

Core& Combined - Core Terms

Version: 1 December 2019

1. Role of the Core Terms

Each agreement between us (the **Buyer**) and you (the **Seller**) consists of:

1. these “**Core Terms**”
2. the Solutions Requirements Part A (Common Requirements) and the relevant Part B (Category Specific Requirements), together the “**Solution Requirements**”
3. and any documents attached to those Solution Requirements

(the “**Agreement**”).

The Core Terms are first in the list and take priority over all other documents. They govern performance of the Agreement, including how the solution described in the Solution Requirements (the “**Solution**”) will be supplied.

Any terms contained in other parts of the Agreement that conflict with, or limit the operation of, these Core Terms have no legal effect.

Capitalised terms used in these Core Terms have the meaning set out in these Core Terms.

2. Your dealings with us

You confirm that all information you provide us is true, correct and not misleading whether by omission or otherwise.

You confirm that you have not withheld any information from us you should reasonably know would change our decision to enter into the Agreement.

A breach of either of the above is a breach of the Agreement.

3. Performance

You agree to perform the Agreement:

- with due care and skill, consistent with relevant industry practice and standards
- working co-operatively with our other partners and suppliers
- in accordance with all applicable laws
- in accordance with our reasonable directions

4. User material

You agree to make available and keep updated all user materials needed for optimal use of the Solution.

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5. Subcontracting

You must have our prior consent to subcontract any significant part of the Agreement.

Any rights we grant to you are extended to your subcontractors on the same terms for the purpose of performing the Agreement.

You are responsible for your subcontractors, and liable for their actions and omissions, in performing the Agreement.

6. Confidential information

Where either party (**Recipient**) receives information from the other (**Discloser**) that is inherently confidential or is designated by the Discloser as confidential (**Confidential Information**), the Recipient must keep it confidential and not disclose it to anyone other than:

- with the prior consent of the Discloser on the condition that the Recipient is bound by the same confidentiality requirements
 - where required to perform the Agreement
 - where required by applicable laws — including the *Government Information (Public Access) Act 2009 (NSW)* which may require us to publish or disclose certain information concerning the Agreement
 - to relevant advisers on condition that they are bound by the same confidentiality requirements
 - to relevant Ministers and other NSW government agencies or entities
 - or where it is already in the public domain for reasons other than a breach of the Agreement
-

You must comply with any restrictions relating to the location of Confidential Information as set out in the Solution Requirements.

7. Buyer data

Buyer Data means any data or information in any form:

- which is provided by us to you
- or which is stored, processed or generated by us, or by you on our behalf, in the course of performing the Agreement or using the Solution,

but excluding Systems Metadata.

“Systems Metadata” means data which is embedded in your systems and unable to be separated and transferred to us, where that data:

- is generated automatically in the course of operating your business and systems
 - and does not relate specifically to us or any other NSW Government agency or entity – including any of our operations, facilities, customers, clients, personnel, assets or programs
-

We own or control all Buyer Data from the time it is created, and it is our Confidential Information.

We grant you a licence to use our Buyer Data for the purpose of performing the Agreement. This licence is non-exclusive, non-transferable and royalty free, and it continues until the later of the termination or expiry of the Agreement and completion by you of any disengagement services.

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While Buyer Data is in your possession or is managed by you:

- you must enable us to access or extract the Buyer Data at any time
- you do not gain any other rights to the Buyer Data

In addition to using the Buyer Data for the purpose of performing the Agreement, you may analyse the Buyer Data in de-identified form, without disclosing it to anyone outside your organisation, in order to improve your products and services.

You must obtain our consent before you use the Buyer Data for any other purposes, whether in identified or de-identified form, including where you wish to:

- commercially exploit Buyer Data
- or use Buyer Data for data analytics or to target advertising to any of us

8. Privacy

Personal information has the meaning given to it in applicable Privacy Laws.

Privacy laws means the laws governing privacy as applicable in New South Wales and the Commonwealth of Australia, and includes any associated rules, codes of practice and guidelines made under those laws.

Where you have access to Personal Information under the Agreement, you must not:

- use or disclose it for any purpose other than performing the Agreement
- transfer it outside Australia, or access it from outside Australia
- or do anything that would cause us to be in breach of Privacy Laws

You must tell us as soon as reasonably possible:

- if you are required to disclose that Personal Information under applicable Privacy Laws
- if you are approached by any privacy commissioner concerning that Personal Information

9. Security

Security Breach means:

- any unauthorised use of, loss of, access to or disclosure of Buyer Data
- or any other security breach or data breach relating to Buyer Data that is governed by applicable laws

You must maintain a formal security program in accordance with industry standards which is comprehensive in terms of covering the Solution. The security program must be designed to:

- ensure the security and integrity of your Solution and our Buyer Data
- protect against threats or hazards to the security or integrity of your Solution and our Buyer Data
- and prevent any Security Breach

By exception, where your Solution is managed and operated by us in our environment, and you do not have any means of accessing our Buyer Data or enabling any persons to access our Buyer Data, then your security obligations only apply:

- to the scope of your Solution
- and to the extent that industry standards apply to that Solution

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Additional security requirements may be contained in the Solution Requirements.

If you become aware that there has been a Security Breach, you must notify us within 48 hours, or any shorter period required by law.

As soon as reasonably possible after becoming aware of any Security Breach, or where we advise you that we have reasonable cause to believe there has been a Security Breach, you must:

- conduct a root cause analysis and share the results of your analysis and your remediation plan with us on request
- and provide to us, to the extent known at the time:
 - the date of the Security Breach
 - a description of the Security Breach
 - a list of actions taken by you to mitigate the impact
 - a summary of the information and Buyer Data lost, accessed or disclosed in the Security Breach

10. Intellectual property

You grant us the intellectual property rights set out in the Solution Requirements.

You confirm that:

- you have all the intellectual property rights required to perform the Agreement and to enable us to use the Solution in accordance with the Agreement
- the rights you grant to us will not infringe any other person's intellectual property rights

A breach of the above is a breach of the Agreement.

Existing materials

Either party may provide Existing Materials to the other. "**Existing Materials**" are materials that are:

- developed before the Agreement commences - including any adaptation, modification or development of those materials in the course of performing the Agreement
- or developed independently of the Agreement.

The intellectual property rights in those Existing Materials remain with the party making them available or their licensors.

We license you to use our Existing Materials to perform the Agreement. This licence is non-exclusive, non-transferable and royalty free.

You license us to use your Existing Materials to exercise our rights under the Agreement. This licence is non-exclusive, non-transferable and royalty free.

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New materials

“**New materials**” are materials created in the course of performing the Agreement, other than Buyer Data and Existing Materials.

Where you create New Materials:

- intellectual property rights in those New Materials are owned by you
- you license us to use them in connection with the Solution
- this licence is non-exclusive, non-transferable, perpetual and royalty free

By exception:

- where the New Materials form part of a subscription service, our licence will end on termination or expiry of the Agreement
- alternative arrangements for particular items of New Materials may be set out in the Solution Requirements

Logos and branding

We will not use each other’s logos or brand without prior consent.

11. Transparency

You agree to create and maintain records and logs of your performance under the Agreement in accordance with applicable laws and relevant industry practice and standards.

We may inspect those records and logs where we provide you with 7 days’ written notice. You agree to give us access and reasonable assistance.

12. Payment and invoicing

We agree to pay the fees set out in the Solution Requirements, other than disputed amounts:

- by electronic funds transfer in Australian dollars to a bank account nominated by you
- in accordance with the payment terms set out in the Solution Requirements
- within 30 days following receipt of your valid tax invoice, which must comply with the invoicing requirements set out in the Solution Requirements

If we dispute any invoiced amount, we can withhold that disputed amount until the dispute is resolved.

13. Insurance

You must hold and maintain appropriate insurances, and comply with any specific insurance requirements in the Solution Requirements.

If requested, you must provide a certificate of currency or other evidence proving you have appropriate cover for the performance of the Agreement.

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14. Indemnity

You indemnify us and our personnel — including any persons authorised to use the Solution — against any loss or damage arising out of, or connected with, a claim, demand or proceeding brought by a third party relating to any infringement, or alleged infringement, of a third party's intellectual property rights in connection with our use of the Solution.

15. Liability

Neither party is liable to the other for an amount greater than two times the agreement value, being the total amount paid or payable under the Agreement.

As an exception, liability is uncapped in relation to each of the following:

- personal injury (including death)
- damage to property
- a breach of a third party's intellectual property rights
- a breach of confidentiality or privacy

These limitations on liability apply only to the extent permitted by law. Any limitations on liability that apply to us also apply to the State of New South Wales.

16. Termination for cause

If either party breaches the Agreement, and it is more than a trivial or inconsequential breach:

- which is not capable of remedy
- or which is capable of remedy, but that party fails to remedy it within 14 days of receiving notice from the other party asking them to do so

then the other party can immediately give notice of termination of the Agreement in whole or part including by removing one of the Solutions Requirements documents in Part B (Category Specific Requirements).

17. Early termination

We may terminate the Agreement in whole or part including by removing one of the Solutions Requirements documents in Part B (Category Specific Requirements) by giving you 30 days' notice – except where a shorter notice period is permitted in the Solution Requirements. Our liability is limited to the payments due to you up to the date of termination. No additional termination fees are payable, but we will pay for any disengagement services required under clause 18 (**Consequences of termination or expiry**).

You are not entitled to terminate the Agreement except where our breach entitles you to terminate for cause under clause 16 (**Termination for Cause**).

18. Consequences of termination or expiry

If we give you notice of termination, you must stop work in accordance with that notice and comply with our directions.

When the Agreement expires or terminates:

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- if we ask, you must provide disengagement services to us for up to three months, including:
 - continuity of the solution on the same terms
 - and disengagement assistance on a time and materials basis at agreed government rates
- each of us must, on request, hand over or destroy any Confidential Information and intellectual property of the other party in accordance with agreed technical arrangements
- you must promptly give us any items we have paid for, and any Buyer Data that is held or managed by you

19. General

19.1 Personnel	<p>We must each ensure our personnel, including any persons authorised to use the Solution, do not cause a breach of the Agreement.</p> <p>You must ensure your personnel, including any persons performing any part of the Agreement on your behalf, do not cause a breach of the Agreement.</p>
19.2 Scope of our rights	<p>Our rights to use the Solution extend on the same terms to our contractors, outsourcing providers and other suppliers where they are performing that role for us.</p>
19.3 Assistance	<p>If requested, you agree to provide us with assistance and information in relation to matters relating to the Agreement to enable us to respond to regulators and governmental authorities.</p>
19.4 ICT accessibility	<p>NSW Government is committed to meeting Accessibility Standard AS EN 301 549. If specified in the Solution Requirements, your Solution must meet those accessibility requirements.</p>
19.5 Assignment	<p>A reference to a party, either Buyer or Seller, includes that party's administrators, successors and permitted assigns.</p> <p>You may not assign any of your rights under the Agreement without our prior consent.</p>
19.6 Change of control	<p>You must notify us if there is a change in control of your organisation that affects your organisation's ability to determine or control decisions about its legal, financial or operating policies.</p>
19.7 Waiver	<p>A party does not waive any of its rights under the Agreement unless it does so in writing.</p>
19.8 Variations	<p>Any change to the Agreement must be in writing and signed by authorised representatives of each party.</p>
19.9 Notices, communications and consents	<p>Any notice, communication or consent under the Agreement must be in writing, to the contact person nominated in the Solution Requirements.</p>
19.10 Dispute resolution	<p>Either party may give written notice of a dispute to the other, setting out particulars of the dispute ("Dispute Notice"). Each party must follow this dispute resolution process before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).</p>

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	<p>Within 10 business days of a party receiving a Dispute Notice, the parties must meet to try and resolve the dispute in good faith. If the parties are unable to resolve the dispute within that period, a senior executive of each party must meet and try to resolve the dispute in good faith within 10 business days or such other agreed period.</p> <p>If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Disputes Centre in accordance with its Commercial Mediation Guidelines.</p> <p>Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under the Agreement.</p>
19.11 Applicable laws	Applicable laws include all amendments to those laws.
19.12 Survival	The termination or expiry of the Agreement for any reason will not affect or extinguish the terms which are intended to survive termination or expiry, being clauses 1, 2, 5-11, 13-15, 18 and 19.
19.13 Governing law and jurisdiction	The Agreement is governed by and construed in accordance with the laws applicable in New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.