable is safe and operates in accordance with this Agreement; and
 - B. if required by the Customer, demonstrate to the Customer that the Physical Deliverable complies with the requirements of this Agreement;
 - (vii) carry out commissioning of the Physical Deliverable by ensuring that the following have been achieved:
 - A. Acceptance Testing is complete to the Customer's satisfaction, and documentary evidence, including where appropriate, electronic data files, is of satisfactory performance of the Physical Deliverable is provided to the Customer;
 - B. all necessary adjustments to enable the proper operational use of the Physical Deliverable are complete;
 - C. to the extent applicable, end-users of the Physical Deliverable, as identified by the Customer, are effectively trained to be competent in the operation and maintenance of the Physical Deliverable, including all safety requirements;
 - D. all relevant Documentation, including User Documentation operational and service manuals and circuit diagrams, is provided to the Customer;

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- E. all relevant tools, instruments, phantoms, dongles, software keys and passwords allowing access to service software and diagnostic software and other materials required for routine testing, servicing, calibration or quality checks of the Physical Deliverable are provided to the Customer; and
 - F. a spare parts kit, if available, including (where applicable) three of each required size of fuses, in an appropriate and properly labelled container with lists of all components, is provided to the Customer;
- (viii) remove or otherwise dispose of, in an environmentally responsible manner, all packaging materials used in connection with the supply and Installation of the Physical Deliverable;
 - (ix) repair and make good any damage caused by it during delivery, Installation of the Physical Deliverable; and
 - (x) upon completion of Installation, provide a written notice to the Customer's Representative that the Physical Deliverable has been supplied and Installed in accordance with the requirements of this Agreement.
- (d) The Customer will provide assistance to the Supplier that the Customer reasonably considers necessary to ensure the satisfactory Installation of the Physical Deliverable in accordance with this Agreement.

36.2 Testing

Without limiting the Customer's rights to perform Acceptance Testing, and even where the Customer does not perform Acceptance Testing, the Customer may test the Physical Deliverable by any means it deems fit, acting reasonably (including selection of samples for testing and analysis) to determine whether the Physical Deliverable complies with this Agreement. The Supplier will be liable for the costs of such tests where such tests should indicate that the Physical Deliverable does not comply with this Agreement. Nothing in this clause 36.2 limits clause 13.

36.3 Backups

- (a) Unless otherwise specified in the Clause Matrix:
 - (i) prior to Installation, the Customer must take and maintain adequate backups of any data that is loaded into the Physical Deliverable; 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 this Agreement that it is the Supplier's responsibility to backup any data that is loaded into the Physical Deliverable, 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 this Agreement.
- (c) A backup undertaken under clause 36.3(b) must be undertaken in a manner which enables the relevant data to be accurately and completely restored, in the event that any failure of the Physical Deliverable causes damage to, or loss of, that data.

37. Machine Code and software**37.1 Machine Code**

- (a) Notwithstanding clauses 15.2, 15.4 and 15.5, the parties agree that the licence rights with respect to Machine Code will be on the terms specified in this clause 37.1.
- (b) The Supplier grants (or must procure a grant) to the Customer and its Personnel a licence to access and use any Machine Code for any purpose in connection with:
 - (i) the Customer performing its obligations, and exercising its rights, under this Agreement;
 - (ii) the full use of the relevant Physical Deliverable, other Deliverables and Machine Code as contemplated under this Agreement, including, where applicable, Installing, operating, upgrading, modifying, supporting, enhancing, and maintaining the Physical Deliverable and other Deliverables or integrating them with other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (iii) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Physical Deliverable and other Deliverables and systems that may integrate or interoperate with the Physical Deliverable and other Deliverables;
 - (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 use required for, or associated with, the Customer's administrative, business or operational functions or purposes.
- (c) For clarity, the Customer may use and make such number of copies of the Machine Code as are reasonably required for:
 - (i) evaluation and training;
 - (ii) backup or disaster recovery;
 - (iii) archiving or record-keeping;
 - (iv) security purposes;
 - (v) the Customer's internal business or operational purposes; or
 - (vi) exercising any of the Customer's rights at Law or under this Agreement.
- (d) The licence under clause 37.1 applies for so long as the Customer has lawful possession or title to the relevant Physical Deliverable or other Deliverable in which the Machine Code is incorporated.
- (e) Where the relevant Physical Deliverable or other Deliverable is used by any other Government Agency, the Customer may sub-licence any of its rights under this clause 37.1 to any other Government Agency who uses, operates or maintains the Physical Deliverable or other Deliverable.
- (f) No Machine Code may be:
 - (i) copied, transferred, adapted, modified or distributed; or
 - (ii) reverse engineered, reverse assembled or decompiled,
 except as otherwise permitted under this Agreement or authorised by the Supplier in writing.

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37.2 Software

To the extent that any Physical Deliverable or other Deliverable incorporates any Licensed Software, the Licensed Software is licensed in accordance with the terms specified under the Software (Non-Cloud) Terms.

38. General

38.1 Application

This clause 38 applies where it is specified in the Clause Matrix that the Supplier will provide Support Services with respect to any Physical Deliverable.

38.2 Support Period

All Support Services under these Physical Deliverable Terms must be provided for the Support Period.

38.3 Provision of Support Services

The Supplier must carry out the Support Services specified in this Agreement.

38.4 Preventative Maintenance

- (a) Where specified in the Clause Matrix, the Supplier must carry out Preventative Maintenance to ensure that the Physical Deliverable remains in good working order and complies with this Agreement.
- (b) Preventative Maintenance will be carried out outside Business Hours or at such other times as specified in this Agreement or agreed by the Customer in writing.
- (c) Except to the extent specified in the Clause Matrix, as part of Preventative Maintenance the Supplier must:
 - (i) maintain the Physical Deliverable and any Machine Code to a standard that ensures continued performance in accordance with this Agreement;
 - (ii) make available all necessary fixes, patches, upgrades and new releases and enhancements for the Machine Code and other software components incorporated within the Physical Deliverable; and
 - (iii) detect problems in relation to the Physical Deliverable and minimise their occurrence,

including undertaking system checks, replacing any unserviceable parts (excluding consumable items), cleaning and, where necessary, lubricating and adjusting mechanical and electro-mechanical devices in accordance with any manufacturer's instructions.
- (d) The Customer may, acting reasonably, postpone Preventative Maintenance with at least five Business Days' notice in writing to the Supplier's Representative. Where this occurs, the parties will co-operate with each other to reschedule the Preventative Maintenance on a date and time mutually agreed between the parties.

38.5 Engineering changes

- (a) Unless otherwise specified in the Clause Matrix, the Supplier must make available to the Customer all engineering changes to any Physical Deliverable and other Deliverables that:
 - (i) are designed to improve the safety, performance and reliability of the Physical Deliverable; and
 - (ii) the Supplier generally makes available to its other customers,

(Engineering Changes).

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- (b) The Supplier must ensure that all Engineering Changes to any Physical Deliverable and other Deliverables comply with the requirements of this Agreement applying to Physical Deliverables and other Deliverables.
- (c) The Supplier must give the Customer advance written notice of all proposed Engineering Changes in accordance with any notice period specified in this Agreement (and if no period is specified, the notice period is 6 months). This notice should include sufficient particulars about the proposed Engineering Changes to enable the Customer to determine whether to implement the proposed Engineering Changes.
- (d) Except where any Engineering Changes are classified by the Supplier or the manufacturer as being mandatory to ensure product security or safety in accordance with this Agreement (**Mandatory Engineering Changes**), the Customer may, at its sole discretion, elect not to proceed with any Engineering Changes.
- (e) For any Engineering Changes that the Customer proceeds with, the Customer may (at its sole discretion) elect to either:
 - (i) procure the Supplier to, at its own cost, provide a "user installable part" which the Customer must promptly Install in accordance with the Supplier's, and any manufacturer's, instructions; or
 - (ii) allow the Supplier to Install the Engineering Change, at the Supplier's own cost.
- (f) The Supplier must:
 - (i) perform relevant tests to demonstrate that the Engineering Change has been successfully implemented and, if requested by the Customer, provide written confirmation of such tests;
 - (ii) if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the Engineering Change; and
 - (iii) promptly following performance of the Engineering Change, make any necessary updates to the User Documentation in accordance with this Agreement.
- (g) Except for Mandatory Engineering Changes, a refusal of the Customer to implement an Engineering Change will not affect the Customer's entitlement to the Supplies under this Agreement.

38.6 Remedial Maintenance

- (a) Where specified in the Clause Matrix, the Supplier must provide Remedial Maintenance as specified in this Agreement and in accordance with the requirements of this clause 38.6.
- (b) The Supplier must promptly, after being notified of a Defect or problem in relation to any Physical Deliverable (including any Machine Code):
 - (i) repair or restore the Physical Deliverable (including Machine Code) to enable it to operate in accordance with this Agreement;
 - (ii) comply with any applicable Service Levels and response times specified in this Agreement;
 - (iii) to the extent that it is practical to do so, implement appropriate measures to minimise disruption to Customer Users and the Customer's operations during the provision of Remedial Maintenance; and
 - (iv) comply with any other requirements specified in this Agreement.
- (c) The Supplier must:

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- (i) perform relevant tests to demonstrate that the Remedial Maintenance has been successfully implemented and, if requested by the Customer, provide written confirmation of such tests;
- (ii) if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the Remedial Maintenance; and
- (iii) promptly following performance of the Remedial Maintenance, make any necessary updates to the User Documentation in accordance with this Agreement.

38.7 Optional Features

- (a) If the Physical Deliverable or any other Deliverables comes with any optional features or capacity that are specified in this Agreement (**Optional Features**), the Customer may, at any time during the Term, activate any of the Optional Features by submitting a written request to the Supplier's Representative.
- (b) Unless otherwise agreed between the parties in writing, the Supplier must:
 - (i) activate the specific Optional Features requested by the Customer within the time specified in this Agreement; and
 - (ii) provide the activated features for the duration specified in this Agreement.
- (c) The Agreement Sum for the Optional Features is set out in the Payment Particulars.
- (d) If the Supplier provides Support Services in relation to any Physical Deliverable that includes any Optional Features that have been activated, the Supplier must, at no additional cost, continue to provide Support Services for the relevant Physical Deliverable (including any activated features), unless otherwise set out in this Agreement.
- (e) The Supplier acknowledges and agrees that:
 - (i) the Customer is under no obligation to request any Optional Features; and
 - (ii) all Optional Features must be provided on the same terms and conditions of this Agreement.

38.8 Supply of additional and ancillary Supplies

- (a) The Supplier must supply:
 - (i) any additional or related Supplies specified in this Agreement, including (where specified):
 - A. installation Services; and
 - B. the provision of associated Deliverables; and
 - (ii) all other goods and services that are incidental or ancillary to the provision of the Supplies under these Physical Deliverable Terms and that are required to ensure that the Supplies comply with this Agreement.
- (b) The Supplier must supply all additional, related, incidental and/or ancillary Supplies specified in clause 38.8(a) in accordance with all applicable requirements and timeframes under this Agreement.

39. Lease Transactions

39.1 General

This clause 39 applies where the Customer elects to enter into a Lease Transaction in respect of Equipment that is the subject of a Purchase Order.

39.2 Finance Confirmation Notice

- (a) This clause 39.2 applies where the Supplier is not the Finance Supplier.
- (b) Where the Equipment has been Accepted, the Customer will prepare a Finance Confirmation Notice (in the form of Annexure D or in such other form determined by the Customer) and provide a draft to the Supplier for review.
- (c) A Finance Confirmation Notice must contain the following information (including applicable attachments):
 - (i) the identity of the Finance Supplier;
 - (ii) an Acceptance Certificate confirming that the relevant Equipment has been Accepted;
 - (iii) list of Equipment installed and the corresponding serial numbers of such Equipment;
 - (iv) the place and location where the Equipment is installed and any other details; and
 - (v) an invoice for payment addressed to the Finance Supplier or its nominee.
- (d) Once the Finance Confirmation Notice has been provided to the Supplier by the Customer, the Supplier must sign it, issue it to the Finance Supplier, and provide a copy of it to the Principal and the Customer.

39.3 Entry into a Lease Transaction

- (a) Subject to clause 39.3(c) and notwithstanding any other provision of this Agreement, where the Supplier is not the Finance Supplier, in connection with the commencement of a Lease Transaction in respect of particular Equipment:
 - (i) title to the Equipment will pass to the Finance Supplier upon payment of the Agreement Sum;
 - (ii) the Finance Supplier may make payment to the Supplier of the Agreement Sum on behalf of the ~~Supplier~~Customer, and the Agreement Sum will be due no earlier than 30 days following the issuance by the Supplier of the Finance Confirmation Notice to the Finance Supplier; and
 - (iii) upon payment by the Finance Supplier, the Supplier releases the Customer from any obligation to pay the Agreement Sum.
- (b) Subject to clause 39.3(c) and notwithstanding any other provision of this Agreement, where the Supplier is the Finance Supplier, in connection with the commencement of a Lease Transaction in respect of particular Equipment:
 - (i) the Customer is not required to pay the Agreement Sum (any obligation to pay the Agreement Sum will be deemed satisfied by entry into the Lease Transaction);
 - (ii) title to the Equipment will remain with the Supplier; and

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- (iii) without limiting the Supplier's obligations under this Agreement (including in relation to the Equipment), the Equipment will be supplied to the Customer by way of lease under the Lease Transaction.
- (c) The Supplier acknowledges and agrees that the supply of the Equipment by way of a Lease Transaction does not operate in any way to limit the obligations of the Supplier to the Customer under or in connection with this Agreement or the rights or remedies of the Customer under or in connection with this Agreement (including in relation to Defects or other failures in the Equipment).
- (d) The Supplier must perform its obligations to the Customer with respect to the Equipment subject to a Lease Transaction to the same standard as if the Customer had acquired legal title in such Equipment.

40. Exceptions

- (a) The Supplier is not liable for any failure of the Physical Deliverable, other Deliverables or Support Services to comply with this Agreement to the extent arising as a result of:
 - (i) any Critical CSI not operating in accordance with this Agreement;
 - (ii) the fair wear and tear of the Physical Deliverable and other Deliverables following their provision to the Customer in accordance with this Agreement;
 - (iii) the Customer not implementing any Mandatory Engineering Changes;
 - (iv) any misuse of the Physical Deliverable, other Deliverables or Support Services by the Customer;
 - (v) damage caused by the Customer's operation of the Physical Deliverable and other Deliverables in breach of any recommended and reasonable operating procedures expressly specified in this Agreement; or
 - (vi) any Virus, Denial of Service Attack or other malicious act that adversely affects the Physical Deliverable, other Deliverables or Support Services (or any software installed on the Physical Deliverable or other 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 this Agreement, including any failure to comply with the security obligations under this Agreement.
- (b) Subject to clause 40(c), the Customer may, at its sole discretion, require the Supplier to:
 - (i) provide Services in respect of correcting or resolving any of the issues set out in clause 40(a); and
 - (ii) enter into a variation to this Agreement to reflect the additional Services required to be performed by the Supplier,

in which case, 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.
- (c) Notwithstanding clause 40(b), any issue that results from one or more of the circumstances specified in clauses 40(a)(vi)A to 40(a)(vi)C must be rectified at the Supplier's sole cost and in accordance with this Agreement.

41. Movement of Deliverables

- (a) If specified in the Clause Matrix, the Customer's Representative may require the Supplier to move and relocate Physical Deliverable being maintained under this Agreement. In such event, the Supplier:
 - (i) must carry out the movement and relocation in accordance with the Customer's reasonable requirements and timeframes;
 - (ii) will be responsible for dismantling, packing, unpacking, reinstalling and recommissioning the Physical Deliverable and removing and disposing of any packing or moving materials at the Supplier's sole cost, unless otherwise specified in this Agreement; and
 - (iii) will be solely responsible for the safe-handling and safe-keeping of the Physical Deliverable during such relocation.
- (b) Unless otherwise specified in this Agreement, the Customer may move and relocate the Physical Deliverable without prior reference to the Supplier and without any reduction of the Supplier's obligations under this Agreement. Where specified in this Agreement, the Customer's Representative must inform the Supplier's Representative of the new location of the Physical Deliverable concerned.

PART H: SOFTWARE (NON-CLOUD) TERMS

42. Licensed Software**42.1 Provision of Licensed Software**

- (a) Except where otherwise specified, clauses 42 to 47 apply where it is specified in the Clause Matrix that the Supplier will provide Licensed Software.
- (b) By the Dates for Delivery (or as otherwise agreed between the parties in writing), the Supplier must deliver or provide the Customer with access to (as applicable):
 - (i) the Licensed Software;
 - (ii) User Documentation that:
 - A. contains sufficient information to enable the Customer and Permitted Users to use the Licensed Software for the Permitted Purpose and in the manner contemplated under this Agreement; and
 - B. complies with clause 7.4; and
 - (iii) any Third Party Components or other Deliverables that are specified in this Agreement or are needed to operate the Licensed Software in accordance with this Agreement.
- (c) Unless this Agreement specifies that the Supplier is responsible for installing the Licensed Software, the Customer:
 - (i) is responsible for downloading (if applicable) and/or installing the Licensed Software; and
 - (ii) must perform the installation in accordance with any instructions in the User Documentation or other instructions specified in this Agreement.
- (d) Where the Supplier makes the Licensed Software and User Documentation available for download from a website, the Supplier must provide the Customer with the relevant access codes by the date specified in this Agreement, or where no date is specified, on the Commencement Date.

42.2 Installation by the Supplier

Where this Agreement specifies that the Supplier is to install the Licensed Software, the Supplier must:

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

42.3 Backups

- (a) Unless otherwise specified in this Agreement:
 - (i) prior to loading data into the Licensed Software, the Customer must take and maintain adequate backups of the data that is loaded into the Licensed Software; and
 - (ii) the Supplier must reasonably assist the Customer in relation to any transfer or restoration of such data and in relation to any backups made by the Customer.
- (b) Where it is specified in this Agreement that it is the Supplier's responsibility to backup any data that is loaded into the Licensed Software, the Supplier must:
 - (i) perform an initial backup of such data;
 - (ii) take and maintain adequate and regular backups of such data; and
 - (iii) carry out any other Data Services relevant to data backup specified in this Agreement.
- (c) A backup undertaken under clause 42.3(b) must be undertaken in a manner which enables the relevant data to be accurately and completely restored, in the event that any failure of the Licensed Software causes damage to, or loss of, that data.

43. Licensing

43.1 Licence Period

- (a) The Supplier provides the Customer with a licence to use the Licensed Software:
 - (i) for the Licence Period (including any Extended Periods); or
 - (ii) where no Licence Period is specified or where a perpetual licence is granted, on a perpetual basis.
- (b) The Customer may, at its sole discretion, exercise one or more options to extend the Licence Period for any Extended Period specified in this Agreement, by giving the Supplier a notice in writing prior to the end of the then-current Licence Period or such other notice period as may be specified in this Agreement.

43.2 Licensing model

- (a) The parties agree that the licensing model specified in this Agreement applies to the Licensed Software being provided under this Agreement.
- (b) Where the Licensed Software is licensed on a User Licensing Model, the following terms apply, unless otherwise expressly stated in this Agreement:
 - (i) there is no cap on the number of Permitted Users who may access and use the Licensed Software, except where otherwise specified in this Agreement; and

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- (ii) where this Agreement 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 this Agreement (or as otherwise agreed between the parties in writing) use the Licensed Software; and
 - B. may, at its sole discretion, increase the number of Permitted Users at any time during the Licence Period (or while a licence is in place to use the Licensed Software), subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars.
- (c) Where the Licensed Software is not licensed on a User Licensing Model, the Customer must ensure that it does not exceed any applicable consumption or other ceiling with respect to use of the Licensed Software as specified in this Agreement. The Customer may, at its sole discretion, increase its consumption or ceiling at any time during the Licence Period (or while a licence is in place to use the Licensed Software), subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars.

43.3 Scope of licence

- (a) Notwithstanding clauses 15.2, 15.4 and 15.5, the parties agree that the licence rights with respect to the Licensed Software will be on the terms specified in these Software (Non-Cloud) Terms.
- (b) Unless otherwise specified in this Agreement, the Supplier grants (or must procure a grant) to the Customer and its Personnel a non-exclusive licence to access and use the Licensed Software for any purpose in connection with:
 - (i) the Customer performing its obligations, and exercising its rights, under this Agreement;
 - (ii) the full use of the Licensed Software as contemplated under this Agreement, including, where applicable, installing, operating, supporting, enhancing, upgrading and maintaining the Licensed Software or integrating it with other software, systems, equipment or infrastructure owned, operated or maintained by the Customer or a Government Agency;
 - (iii) the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Licensed Software and associated Deliverables or systems that may integrate or interoperate with the Licensed Software;
 - (iv) the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; or
 - (v) such other Permitted Purpose specified in this Agreement.
- (c) For clarity, the Customer may use or make such number of copies of the Licensed Software as are reasonably required for:
 - (i) evaluation and training;
 - (ii) backup or disaster recovery;
 - (iii) archiving or record-keeping;
 - (iv) security purposes;
 - (v) the Customer's internal business or operational purposes; or
 - (vi) exercising any of the Customer's rights at Law or under this Agreement.

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- (d) The Customer may sub-license or transfer its rights under this clause 43.3 to any class of Permitted Users. The Customer must use its reasonable endeavours to ensure that Permitted Users only access and use the Licensed Software for the Permitted Purpose and in accordance with these Software (Non-Cloud) Terms.
- (e) The parties acknowledge and agree that:
 - (i) the rights and licences specified in this clause 43.3 are included in the Agreement Sum and will be provided to the Customer and Permitted Users on a royalty-free basis and at no additional charge to the Customer and Permitted Users, unless otherwise specified in this Agreement;
 - (ii) the Customer obtains no right, title or interest with respect to the Licensed Software, except to the extent expressly set out in this Agreement, including in this clause 43.3; and
 - (iii) nothing in these Software (Non-Cloud) Terms is intended to exclude or restrict any rights that the Customer has at Law, including under Part III, Division 4A of the *Copyright Act 1968* (Cth).

44. Updates and New Releases

44.1 Application

This clause 44 applies where:

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

44.2 Updates and New Releases

- (a) The Supplier must offer and provide the Customer all:
 - (i) Updates applicable to the Licensed Software; and/or
 - (ii) New Releases applicable to the Licensed Software,
 at no additional cost and when the Update and/or New Release becomes available, except where otherwise specified in this Agreement (in relation to either Updates or New Releases, or both).
- (b) All Updates and New Releases that the Supplier provides must conform to the security and other requirements of this Agreement and must not reduce or diminish the functionality, performance or availability of the Licensed Software.
- (c) To the extent reasonably practicable, the Supplier must:
 - (i) provide the Customer with written notice of all Updates and New Releases prior to installation; and
 - (ii) if requested to do so by the Customer, at the Supplier's sole cost (unless otherwise specified in this Agreement), demonstrate the extent to which the relevant Update and New Release is capable of providing the functionality and performance specified in this Agreement, including the Specifications (including, where available, through the provision of release notes pertaining to the Update and New Release).
- (d) Subject to clauses 44.2(e) and 44.2(f), the Customer is under no obligation to accept, approve or permit the installation (whether manually or automatically applied) of any Update or New Release offered by the Supplier pursuant to this clause 44.2 and a refusal by the Customer to implement an Update or New Release will not affect the Customer's entitlement to the Supplies.

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- (e) Notwithstanding the above, the Customer must accept any Update that is designed to correct or redress a security vulnerability that is affecting the Licensed Software (**Security Correction**) but only to the extent that the Update complies with clause 44.2(b) and such other conditions specified in this Agreement.
- (f) If the Customer rejects the offer by the Supplier of an Update or New Release (other than any Security Correction), the Supplier must (unless otherwise specified in this Agreement) continue to maintain the version of the Licensed Software that the Customer is using for 18 months (or such other period as specified in this Agreement) from the date that the Customer provides written notice to the Supplier of the rejection of the Update or New Release. After this period, the parties acknowledge and agree that:
 - (i) the Licensed Software may have its usefulness reduced over time;
 - (ii) the Supplier may not be able to remedy any Defects in the Licensed Software; and
 - (iii) the Supplier is not responsible for any Defect in the Licensed Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the Update or New Release been installed.
- (g) If the Customer accepts an Update or New Release the:
 - (i) Specifications with respect to the Licensed Software will be deemed to be amended to the extent that the specifications for the Update and New Release supersede the existing Specifications;
 - (ii) Supplier must promptly update the User Documentation to the extent required to reflect the Update and New Release and, once updated, promptly provide a copy to the Customer;
 - (iii) Supplier must deliver the Update and New Release in a timely manner and in accordance with any timeframes agreed between the parties in writing; and
 - (iv) Agreement will continue to apply in all respects to the Update and New Release.

44.3 No restriction

Nothing in this clause 44 is intended to reduce or restrict the Supplier's obligations to respond to and redress Defects and Information Security Incidents (including through the provision of appropriate patches for security vulnerabilities). Such matters must be completed in accordance with any applicable Service Levels and all other requirements of this Agreement.

45. Transfer of licences

45.1 Transfer rights

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

45.2 Effect of transfer

Transfers under clause 45.1 will:

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

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

46. Additional licensing conditions

46.1 Restrictions

- (a) Except to the extent permitted by Law or by this Agreement, the Customer must not without the Supplier's written consent:
- (i) remove or alter any copyright or other proprietary notices on the Licensed Software;
 - (ii) sell, lease, licence, sub-licence, assign or transfer the Licensed Software to any third party;
 - (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Licensed Software; or
 - (iv) do, or omit to do, any additional things with respect to the Licensed Software as specified in this Agreement.
- (b) Nothing in this clause 46.1 restricts the Customer from:
- (i) providing the Permitted Users with access to, and use of, the Licensed Software in accordance with these Software (Non-Cloud) Terms; or
 - (ii) exercising any of the Customer's rights under clause 45.

46.2 End of Licence Period

- (a) Except where a perpetual licence has been granted to the Customer under this Agreement, within 20 Business Days following the end of the Licence Period (or such later period specified in this Agreement), the Customer must in accordance with this Agreement either destroy or return (as applicable) to the Supplier all copies of the Licensed Software that are in its possession or control.
- (b) Notwithstanding clause 46.2(a), the Customer may retain a copy of the Licensed Software for archival or record-keeping purposes or to the extent authorised or required by Law.

47. Audits

47.1 Records of usage

If specified in this Agreement, the:

- (a) Customer must maintain records of the location of all copies of the Licensed Software and the usage of the Licensed Software;
- (b) Customer must provide copies of the records kept under this clause 47 to the Supplier at the times and the intervals specified in this Agreement or as otherwise agreed between the parties in writing; and
- (c) Supplier must supply the Customer with reporting and monitoring tools to assist the Customer to verify its compliance with the licensing terms under these Software (Non-Cloud) Terms.

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47.2 Audit and verification

- (a) Subject to clause 47.2(c), the Supplier may, acting reasonably, undertake audits in accordance with this clause 47.2 to verify the Customer's compliance with the Licensed Software terms under this Agreement (**Software Audits**). All Software Audits will be conducted at the Supplier's sole cost. The Supplier has no rights to access the Customer's facilities, premises, technology environment or systems as part of any Software Audit.
- (b) The Supplier may undertake Software Audits in accordance with the approved Audit Procedure and at the times and the intervals specified in this Agreement or as otherwise agreed between the parties in writing.
- (c) The Supplier must:
 - (i) provide the Customer with at least 90 days' written notice prior to undertaking any Software Audits (or such other notice specified in this Agreement);
 - (ii) at the time of providing notice pursuant to clause 47.2(c)(i), provide to the Customer, for its approval, a draft copy of the processes and procedures that will be used to carry out the relevant Software Audit (**Audit Procedure**) and such other information that is reasonably required by the Customer to sufficiently understand the Audit Procedure; and
 - (iii) if requested by the Customer, within two Business Days of the Customer's request, provide the Customer with information in relation to the Customer's licences and entitlements under this Agreement.
- (d) The Supplier must not install any tools or applications within the Customer Environment or systems in order to conduct any Software Audits without the Customer's prior written agreement.

47.3 Results and consequences of Software Audit

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

48. Provision of Software Support Services

48.1 Application

This clause 48 applies where it is specified in the Clause Matrix that the Supplier will provide Software Support Services with respect to the Licensed Software.

48.2 Support Period

All Software Support Services under these Software (Non-Cloud) Terms must be provided for the Support Period.

48.3 General

The Supplier must carry out the Software Support Services specified in this Agreement.

49. Exceptions

- (a) The Supplier is not liable for any failure of the Licensed Software or Software Support Services to comply with this Agreement to the extent arising as a result of:
- (i) any Critical CSI not operating in accordance with this Agreement;
 - (ii) any misuse of the Licensed Software or the Software Support Services by the Customer;
 - (iii) the Customer's combination, operation or use of the Licensed Software with any other product, equipment, software or document of the Customer or a third party except where:
 - A. such combination, operation or use is authorised under this Agreement;
 - B. the Supplier supplied the Licensed Software on the basis that the Licensed Software can be combined, operated or used with the Customer's or relevant third party products; or
 - C. such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Licensed Software;
 - (iv) damage caused by the Customer's operation of the Licensed Software in breach of any recommended and reasonable operating procedures expressly specified in this Agreement; or
 - (v) any Virus, Denial of Service Attack or other malicious act that adversely affects the Licensed Software, Software Support Services or associated Services and Deliverables (or any software installed on the Deliverables or connected to them), except to the extent that the Virus, Denial of Service Attack or other malicious act was:
 - A. introduced or carried out by the Supplier or its Personnel;
 - B. caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or
 - C. due to the Supplier or its Personnel breaching this Agreement, including any failure to comply with the security obligations under this Agreement.
- (b) Subject to clause 49(c), the Customer may, at its sole discretion, require the Supplier to:
- (i) provide Services in respect of correcting or resolving any of the issues set out in clause 49; and
 - (ii) enter into a variation to this Agreement to reflect the additional Services required to be performed by the Supplier,
- in which case, 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.
- (c) Notwithstanding clause 49(b), any issue that results from one or more of the circumstances specified in clauses 49(a)(iii)A to 49(a)(iii)C or clauses 49(a)(v)A to 49(a)(v)C must be rectified at the Supplier's sole cost and in accordance with this Agreement.

PART I: CLOUD SERVICES TERMS

50. Cloud Services**50.1 General**

Except where otherwise specified, clauses 50 to 55 apply where it is specified in the Clause Matrix that the Supplier will provide Cloud Services.

50.2 Cloud Services Period

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

50.3 Variations to Cloud Services

- (a) Unless otherwise specified in this Agreement, the Supplier may, subject to this clause 50.3, 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 this Agreement; and
 - (iii) is consistent with the Supplier's obligations under the Agreement Terms.
- (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 50.3(b) must be provided in writing and in accordance with clause 33.14.
- (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 50.3 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 this Agreement (including clause 53.4 below).

51. Provision and use of Cloud Services**51.1 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;

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- (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 this Agreement; and
 - B. complies with clause 7.4; and
- (iii) any Third Party Components or other Deliverables that are specified in this Agreement or are needed to utilise the Cloud Services in accordance with this 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 this Agreement, or where no date is specified, on the Commencement Date.

51.2 Scope of licence

- (a) Notwithstanding clauses 15.2, 15.4 and 15.5, the parties agree that the licence rights with respect to the Cloud Services will be on the terms specified in these Cloud Services Terms.
- (b) Unless otherwise specified in this Agreement, Permitted Users may access and use the Cloud Services for the Cloud Services Period and for any purpose in connection with:
 - (i) the Customer performing its obligations, and exercising its rights, under this Agreement;
 - (ii) the full use of the Cloud Services and any associated applications as contemplated under this 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 this Agreement.

51.3 Licensing model

- (a) The parties agree that the User Licensing Model or such other licensing model specified in this Agreement applies to the Cloud Services being provided under this Agreement.
- (b) Where the Cloud Services are licensed on a User Licensing Model, the following terms apply, unless expressly stated otherwise in this Agreement:
 - (i) there is no cap on the number of Permitted Users who may access and use the Cloud Services, except where clause 51.3(b)(ii) applies; and

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- (ii) where this Agreement 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 this Agreement (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 Cloud 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 this Agreement (for example, storage cap). The Customer may, at its sole discretion, increase its consumption or ceiling at any time during the Cloud 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.

51.4 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.

51.5 Backups

- (a) Where it is specified in this Agreement that it is the Customer's responsibility to backup any data that is loaded into the Cloud Services:
 - (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) Unless otherwise specified in this Agreement, 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 this Agreement.
- (c) A backup undertaken under clause 51.5(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.

51.6 Records of usage and audits

- (a) If specified in this Agreement, 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 these Cloud Services Terms; and

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- (ii) may, acting reasonably, undertake audits in accordance with this clause 51.6 to verify the Customer's compliance with the licensing terms under this Agreement. All audits under this clause will be conducted at the Supplier's sole cost.
- (b) All audits under this clause 51.6 must be conducted in accordance with the auditing timeframe and procedure specified in this Agreement.
- (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.

52. Restrictions

- (a) Except to the extent permitted by Law or by this 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 this Agreement.
- (b) Nothing in this clause 52 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 these Cloud Services Terms.

53. Data

53.1 Customer Data

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

53.2 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 Supplies, then the Supplier must ensure that:
 - (i) such access is only in accordance with this 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 18.3(c) 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;

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- (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 this 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 53.2; 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.

53.3 Storage and transfer of Customer Data

- (a) Unless otherwise agreed by the Principal in accordance with clause 53.4, the Supplier and its Personnel must ensure that it provides the Cloud Services from data centres in NSW.
- (b) Nothing in this clause 53.3 relieves the Supplier of its obligations to protect and keep Customer Data secure in accordance with this Agreement.

53.4 Change to location of Customer Data

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 without the Principal's prior written consent.

53.5 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 this Agreement.
- (b) If requested by the Customer, the Supplier must provide the Customer with a report or certification showing that clause 53.5(a) has been complied with.

53.6 Data control and other requirements

The Supplier must:

- (a) implement and comply with all relevant data retention and disposal requirements specified in this Agreement; and

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- (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.

54. Provision of Support Services

54.1 Application

This clause 54 applies where it is specified in the Clause Matrix that the Supplier will provide Support Services in relation to the Cloud Services.

54.2 Support Period

All Support Services under these Cloud Services Terms must be provided for the Support Period.

54.3 General

The Supplier must carry out the Support Services specified in this Agreement.

55. Exceptions

- (a) The Supplier is not liable for any failure of the Cloud Services to comply with this Agreement to the extent arising as a result of:
- (i) any Critical CSI not operating in accordance with this 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 this 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 Customer's operation of the Cloud Services in breach of any recommended and reasonable operating procedures expressly specified in this Agreement; 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

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- C. due to the Supplier or its Personnel breaching this Agreement, including any failure to comply with the security obligations under this Agreement.
- (b) Subject to clause 55(c), the Customer may, at its sole discretion, require the Supplier to:
- (i) provide Services in respect of correcting or resolving any of the issues set out in clause 55(a); and
 - (ii) enter into a variation to this Agreement to reflect the additional Services required to be performed by the Supplier,
- in which case, 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.
- (c) Notwithstanding clause 55(b), any issue that results from one or more of the circumstances specified in clauses 55(a)(iii)A to 55(a)(iii)C or clauses 55(a)(v)A to 55(a)(v)C must be rectified at the Supplier's sole cost and in accordance with this Agreement.

56. Definitions and interpretation

56.1 Definitions

In this Agreement, unless the contrary intention appears, capitalised terms have the meaning given in the Definitions Document.

56.2 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;

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- (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 this Agreement; and
- (viii) time is to Australian Eastern Standard Time;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) 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
- (j) 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.

56.3 Discretion


- (a) Subject to any express provision in this Agreement to the contrary:
 - (i) a provision of this Agreement which says that the Customer, the Customer's Representative or an Eligible Customer "may" do or not do something is not to be construed as imposing an obligation on the Customer, the Customer's Representative or the Eligible Customer 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 56.3(a), the Customer, the Customer's Representative or any Eligible Customer will be under no obligation to exercise any discretion, power or entitlement for the benefit of the Supplier, or as required by any other legal doctrine which in any way limits the express words used in the provisions of this Agreement conferring the discretion, power or entitlement.

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Annexure A to Agreement Terms - Change Request Form

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

Customer Name (Print): Signature: Date:	Supplier Name (Print): Signature: Date:
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	Guidance note: Only persons with the necessary authorisation or delegation may execute Change Request Forms.
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Annexure B to Agreement Terms – Approved Agent Deed Poll

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

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

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

Recitals

- A. Under the provisions of the Agreement, the Approved Agent is required to provide this Deed to the Customer.

Operative

1. In this Deed capitalised terms have the same meaning as in the Agreement (unless they are assigned a different meaning below) and the following terms have the meaning assigned to them below:
 - (a) **Agreement** means the relevant 'agreement' (Provision of Goods and Services) between the Customer and the Supplier, formed by the issuance of a 'purchase order' to the Supplier by the Customer on or about [insert date]; and
 - (b) **Supplier** means [insert full legal name of the Supplier (i.e. the party to the SOA)] ABN [insert ABN].
2. The Approved Agent represents, warrants and undertakes to the Customer that it is, and will remain for the duration of the Term, the Supplier's legal agent, and is properly authorised to fulfil its role as a legal agent of the Supplier, for the purposes of:
 - (a) performing all of the Supplier's obligations under the Agreement; and
 - (b) collecting payments from the Customer on behalf of the Supplier under the Agreement.
3. The Approved Agent must comply with any obligations assigned to the Approved Agent under the Agreement.
4. The Approved Agent acknowledges and agrees that the Approved Agent is a subcontractor of the Supplier for the purposes of the Agreement and accordingly the Approved Agent agrees to co-operate reasonably and in good faith with the Customer in the Approved Agent's performance of any obligations of the Supplier under the Agreement, including with respect to any performance reviews, inspections, audits, requests for information or other similar activities that may be initiated by the Customer.
5. The Approved Agent must promptly pay to the Supplier all amounts paid by the Customer to the Approved Agent under or in connection with the Agreement (provided that to the extent agreed between the Approved Agent and the Supplier, the Approved Agent may deduct from such amounts any sales commission, subcontractor payments or similar amounts that are owed to the Approved Agent by the Supplier).
6. The Approved Agent indemnifies the Indemnified Entities against any Loss arising out of, or connected with, any failure of the Approved Agent to make prompt payment to the Supplier of any amounts payable by the Approved Agent to the Supplier under or in connection with the Agreement.

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7. The Approved Agent acknowledges and agrees that the Approved Agent has no rights or remedies against the Customer under the terms and conditions of the Agreement.
8. The Approved Agent must not:
- (a) in whole or in part, assign or novate this Deed or any of its rights or obligations under or in connection with under this Deed or the Agreement; or
 - (b) otherwise deal with the benefit of it or a right under or in connection with this Deed or the Agreement, 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.
9. This Deed will be governed by, and construed in accordance with, the Laws of the State of New South Wales, Australia.

Executed as a deed poll:

Signed, sealed and delivered as a deed by
[Insert name of Approved Agent] ABN ***[Insert***
ABN of Approved Agent] in accordance s 127(1)
 and s 127(3) of the *Corporations Act 2001* (Cth):

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Date

Date

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Annexure C to Agreement Terms – Consignment Deliverables Order Document

Consignment Deliverables Order Document

Parties	Customer	[insert legal name of the Customer] (ABN [insert ABN of the Customer]) of [insert address of head office of the Customer]			
	Supplier	[insert legal name of the Supplier] (ABN [insert ABN of the Supplier]) of [insert address of registered office of the Supplier]			
Agreement Reference		[insert details of the Agreement]			
Consignment Deliverables	Deliverable Description	Deliverable Reference or Code	Number of Deliverables required (e.g. each of box of five)	Purchase Price per Deliverable (if applicable)	Minimum Consignment Quantity
	[insert]	[insert]	[insert]	[\$[insert]]	[insert minimum quantity of Deliverables to be held by the Customer at any one time or write "Not required"]
Consignment Location		[insert address and details of the premises at which the Consignment Deliverables are to be stored by the Customer]			

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Annexure D to Agreement Terms – Finance Confirmation Notice

[ON LETTERHEAD OF EQUIPMENT SUPPLIER]

[Name of Finance Supplier] Equipment Quotation Number (s): _____

[Address of Finance Supplier]

Attention: [***]

**[SUPPLY] AGREEMENT (“AGREEMENT”) DATED [*] BETWEEN THE
[NAME OF CUSTOMER], AND [NAME OF SUPPLIER]**

Contract Number(s): _____

1. Terms which are defined in the [Supply] Agreement have the same meaning when used in this document.
2. The Equipment Supplier confirms that Acceptance has occurred and has attached the documents:
 - i. an Acceptance Certificate;
 - ii. a list of Equipment installed and the corresponding serial numbers of such Equipment;
 - iii. the place and location where the Equipment is installed; and
 - iv. an invoice for payment addressed to the Finance Supplier or its nominee.

SIGNED BY EQUIPMENT SUPPLIER

.....

Authorised Signature

.....

Name of Authorised Person (print)

Attachment 2 – Definitions

In the SOA and the Agreement, unless the contrary intention appears:

24 x 7 means a 24-hours-per-day, 7-days-per-week basis.

Aboriginal Participation Plan means the final version of the plan of that name developed by the Supplier pursuant to the Aboriginal Procurement Policy.

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:

- (a) where a Deliverable is subject to Acceptance Testing, the issuing by the Customer of an Acceptance Certificate for that Deliverable; and
- (b) where a Deliverable is not subject to Acceptance Testing, the issuing by the Customer of a document confirming that the Deliverable has been delivered to the Customer.

Accept and **Accepted** have a corresponding meaning.

Acceptance Certificate means an acceptance notice or certificate issued by the Customer. Where a Deliverable is subject to Acceptance Testing, the Acceptance Certificate will be issued pursuant to clause 13.5 of the Agreement Terms to confirm that a Deliverable meets the Acceptance Criteria. Where a Deliverable is not subject to Acceptance Testing, the Acceptance Certificate will be issued to confirm that the Deliverable has been delivered to the Customer.

Acceptance Criteria in respect of a Deliverable, means the compliance of that Deliverable with any criteria set out in the Agreement 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 the Agreement.

Acceptance Tests or **Testing** in respect of a Deliverable, means acceptance tests carried out in accordance with clause 13 of the Agreement Terms to verify whether the Acceptance Criteria in respect of that Deliverable has been met, including any such tests specified in the Agreement.

Additional Conditions means the terms and conditions (if any) specified in Item 10 of the Key Details.

Additional Period means the relevant period/s set out in Item 8 of the Key Details.

Additional Supplies has the meaning given to that term in clause 5.8(a)(i) of the Agreement Terms.

Additional Supplies Tender Process has the meaning given to that term in clause 6.2(a) of the SOA.

Adverse Event has the meaning ascribed to that term from time to time by the Therapeutic Goods Administration or by applicable Law, and includes an occurrence involving a Deliverable that meets the following criteria:

- (a) death of a patient, health care provider, user or other person; or
- (b) a serious injury or serious deterioration to a patient, health care provider, user or other person, including: a life-threatening illness or injury; permanent impairment of a body function; permanent damage to a body structure; or, a condition necessitating medical or surgical intervention to prevent permanent impairment of a body function or permanent damage to a body structure.

Agreement means the contractual relationship established between the Supplier and the relevant Eligible Customer under the Agreement Terms, comprising the terms and conditions and documents set out or referred to in clause 1.1 of the Agreement Terms.

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Agreement Sum means the relevant rate, price, cost or other amount payable by Eligible Customers for Supplies under the relevant Agreement, which must reflect the Price for such Supplies.

Agreement Terms means Attachment 1 (Agreement Terms).

Annexure means an Annexure to the Agreement.

Approved Agent means the entity (if any) that is named as such in the Clause Matrix, or is otherwise approved in writing by the Principal as being an Approved Agent.

Audit Procedure has the meaning given to that term in clause 47.2(c)(ii) of the Agreement Terms.

Australian Government Information Security Manual means the Australian Government's manual of the same name available at <https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism> (or such other link as notified by the Customer to the Supplier).

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 (including the Therapeutic Goods Administration).

Availability Period means the period (including any period identified as the 'equipment lifecycle') specified in the Agreement as being the Availability Period or, where no period is specified, the period commencing on the Commencement Date and ending ten years after Acceptance.

Back up (also referred to as 'backup' 'back-up' or 'back up) means, unless the context requires otherwise, a copy of data that is used to restore data, information, files or systems in case they are lost, deleted, or corrupted and, where applicable refers to the process of undertaking a 'back up'.

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 things, materials, deliverables, goods, services and/or tasks to the Supplies throughout the world.

Business Contingency Plan has the meaning given to that term in clause 14.6 of the SOA.

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 8:00am and 6:00pm on any Business Day.

Change Control Procedure means the procedure to be followed with respect to Change Requests as specified in clause 9 of the Agreement Terms.

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 9.1(a) of the Agreement Terms.

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Change Request Form means a document in substantially the same form as that in Annexure A to the Agreement Terms 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.

Clause Matrix means Part B (Clause Matrix) of the Key Details and Clause Matrix.

Cloud Services means any Cloud Services identified in, or required to be performed under, the Agreement, which may include:

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

Cloud Services Period has the meaning given to that term in clause 50.2 of the Agreement Terms.

Cloud Services Terms means the terms and conditions specified in PART I: CLOUD SERVICES TERMS of the Agreement Terms (see clauses 50 to 55).

Commencement Date means the date specified as the 'commencement date', 'effective date' or similar in the Purchase Order, and if no such date is specified as such, means the date on which the Customer issues the Purchase Order.

Commonwealth Government Protheses List means the then current list/s published by the Australian Government Department of Health and Aged Care that sets out the prostheses that private health insurers must pay benefits for (if the patient is covered) and the benefit amount for such prostheses (including any successor or replacement list/s). As at the Effective Date, the current lists described as the 'Prescribed List of Medical Devices and Human Tissue Products' and are available at: <https://www.health.gov.au/resources/publications/prescribed-list-of-medical-devices-and-human-tissue-products>.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is communicated by the Discloser to the Recipient as confidential;
- (c) the Recipient knows or ought to know is confidential; or
- (d) relates to or comprises:
 - (i) Customer Data;
 - (ii) the financial, corporate or commercial information of any party;
 - (iii) the affairs of a third party; or
 - (iv) the 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 a breach of confidentiality by the Recipient or other person,

except that for the purposes of the SOA, references in this definition to 'Customer' are deemed to be references to 'Principal'.

Conflict of Interest means the Supplier or its Personnel:

- (a) engaging in any activity;

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- (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 the Agreement, except that for the purposes of the SOA, references in this definition to 'Agreement' are deemed to be references to 'SOA'.

Consignment Deliverables means the relevant Deliverables (if any) that are ordered and held on consignment by the Customer in accordance with clause 5.9 of the Agreement Terms.

Consignment Deliverables Order Document means a document in the form of Annexure C to the Agreement Terms or otherwise incorporating the relevant details contemplated by Annexure C to the Agreement Terms.

Consignment Location means the relevant location at which the Customer will store Consignment Deliverables, as set out in the Order Documents or the relevant Consignment Deliverables Order Document.

COR Laws is any section of the Heavy Vehicle Law under which the Supplier is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle Law).

COR Systems are policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws.

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 the 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 the 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 the 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 21.2(a) to 21.2(b) of the Agreement Terms and satisfies any additional criteria relating to Invoices specified in the Agreement.

Critical CSI means any:

- (a) CSI that is critical to the Supplier's ability to supply the Supplies and without which the Supplier would be materially restricted in its ability to provide the Supplies in accordance with the requirements of the Agreement; or
- (b) any CSI expressly specified as "Critical CSI" in the Agreement.

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

Customer means the Eligible Customer identified in the relevant Purchase Order issued in accordance with the SOA.

Customer Data means all data (including metadata) and information relating to the Customer or any Government Agency and the operations, facilities, customers, clients, patients, 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 supplying the Supplies, but excluding any Performance Data.

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Customer Environment means the combination of facilities, property, materials, hardware, software, systems, networks and other infrastructure and services used by the Customer from time to time, including those specified in the Agreement.

Customer Group means:

- (a) the Customer;
- (b) where the Customer is a member of the Health Cluster, each of the other members of the Health Cluster;
- (c) where the Customer is not a member of the Health Cluster, each of the Related Bodies Corporate of the Customer;
- (d) any other entity, agency, association, corporation or body that is:
 - (i) intended to receive, use or benefit from the Supplies; or
 - (ii) otherwise identified in the SOA or Purchase Order (or elsewhere in the Agreement) as a member or part of the Customer Group for the purposes of the Agreement; and
- (e) any other entity, agency, association, corporation or body agreed in writing between the parties from time to time as a member or part of the Customer Group for the purposes of the Agreement.

Customer Provided Data means the Customer Data provided by the Customer to the Supplier (or extracted by the Supplier as part of supplying the Supplies) 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 supply of the Supplies.

Customer's Representative means the person nominated as the 'Customer's Representative' (or similar) in the Purchase Order, or as otherwise notified by the Customer to the Supplier from time to time.

Customer Supplied Items or **CSI** means the Materials, equipment, resources or items expressly specified as being 'CSI' in the Agreement, 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 Supplies.

Data Management and Protection Plan means the Supplier's written plan with respect to data management and protection that complies with clause 17.2 of the Agreement Terms.

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

Date for Delivery means the date(s) (including any Key Milestones) by which the Supplier must supply the relevant Supplies to the Customer, as stated in the Agreement and as may be adjusted under the Agreement.

Deed of Confidentiality and Privacy has the meaning given to that term in clause 10.2(a) of the Agreement Terms.

Definitions Document means this Attachment 2 (Definitions).

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

Delay has the meaning given to that term in clause 5.6(b)(i) of the Agreement Terms.

Deliverable means all things or items (including software, goods, Documents, Physical Deliverables and other materials) to be supplied by the Supplier under the Agreement.

Denial of Service Attack means an attack that shuts down or substantially degrades the Supplies, resulting in the Supplies (or any functionality forming part of the Supplies) being

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unable to be used by the Customer or Customer Users in the manner intended to be used under the 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 Supplies (including any Intervening Event impacting the Supplier).

Discloser has the meaning given to that term in clause 20(a) of the Agreement Terms.

Dispute Notice has the meaning given to that term in clause 30.1(b) of the Agreement Terms.

Document Deliverable means any Deliverable which comprises written, printed, digital or electronic Materials on which there is writing or other text or symbols, including all Plans.

Eligible Customer means:

- (a) the Principal acting on its own behalf, or on behalf of any other Eligible Customer;
- (b) all "NSW Health" bodies and organisations under the control and direction of the NSW Health Minister, from time to time including:
 - (i) all local health districts constituted under the *Health Services Act 1997* (NSW) (Schedule 1);
 - (ii) all statutory health corporations constituted under the *Health Services Act 1997* (NSW) (Schedule 2);
 - (iii) all specialty networks constituted under the *Health Services Act 1997* (NSW) (Schedule 3);
 - (iv) the Health Administration Corporation, a corporation sole constituted by section 9 of the *Health Administration Act 1982* (NSW), including:
 - A. NSW Ambulance;
 - B. NSW Health Pathology;
 - C. Public Health System Support Group;
 - D. HealthShare NSW;
 - E. eHealth NSW;
 - F. Health System Support Group; and
 - G. Health Infrastructure;
 - (v) Mental Health Review Tribunal and Health Professional Councils Authority; and
 - (vi) Cancer Institute (NSW),
 (collectively, the **Health Cluster**);
- (c) any affiliated health organisation as defined in the *Health Services Act 1997* (NSW) from time to time;
- (d) any other Government Agency;
- (e) any public authority, agency, department, directorate, authority or other body of the Australian Capital Territory Government, including the ACT Health Directorate;
- (f) any Eligible Non-Government Body; and
- (g) any other persons or entities agreed by the parties from time to time as being an 'Eligible Customer' or referred to in the SOA as an 'Eligible Customer'.

Eligible Non-Government Body means any public bodies that are not Government Agencies (as identified under clause 6 of the *Public Works and Procurement Regulation 2019* (NSW) from time to time), including:

- (a) a private hospital;

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- (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 any other jurisdiction (but only if it carries on activities in the State of New South Wales); or
- (g) a contractor to a public authority (but only in respect of things done as such a contractor),

but excluding a public authority of the Commonwealth or any State or Territory (unless it carries on activities in the State of New South Wales).

Engineering Changes has the meaning given to that term in clause 38.5(a) of the Agreement Terms

Equipment means the physical equipment or hardware, including all components and parts, specified in the Agreement which is to be acquired or maintained under the Agreement (as the case may be) and any substituted equipment, hardware, components or parts. For clarity, all Medical Devices (other than software) and associated consumables are Equipment.

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 the 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 the Agreement,

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

Expiry Date means the date on which the SOA expires, as set out in Item 7 of the Key Details.

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

Finance Confirmation Notice means the notice prepared by the Customer in respect of the Lease Transaction where the Supplier is not the Finance Supplier, and issued by the Supplier under clause 39.2 of the Agreement Terms.

Finance Supplier means:

- (a) where the Supplier is person from whom the Customer elects to obtain financing services, the Supplier; and
- (b) the Supplier is not the Finance Supplier, the party indicated as a 'Finance Supplier' in the Finance Confirmation Notice.

Financial Security has the meaning given to that term in clause 23(a) of the Agreement Terms.

Further Tender Option has the meaning given to that term in clause 6.3(a) of the SOA.

FX Supplies has the meaning given to that term in clause 8(a) of the SOA.

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

Government Agency means any government agency (as defined in the *Public Works and Procurement Act 1912* (NSW)), including any of the following:

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- (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).

Health Cluster has the meaning given to that term in paragraph (b) of the definition of Eligible Customer.

Heavy Vehicle Law includes:

- (a) the Heavy Vehicle National Law (NSW), within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); and
- (b) all regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW).

ICT means information and communication technologies.

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 Incident means in relation to the Agreement:

- (a) any unauthorised (whether under the 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 supply the Supplies, or any unauthorised or unlawful access to such equipment or facilities);
- (b) any notifiable data breach under the Privacy Laws;
- (c) any Denial of Service Attack;
- (d) the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraphs (a) to (c) have occurred;
- (e) any similar events relating to Customer Data or Personal Information which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under the Agreement, at Law or under any of the Policies, Codes and Standards; or
- (f) any alleged or suspected occurrence of any of the above events or circumstances.

Information Security Requirements has the meaning given to that term in clause 16.2(a) of the Agreement Terms.

Infrastructure as a Service means a computing equipment used to support operations, including storage, hardware, servers and networking components, delivered as an Online Service.

Inherent Risks means risks that exist 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 the 'initial term', 'term', 'contract period' or similar in the Purchase Order, and if no such period is specified as such, is the period commencing on the Commencement Date and ending on the date on which the Supplier successfully fulfills all of its obligations under such Purchase Order.

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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.

Install means the installation, commissioning and set-up of the a Deliverable in accordance with this Agreement, including the integration of the Deliverable into the Customer Environment, and **Installation** has a corresponding meaning.

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 for the use of, or application for the registration of, any of the rights referred to in paragraph (a),

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

Intervening 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,

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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.

Invoice means a tax invoice issued under the GST Law.

Item means an item in the Key Details.

Key Details means Part A (Key Details) of the Key Details and Clause Matrix.

Key Details and Clause Matrix means part of the SOA titled as such, starting on page 3.

Key Milestone means a Date for Delivery of a Deliverable, or for the completion of a particular Service or other obligation of the Supplier, that:

- (a) is specified as such in the Payment Particulars or elsewhere in this Agreement; or
- (b) in respect of which, the Payment Particulars or other part of this Agreement provide that Liquidated Damages are payable if the Supplier fails to meet such Date for Deliverable,

as may be adjusted under the Agreement.

Key Performance Indicators or KPIs means the key performance indicators specified in this Agreement (including in the Requirement Documentation).

Laws means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive, code or public health order 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.

Lease Transaction means a lease of Equipment by the Finance Supplier to the Customer.

Licence Period means the initial licence period specified in the Purchase Order and any Extended Period exercised by the Customer pursuant to clause 43.1(b) of the Agreement Terms.

Licensed Software means the software set out in the Agreement that the Supplier is to provide to the Customer, or provide the Customer access to (as applicable) under the 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 the Agreement.

Liquidated Damages means any damages specified as such in this Agreement which, where applicable, will be applied in accordance with clause 5.10 of the Agreement Terms.

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.

Machine Code means any microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, firmware and any other code, delivered with the Equipment for the purpose of enabling the Equipment to function as specified in the Agreement. Machine Code excludes the operating system and any Licensed Software that is provided pursuant to the Physical Deliverable Terms and/or the Software (Non-Cloud) Terms (as applicable).

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

Mandatory Engineering Changes has the meaning given to that term in clause 38.5(d) of the Agreement Terms.

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,

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Documents, manuals and anything else which is the subject matter of Intellectual Property Rights.

Medical Device has the meaning given to that term in the *Therapeutic Goods Act 1989* (Cth).

Minimum Consignment Quantity means the minimum quantity (if any) of Consignment Deliverables to be held by the Customer, as specified in the Agreement or the relevant Consignment Deliverables Order Document.

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.

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.

Near Adverse Event has the meaning ascribed to that term from time to time by the Therapeutic Goods Administration or by applicable Law, and includes an occurrence involving a Deliverable that might have led to a death or serious injury if, for example, the timely intervention of a healthcare practitioner is the only reason a death or serious injury did not occur.

New Materials means Materials in which Intellectual Property Rights subsist that are created or which arise in the course of performing the 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. New Releases are also referred to as 'Upgrades'.

Notice has the meaning given to that term in clause 33.14 of the Agreement Terms.

Online Service means computing services and capabilities such as application software, software platforms, hardware platforms, infrastructure and similar capabilities, which are delivered by the Supplier to the Customer over an internet protocol network (including the internet), rather than provided locally or on-site.

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/osd>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <https://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.

Optional Features has the meaning given to that term in clause 38.7(a) of the Agreement Terms.

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 Principal, the Customer or the State of New South Wales; or
- (b) adversely affect the:
 - (i) Supplier's ability to fulfil its obligations under the Agreement; or

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- (ii) reputation of the Principal, the Customer or the State of New South Wales.

Other Public Body means any public authority or public body of the Commonwealth or any State or Territory in Australia (other than the Principal and Government Agencies).

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 supply of the Supplies as set out in the Schedule of Prices or Requirements Documentation.

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 Services,

except that for the purposes of the SOA, references in this definition to 'Customer' are deemed to be references to 'Principal' and references to 'Services' are deemed to refer to 'Supplier's obligations under the SOA'.

Performance Guarantee has the meaning given to that term in clause 13(a) of the SOA.

Performance Report has the meaning given to that term in clause 10.1(a) of the SOA.

Permitted Purpose means the use and purposes specified in clauses 43.3 or 51.2 of the Agreement Terms (as applicable) and any other purposes specified in the Agreement.

Permitted Users means:

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

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) for the purposes of the SOA, the Principal's or the Supplier's (as applicable) employees, officers, agents and subcontractors and, in the case of the Supplier, includes any persons performing activities under the SOA on the Supplier's behalf; and
- (b) for the purposes of the Agreement, the Principal's or the Supplier's (as applicable) employees, officers, agents and subcontractors (including the employees, officers and agents of subcontractors) and:
 - (i) in the case of the Supplier, includes any persons supplying the Supplies on the Supplier's behalf (including distributors, freight contractors, direct subcontractors and any down-stream subcontractors, such as sub-subcontractors (and in each case, includes their respective employees, officers and agents)); and

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- (ii) in the case of the Customer, includes any Customer Users permitted or enabled by the Customer to use the Supplies, but excludes the Supplier and its Personnel.

Physical Deliverable means any tangible or physical Deliverable (including Equipment).

Physical Deliverable Terms means the terms and conditions specified in [PART G: PHYSICAL DELIVERABLE TERMS](#) of the Agreement Terms (see clauses 34 to 41).

Plans means any:

- (a) Project Plan;
- (b) Data Management and Protection Plan;
- (c) Test Plan;
- (d) Transition-In Plan and Transition-Out Plan; and
- (e) any additional plans specified in the Agreement or required to be complied with under the Agreement.

Platform as a Service means a hosted environment for configuring and running software that is delivered as an Online Service.

Policies, Codes and Standards means:

- (a) all applicable SME Policies and associated requirements;
- (b) all applicable industry codes, standards and other similar requirements;
- (c) the SPRs;
- (d) the Therapeutic Goods Administration's Australian Regulatory Guidelines for Medical Devices in so far as they relate to the Supplies;
- (e) the Therapeutic Goods Administration's Medical Device Cyber Security Guidance for Industry in so far as it applies to the Supplies;
- (f) the Therapeutic Goods Administration's Uniform Recall Procedure for Therapeutic Goods;
- (g) the Customer's environmental and sustainability policy;
- (h) the Customer's statement of business ethics;
- (i) the Customer's anti-bribery and anti-corruption policies;
- (j) the Customer's work place, health and safety policies, including those related to:
 - (i) drug and alcohol use;
 - (ii) workplace standards;
 - (iii) safety policies or safety specifications;
 - (iv) return to work and injury management; and
 - (v) equality and discrimination;
- (k) the NSW Procurement Policy Framework published at <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework> in so far that it relates to the Supplies;
- (l) the NSW Supplier Code of Conduct published at <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>;

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- (m) the NSW Cyber Security Policy published at <https://www.digital.nsw.gov.au/policy/cyber-security-policy> in so far as it relates to the Supplies and the Supplier is directed by the Customer to assist with the Customer's compliance with that policy;
- (n) the Aboriginal Procurement Policy;
- (o) the Worst Forms of Child Labour Convention, 1999 (International Labour Organization Convention 182) ensuring that the Deliverables and Services have not been produced using the "worst forms of child labour" as defined;
- (p) the NSW Internet of Things Policy published at <https://www.digital.nsw.gov.au/policy/internet-things-iot> in so far as it relates to the Supplies;
- (q) Accessibility Standard EN 301 549;
- (r) any other policies, codes, standards and guidelines and associated requirements specified in the Agreement, including within the Requirements Documentation or the Specifications, or otherwise notified or made available to the Supplier or its Personnel by the Customer from time to time (including via the Customer's intranet to the extent the Supplier's Personnel have access to the Customer's intranet); and
- (s) any Policy Changes with which the Supplier is or becomes required to comply with under clause 11.4 of the Agreement Terms.

Policy Change has the meaning given to that term in clause 11.4(a) of the Agreement Terms.

Practical Completion means the later of:

- (a) the date of 'Handover Certification' (if applicable under the Requirements Documentation);
- (b) the completion date of training Services in accordance with the Agreement, to the satisfaction of the Customer, to the extent the Supplier is required to perform training Services under the Agreement; or
- (c) the date when the Deliverables are fully functional and have been formally Accepted by the Customer.

Preventative Maintenance means scheduled maintenance Services required to be performed by the Supplier in accordance with clause 38.4 of the Agreement Terms to ensure that the Physical Deliverables and other Deliverables remain in working order in accordance with the Agreement.

Price means the relevant rate, price, cost or other amount that the Supplier is entitled to charge for the provision of Supplies to Eligible Customers, as set out in, or otherwise calculated in accordance with, the Schedule of Prices.

Price Revision Request has the meaning given to that term in clause 11.4(a) of the SOA.

Principal means the Government Agency identified as such in Item 1 of the Key Details.

Principal Data means all data (including metadata) and information relating to the Principal or any Government Agency and the operations, facilities, customers, clients, Personnel, assets and programs of the Principal 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 in connection with the SOA, but excluding any Performance Data.

Principal's Representative means the person so nominated in the Key Details or any other person nominated by the Principal from time to time under clause 1.10 of the SOA to replace that person.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);

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- (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.

Project Plan has the meaning given to that term in clause 5.5(a) of the Agreement Terms.

Proof of Delivery has the meaning given to that term in clause 34.4(b)(iii)B of the Agreement Terms.

Purchase Order means an order for Supplies that are identified in the Schedule of Prices and further described in the Requirements Documentation, issued to the Supplier by an Eligible Customer and satisfying the requirements for a 'Purchase Order' in clause 5.1 of the SOA. For clarity, a Purchase Order may be in any form required by the relevant Eligible Customer and may be issued electronically, digitally or in hard copy.

Quote for Supplies has the meaning given to that term in clause 6.1(d) of the SOA.

Recipient has the meaning given to that term in clause 20(a) of the Agreement Terms

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

Remedial Maintenance means unscheduled maintenance Services required to be performed by the Supplier pursuant to clause 38.6 of the Agreement Terms, to restore the Physical Deliverables and other Deliverables to a condition allowing performance in accordance with the Agreement. Remedial Maintenance may also be referred to as '**Corrective Maintenance**' or '**Reactive Maintenance**'.

Remediation Plan has the meaning given to that term in clause 19.2(a)(vi) of the Agreement Terms.

Renewal Period means the renewal period specified as the 'renewal period', 'extension period', 'further term' or similar in the Purchase Order, and the maximum number of renewals is as set out in the Purchase Order. If no such period and no maximum number of renewals is specified in the Purchase Order, there is no Renewal Period.

Requirements Documentation means the documentation describing the Supplies and the requirements for the Supplies that are permitted to be procured by Eligible Customers under Agreements formed under the SOA, attached as Attachment 3 (Requirements Documentation), as amended from time to time in accordance with the SOA. For clarity, the Requirements Documentation will have been developed based on the Tender and the Tender Response. Any Specifications contained in the Schedule of Prices will be deemed to form part of the Requirements Documentation.

Request for Supplies has the meaning given to that term in clause 6.1(a) of the SOA.

Schedule of Prices means the schedule of rates and prices, setting out the Supplies, and the applicable Prices for such Supplies, that are permitted to be procured by Eligible Customers under Agreements formed under the SOA, attached as Attachment 4 (Schedule of Prices), as amended from time to time in accordance with the SOA. For clarity, the Schedule of Prices will have been developed based on the Tender and the Tender Response. Any pricing information or terms and conditions set out in the Requirements Documentation will be deemed to apply in the same manner as if such was set out in the Schedule of Prices.

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SCRs mean the 'Security Control Requirements' (or similar, as generally set out in the 'Supplier Security Assessment' document), if any, agreed in writing between the parties in relation to the Supplies.

Security Correction has the meaning given to that term in clause 44.2(e) of the Agreement Terms.

Security Program has the meaning given to that term in clause 18.2(c) of the Agreement Terms.

Service Credits means relevant performance related rebates or credits payable by the Supplier in relation to failure to meet a Service Level, key performance indicator or other similar performance metric.

Service Levels means any minimum performance levels, Key Performance Indicators and other service standards with respect to the Supplies to be achieved by the Supplier as specified, included or incorporated by reference (in accordance with the Agreement) in the Agreement or the SOA (as applicable).

Services means:

- (a) the services that the Supplier is required to perform or provide under the Agreement; 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 5.11(a) of the Agreement Terms.

SME Policies means:

- (a) the 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 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).

SOA (also referred to as the **Standing Offer Arrangement**) means the 'Standing Offer Arrangement: Goods and Services' between the Principal and the Supplier, under which there is a standing offer to provide particular deliverables, goods, services and/or other activities (including the Supplies) to Eligible Customers, comprising the terms and conditions and documents set out or referred to in clause 1.1 of the SOA.

SOA Date means the date on which the last party to execute, executes the SOA.

Software as a Service means software that is delivered as an Online Service.

Software Audit has the meaning given to that term in clause 47.2(a) of the Agreement Terms.

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

Software (Non-Cloud) Terms means the terms and conditions specified in [PART H: SOFTWARE \(NON-CLOUD\) TERMS](#) of the Agreement Terms (see clauses 42 to 49).

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

SPRs means the latest version of NSW Health's Security Policy Requirements for Suppliers of ICT Products and Services to NSW Health document (or the relevant replacement document), which the Customer or the Principal will make available to the Supplier on request.

Substitute Product has the meaning given to that term in clause 34.7(a)(ii) of the Agreement Terms.

Supplier means the entity identified as such in Item 3 of the Key Details.

Supplier Information means information of the Supplier relating to the:

- (a) SOA and any Agreement formed under the SOA;
- (b) Supplier's performance under the SOA or under an Agreement;
- (c) financial position or reputation of the Supplier; and/or
- (d) shareholdings in the Supplier, or the corporate structure, directorship or shareholdings of the Supplier.

Supplies means all things, materials, deliverables (including medical equipment, software, consumables (such as chemicals)), goods, services (including implementation and support services) and/or tasks that the Supplier is, or may be, required to do or deliver (as applicable) to comply with its obligations under the relevant Agreement and includes the Deliverables and Services and, where applicable, the carrying out of any Transition-In Services and Transition-Out Services. For clarity, the Supplies permitted to be procured and provided under an Agreement are those Supplies identified in the Schedule of Prices and further described in the Requirements Documentation. The term **Supply** has a corresponding meaning.

Supplier's Documents means any:

- (a) part of the Tender Response; and
- (b) other product specifications, service-specific detail or other terms and conditions of the Supplier or a third party,

to the extent such documents are incorporated into the SOA or the Agreement.

Supplier's Reports has the meaning given to that term in clause 10.2 of the SOA.

Supplier's Representative means:

- (a) for the purposes of the SOA, the person so nominated in the Key Details or any other person nominated by the Supplier from time to time under clause 1.11 of the SOA to replace that person;
- (b) for the purposes of the Agreement, the person nominated as the 'Supplier's Representative' (or similar) in the Purchase Order, or as otherwise notified by the Supplier to the Customer from time to time; and
- (c) the Supplier's employee nominated as such in the SOA or as advised in writing by the Supplier to the Customer from time to time to act on its behalf in connection with the SOA and/or the Agreement (as applicable).

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

Support Services means the Services (if any) to be provided by the Supplier to support and/or maintain the Supported Deliverables or the Cloud Services (as applicable) (e.g. to prevent the occurrence of and/or correct Defects) and as specified in the Agreement. Support Services may include Preventative Maintenance or Remedial Maintenance.

Supported Deliverables means the software, Physical Deliverables and other Deliverables (as well as all associated components and parts) that are specified in the Agreement and in respect of which the Supplier will provide the Support Services.

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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 the Agreement, but excludes GST.

Tender means the request for tender, request for proposal or similar documentation issued by the Principal to the Supplier, as referenced on page 1 of the SOA, including any and all conditions, annexures, schedules, attachments, addenda, clarifications and other similar things.

Tender Response means the Supplier's written response to the Tender, including:

- (a) any written response by or on behalf of the Supplier to a request from the Principal for clarification or further information given before the SOA Date; and
- (b) any written statement made by or on behalf of the Supplier to the Principal before the SOA Date in relation to its proposed provision of the Supplies.

Term:

- (a) for the purposes of the SOA, has the meaning given to that term in clause 1.4 of the SOA; and
- (b) for the purposes of the Agreement, means the Initial Term of the Agreement and any Renewal Period, unless the Agreement is terminated earlier, in which case the Term ends on the date of termination of the Agreement.

Test Plan means the Plan with respect to the conduct of tests pursuant to clause 13 of the Agreement Terms, and which is referenced in or annexed to this Agreement or agreed between the parties in writing.

Therapeutic Goods Administration (also referred to as the **TGA**) means the medicine and therapeutic regulatory agency of the Australian Government and any relevant successor body or agency.

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

Training Reports has the meaning given to that term in clause 5.4(f) of the Agreement Terms.

Transition-In Plan means a transition-in Plan prepared by the Supplier and approved by the Customer in accordance with clause 6.2 of the Agreement Terms.

Transition-In Services means the transition-in Services specified in the Agreement or in any Transition-In Plan that is approved by the Customer in accordance with clause 6.2 of the Agreement Terms.

Transition-Out Period means the period specified in the Agreement or, if no period is specified in the Agreement, the period commencing on the expiry or termination of the 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 26.2 of the Agreement Terms.

Transition-Out Services means any transition-out or disengagement Services provided by the Supplier pursuant to clause 26 of the Agreement Terms, including under any Transition-Out Plan.

Unilateral Variation has the meaning given to that term in clause 50.3 of the Agreement Terms.

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.

Useful Life means the period during which Deliverable must be usable for the purpose it was acquired.

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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 Agreement; 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.

User Licensing Model means where the Licensed Software is, or the Cloud Services are, licensed to the Customer on a per-user basis.

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 Supplies, prevent, inhibit or impair the performance of the Customer's operations or the Supplies 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, in respect of a Deliverable, the later of:

- (a) the warranty period for such Deliverable, if any, identified in the Agreement; and
- (b) the period of 12 months from the date of:
 - (i) if clause 13 of the Agreement Terms applies for the relevant Deliverable, Practical Completion; or
 - (ii) if clause 13 of the Agreement Terms does not apply for the relevant Deliverable, delivery.

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.

Attachment 3 – Requirements Documentation

The Requirements Documentation are attached to this SOA.

Attachment 4 – Schedule of Prices

The Schedule of Prices is attached to this SOA.