| NSW Government | Core and  |
| --- | --- |

Core& One for Hardware

***Guidance note: This Agreement is for low risk procurement up to $1,000,000 (exclusive of GST). Refer to Core& Guidelines for further details. Devices that are available through Contract 2390: Imaging Devices, and End-user Devices that are covered by the GSS under ICT Hardware Agreement 999 should not be acquired under this Agreement.***

This is an agreement for the procurement of the following hardware and associated services:

|  |
| --- |
| *Add summary details: name of hardware vendor and name of hardware product(s)* |

This **agreement** is made up of:

1. the **core terms** – version: 1 December 2019 (“**Core Terms**”)
2. the annexed **solution requirements** for Hardware (“**Solution Requirements**”)
3. any documents attached to the **Solution Requirements.**

(the “**Agreement**”).

Any document in this list takes priority over those documents listed after it. Any terms that conflict with, or limit the operation of, a document earlier in the list will have no legal effect. Section 21 (**Seller Terms**) of these **Solution Requirements** applies to the incorporation of any Seller Terms.

# This Agreement is between:

## “us” the Buyer

|  |  |
| --- | --- |
| Name and ABN of Buyer:  | *[Add Department name]*for and on behalf of the Crown in Right of the State of New South Wales |
| Signed by Buyer’s authorised representative (without personal liability): |  |  |
| Print name:  |  |
| Witnessed by: |  |
| Print name: |  |
| Date: |  |

## “you” the Seller

|  |  |
| --- | --- |
| Name and ABN of Seller:  | *Add correct details of the relevant legal entity* |
| Signed by Seller’s authorised representative: |  |
| Print name: |  |
| Witnessed by: |  |
| Print name: |  |
| Date: |  |

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### Terms used in these Solution Requirements

Capitalised terms used in these Solution Requirements:

* have the meaning set out in these Solution Requirements
* or if not defined in these Solution Requirements, have the meaning given in the Core Terms

These Solution Requirements are made up of:

* Part A: Hardware
* Part B: Warranty Services
* Part C: Fees and general terms

### Part A: Hardware

### Scope of Hardware

You agree to provide the following “**Hardware**” to us:

|  |  |
| --- | --- |
| Hardware description | *Insert description of Hardware, including details of functions and features of the Hardware. Add attachments or links if required* |
| Software Components | *Add description of software or firmware included with the Hardware* |

Any user materials you provide with the Hardware must be complete and of sufficient quality to enable a competent user to operate the Hardware.

### Technical Requirements

The Hardware must meet the following “**Technical Requirements**”:

|  |
| --- |
| *Add base configuration* |
| *Add other technical requirements* |

### Delivery

You must deliver the Hardware:

|  |  |
| --- | --- |
| To our nominated site: | *Insert details of delivery site* |
| By the delivery date: | *Insert delivery date* |
| During the delivery hours: | *Insert delivery hours e.g. 9 to 5 on a business day* |
| In accordance with our delivery instructions: | *Buyer to add delivery instructions e.g. call ahead 12 hours before to schedule delivery* |
| We must undertake the following site preparations: | *Seller to add required site preparations, e.g. related to heavy loads, site access requirements, tailgated trucks and forklift, providing protective equipment so floors are not damaged. lift preparation, weight limit on boxes* |

You must pack and protect the Hardware so that it arrives at our site without any defects.

On delivery, you must provide to us:

* a delivery note listing all items and quantities included in the delivery
* test results, manuals, instructions, procedures and drawings required for the safe handling, transport, storage, commissioning and decommissioning, use, operation, maintenance, repair and disposal of the Hardware
* all consumables and installation materials required for installation, testing and commissioning of the Hardware, if we are performing these tasks
* any other requirements set out below (if any):

|  |
| --- |
| *Add delivery requirements* |

You must, at your own expense, remove or dispose of in an environmentally responsible way all packing materials used for delivering the Hardware to our nominated site.

### Risk and title

|  |  |
| --- | --- |
| Title in the Hardware will pass to us:  | *Insert details of when title will pass: eg: on delivery, on acceptance by us, or on payment in full* |

Risk in the Hardware will transfer to us on delivery of the Hardware in accordance with our delivery instructions set out in section 4 above.

### Hardware and replacement parts

The Hardware and any replacement parts must:

* be new, unused and be recently manufactured unless we agree otherwise
* be free from defects, omissions in design, materials and workmanship
* be of merchantable quality and comply with all laws
* comply with the Technical Requirements
* perform in accordance with this Agreement
* be capable of being used and operated in accordance with the user materials
* be free of any charge or liability on title passing to us.

### Software components

You licence to us the intellectual property rights in the Software Components to use, operate and maintain (as applicable) the Hardware in accordance with the Technical Requirements.

The licence is non-exclusive, transferable only with the Hardware, perpetual and royalty free.

We will not:

* reverse engineer, decompile or disassemble the Software Components
* distribute, transfer, sublicense, rent or lease the Software Components
* remove or alter any of your proprietary marks, branding or notices on the Hardware and the user materials

except as permitted under this Agreement or under applicable law.

Where any additional restrictions are required in relation to our use of the Software Components, they may be specified below:

|  |
| --- |
| *Add any additional restrictions which apply to use of the Software Components* |

**New materials**

Under the Core Terms, any New Materials you create are owned by you and licensed to us - unless alternative arrangements are included here in the Solution Requirements. For the Software Components, the following alternative arrangements apply:

|  |
| --- |
| *Add alternative intellectual property arrangements for the Software Components – or write “Not applicable”* |

The Software Components, including any fixes, patches, upgrades, new releases and enhancements, must be free of any harmful code or any defect that would impair or interfere with the operation of the Hardware in accordance with the Technical Requirements.

### Right to reject Hardware

|  |  |
| --- | --- |
| We may reject the Hardware within the following period if it is not in accordance with the Agreement:  | *Insert period during which we have the right to reject Hardware, e.g. 7 days from delivery* |

If we reject the Hardware you must promptly collect and repair or replace the Hardware at your cost.

If the Hardware is collected for repair, risk will revert to you when collected by you or delivered to a carrier for return to you for repair.

If the Hardware is rejected and returned, title and risk will revert to you when delivered to a carrier for return.

### Part B: Warranty Services

### Warranty Services

“**Warranty Services**” comprise the services set out in this Part B.

You must provide Warranty Services to a standard that ensures that the Hardware continues to perform in accordance with this Agreement and the user materials throughout the Warranty Period.

You agree to provide Warranty Services:

|  |  |
| --- | --- |
| From the “**Commencement Date**”: | *Add Commencement Date* |
| For the “**Warranty Period**”: | *Add Warranty Period which must be a minimum of 12 months* |

### Scope of Warranty Services

 “**Warranty Services**” comprise the following services:

* Commissioning services
* Basic maintenance services
* Help desk support
* Relocation services
* Other services

#### Commissioning services

You must provide the commissioning services selected by us below:

*Select relevant options and mark with an X.*

|  |  |
| --- | --- |
|  | Configure, install, test and commission the Hardware in our systems or in any of our environments in accordance with the Technical Requirements |
|  | Undertake quality assurance and provide an inventory check of all accessories  |
|  | Demonstrate the Hardware |
|  | Provide training in the use of the Hardware |

#### Basic maintenance

You must:

* maintain the Hardware (including Software Components) to a standard that ensures continuous performance in accordance with this Agreement
* make available all fixes, patches, upgrades, new releases and enhancements for the Software Components as they are generally made available to your other customers in Australia
* undertake problem detection, system checks, replacement of unserviceable parts and consumable items, cleaning, lubrication and adjustment of mechanical and electro-mechanical devices in accordance with the manufacturer’s instructions
* undertake any engineering changes that are required by the manufacturer or applicable law
* supply replacement parts for the Hardware on a timely basis to enable the Hardware to continue to perform in accordance with this Agreement
* maintain and provide to us, on request, records of the type of services provided - including when the service event occurs, issues arising, repairs undertaken, parts and consumables replaced and remaining warranty obligations that apply.

#### Help desk

You must provide the following help desk support:

|  |  |  |  |
| --- | --- | --- | --- |
| Help desk level | Who is responsible? | Available hours | Scope |
| *Insert Level 1 etc* | *us* |  |  |
| *Insert Level 2, 3 etc* | *you* |  |  |
| Your contact details for services: | Email: | *Add email contact details* |
| Telephone: | *Add telephone contact details* |
| Self-service: | *Add self-service contact details* |

We will provide you with the following details when we issue a request for help desk services:

* Hardware identifying information
* summary of defect or incident
* priority level that we have allocated to the problem
* details of investigations we have undertaken and our findings
* any logs, screenshots, error messages or other diagnostic information that we have available
* and any other information you reasonable require

#### Relocation

On reasonable notice, we may relocate the Hardware as required for our business purposes and will provide to you details of the new location and when the decommissioning and recommissioning of the Hardware will occur (to be performed at our cost).

#### Other Services

You also agree to provide the following services to us for the Hardware:

|  |
| --- |
| *Insert details e.g. planning and onboarding, asset tagging, BIOS tagging, BIOS configuration/updates, device imaging, Hardware component installation, disposal/retirement, hard drive degaussing, hard drive wiping, deployment of IT Hardware, virus free assurance* |

Title and risk in the replacement parts transfers to us on installation.

Title and risk in the replaced parts revert to you on their removal by you or on behalf.

###  Access to our premises

You may access our premises to deliver, install, test, commission, repair or maintain the Hardware where so required under this Agreement.

When on our premises, you must follow our reasonable safety and security procedures as we require.

### Service levels

You will process our support requests and provide Warranty Servicesin accordance with the following “**Service Levels**”:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Priority 1** | **Priority 2** | **Priority 3** |
| Response time |  |  |  |
| Resolution time |  |  |  |
| Resolution process |  |  |  |
| Other service levels |  |  |  |
| *[Add service levels, and refer to attachment or link if required noting the priority levels listed below. For Priority 3 incidents consider whether this could be remedied by fix, patch etc (maintenance) generally made available by the seller.]* |

Defects or incidents which occur in the operation of the Hardware will be classified as follows:

| Priority levels for Service Levels |
| --- |
| Priority 1 incident: | The Hardware or our systems, processes or operations are critically affected by the defect or incident in theHardware  |
| Priority 2 incident: | Either:* parts of the Hardware or some of our systems, processes or operations are critically affected by the defect or incident
* or if the defect or incident continues there is a likelihood that it could cause a serious disruption to our systems, processes or operations
 |
| Priority 3 incident: | The defect or incident in the Hardware affects our systems, processes or operations, but normal processes and operations can continue with minimal disruption |

**Service credits:** Where you fail to achieve the service levels, then you must provide service credits or rebates where set out below.

|  |
| --- |
| *[Add available service credit / rebates where applicable – or state “not applicable”]*  |

#### Exceptions

You are not required to remedy or replace the Hardware if a defect is caused by:

* fair wear and tear
* our failure to comply with the terms of this Agreement
* our actions or decisions which prevent you from implementing engineering changes recommended by the manufacturer or required by law
* our use of the Hardware in ways that do not comply with the user materials
* modifications to the Hardware that are not made by you or authorised by you under this Agreement
* relocation, reinstallation, decommissioning or recommissioning of the Hardware that is not by you or authorised by you under this Agreement.
* failure of electrical power or operation of the Hardware by us in environmental conditions that are not recommended in the user materials
* our use of consumables or replacement parts of the Hardware that are not recommended by you and adversely affect the performance of the Hardware
* harmful code that is introduced into the Hardware by us or by others acting on our behalf.

### Escalation process for Warranty Services

If we are not satisfied with how our service request has been managed, we may escalate our concerns to the following contacts:

| **Contact details for escalation process** |
| --- |
| Name: |  |
| Role:  |  |
| Phone: |  |
| Email: |  |
| Address:  |  |

### Part C: Fees and general terms

### Fees

We will pay for the Hardware and the Warranty Servicesas follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Hardware and Services** | **Price per Unit** **AUD (GST exclusive)** | **Quantity** | **Extended price****AUD (GST exclusive)** |
| Hardware | *Add unit price*  | *Add quantity* | *Add extended price* |
| Warranty Services (\*) | *Add unit price* | *Add quantity* | *Add extended price*  |
| Subtotal (GST exclusive) |  |  | *Add subtotal (GST exclusive)* |
| GST  |  |  | *Add GST* |
| Total fees (GST inclusive) |  |  | *Add total fees (GST inclusive)* |
| (\*) Where fees for Warranty Servicesare bundled into Hardware fees, write “Included in Hardware Fees” |

The fees include all taxes, except GST. In addition, we will pay GST in accordance with applicable law.

All delivery costs are included in the fees set out above, except where additional delivery fees are set out below:

|  |
| --- |
| *[Add delivery fees (if any) – or state “not applicable”]*  |

### Invoicing

You may invoice at the frequency specified below:

|  |
| --- |
| *Add invoicing frequency* |

Invoices should be sent to the following contact details:

|  |  |
| --- | --- |
| Name:  |  |
| Role:  |  |
| Phone:  |  |
| Email: |  |

### Subcontracting

To subcontract any significant part of your obligations under this Agreement, you must first have our consent. To request our consent, specify the full names and roles of those subcontractors below:

|  |  |  |
| --- | --- | --- |
| **No.** | **Subcontractor** | **Role** |
| 1. | *Add subcontractor name if required — or write “Not applicable”* | *Add subcontractor role if required — or write “Not applicable”* |
| 2. |  |  |
| 3. |  |  |
| 4. |  |  |

### Relevant policies and standards

You must comply with the following policies and/or standards relevant to the Hardware and the Warranty Services:

|  |
| --- |
| *Buyer to add relevant NSW Government or agency specific policies and standards – or write “Not applicable”* |

**ICT accessibility**

Where required by us, the Hardware and/or the Warranty Services must meet Accessibility Standard AS EN 301 549.

*Choose Option 1 or Option 2 and mark with an X:*

|  |  |  |
| --- | --- | --- |
|  | Option 1:  | The Hardware and/or the Warranty Services must comply with Accessibility Standard AS EN 301 549 in the following areas:  |
|  |
|  | Option 2: | We do not require compliance with Accessibility Standard AS EN 301 549 for the Hardware and/or the Warranty Services. |

### Locations

You must comply with clause 8 (**Privacy**) of the Core Terms, which prohibits you from transferring Personal Information outside Australia or accessing Personal Information from outside Australia.

You must not transfer any Buyer Data outside Australia except where we expressly consent to certain additional locations (at our election):

* in those limited circumstances which:
	+ do not involve the transfer of, or access to, Personal Information outside Australia; and
	+ and are limited to testing or development work
* subject to conditions which ensure that our Confidential Information is managed in accordance with our obligations under the *State Records Act 1998 (NSW)*),

as set out below (if applicable):

|  |
| --- |
| *Add additional locations where Buyer Data may be stored / processed / accessed outside Australia (in the limited circumstances set out above), together with details of the conditions applying – or state “not applicable”* |

### Additional security requirements

In addition to the security requirements contained in clause 9 (**Security**) of the Core Terms, you must comply with the additional security requirements set out below:

|  |
| --- |
| *Add additional security requirements – or write “Not applicable”* |

### Insurance

You must hold and maintain each of the following types of insurances, for the periods and in the amounts specified below:

* public liability insurance with an indemnity of at least $5 million in respect of each claim, to be held for the Agreement Period.
* product liability insurance with an indemnity of at least $5 million for the total aggregate liability for all claims, to be held for the Agreement Period.
* workers’ compensation insurance in accordance with applicable laws.
* professional indemnity insurance of $1 million for all claims made by us, to be held for the Agreement Period and for at least four years after the end of the Agreement. Period

By exception, where we specify alternative insurance requirements below, you must comply with those requirements:

|  |
| --- |
| *Buyer to complete alternative insurance requirements if applicable*  |

### Seller terms

Where you:

* attach any additional terms
* include any additional terms in your response to information requested (including where incorporated by reference)
* or include additional terms in any other materials or documents, including in the course of performing the **Services**

those additional terms (**Seller Terms**) will have no legal effect where:

* they conflict with, or limit, the operation of the **Core Terms** or these **Solution Requirements**
* they attempt to vary or expand the scope of any contractual matters governed by the **Core Terms** or these **Solution Requirements**
* or they attempt to increase the scope of our legal obligations to you – including in relation to any additional liability, indemnities or payment obligations

### Your contact person for notices and any issues relating to this Agreement

|  |  |
| --- | --- |
| Name and Role: |  |
| Phone: |  |
| Email: |  |
| Address:  |  |

### Our contact person for notices and any issues relating to this Agreement

|  |  |
| --- | --- |
| Name and Role: |  |
| Phone: |  |
| Email: |  |
| Address:  |  |

|  |
| --- |
| **Add attachments if required** |

You may attach responses to the information requested in the **Solution Requirements** where additional space is required to complete those details.

Where you add any **Seller Terms**, they will be subject to section 21 (**Seller Terms**) of these **Solution Requirements**.

Please identify each attachment below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Number** | **Document Description** | **Date** | **Version** |
|  |  |  |  |
|  |  |  |  |