

**Cloud Module**

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| Information | **Guidance note**: This Cloud Module contains provisions which are specific to "as-a-Service" types of services. It should be used for the provision of Cloud Services, including Software-as-a-Service, Infrastructure-as-a-Service and Platform-as-a-Service.  The Services Module (non-Cloud) is not appropriate for the procurement of Cloud Services and should not be used for the procurement of such Services.  Please refer to the Digital.NSW ICT Purchasing Framework User Guide for more details in relation to the use of this Module. |

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Cloud Module

**Background**

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

PART A: PRELIMINARIES

# General

## Scope

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

## Acknowledgements

The parties acknowledge and agree that the:

### obligations in this Module supplement, and are in addition to, the parties' other rights and obligations under the Agreement. Except to the extent expressly provided in the Agreement, nothing in this Module is intended to limit or restrict any other provision under the Agreement; and

### Customer is relying on the Supplier's expertise in providing the Cloud Services under this Module.

## Services Period

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

## Variations to Cloud Services

### Unless otherwise specified in the Order Form, the Supplier may, subject to this clause 1.4, unilaterally upgrade or vary the functions, features, performance and other characteristics of the Cloud Services (**Unilateral Variation**) at its sole cost, provided that the Unilateral Variation:

#### does not reduce or diminish the security, functionality, performance or availability of the Cloud Services;

#### does not breach the service standards and any applicable Service Levels that apply under the Agreement; and

#### is consistent with the Supplier's obligations under the Core Terms, Module Terms and any Additional Conditions.

### 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.

### Notice under clause 1.4(b) must be provided in writing and, notwithstanding clause 39.13 (**Notices**) of the Agreement, may, if specified in the Order Form, be provided in the form and via the medium specified in the Order Form.

### 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.

### Where this clause 1.4 applies, the parties agree that it governs the process with respect to Unilateral Variations to the Cloud Services only. Where this clause does not apply, all variations to the Services must be made by following the Change Control Procedure, except to the extent otherwise expressly permitted under the Agreement (including clause 4.4 below).

PART B: PROVISION OF CLOUD SERVICES

# Provision and use of Cloud Services

## Customer use and access to the Cloud Services

### By the Dates for Delivery (or as otherwise agreed between the parties in writing), the Supplier must provide the Customer with access to:

#### the Cloud Services;

#### User Documentation that:

##### contains sufficient information to enable the Customer and Permitted Users to use the Cloud Services for the Permitted Purpose and in the manner contemplated under the Agreement; and

##### complies with clause 8.4 (User Documentation) of the Agreement; and

#### any Third Party Components or other Deliverables that are specified in the Order Form or are needed to utilise the Cloud Services in accordance with the Agreement.

### Where access codes are required to access the Cloud Services or User Documentation, the Supplier must provide the Customer with the relevant access codes by the date specified in the Order Form, or where no date is specified, on the Commencement Date.

## Scope of licence

* + 1. Notwithstanding clauses 17.2, 17.4 and 17.5 of the Agreement, the parties agree that the licence rights with respect to the Licensed Software will be on the terms specified in this Module.
    2. Unless otherwise specified in the Order Form, Permitted Users may access and use the Cloud Services for the Services Period and for any purpose in connection with:

#### the Customer performing its obligations, and exercising its rights, under the Agreement;

#### the full use of the Cloud Services and any associated applications as contemplated under the Agreement, including, where applicable, operating, supporting, enhancing, upgrading and maintaining the Cloud Services;

#### 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;

#### the carrying out, or exercise, of the functions or powers of the Customer, a NSW Government Agency or the Crown; or

#### such other Permitted Purpose specified in the Order Form.

## Licensing model

### The parties agree that the licensing model specified in the Order Form applies to the Cloud Services being provided under the Agreement.

### Where the Cloud Services are licensed on a User Licensing Model, the following terms apply, unless expressly stated otherwise in the Order Form:

#### there is no cap on the number of Permitted Users who may access and use the Cloud Services, except where clause 2.3(b)(ii) applies; and

#### where the Order Form specifies that there is a cap on the number of Permitted Users, the Customer:

* + - * 1. must ensure that only the number of Permitted Users specified in the Order Form (or as otherwise agreed between the parties in writing) use the Cloud Services; and
        2. may, at its sole discretion, increase the number of Permitted Users at any time during the Services Period, subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing.

### Where the Cloud Services are not licensed on a User Licensing Model, the Customer must ensure that it does not exceed any applicable consumption or other ceiling with respect to its use of the Cloud Services as specified in the Order Form (for example, storage cap). The Customer may, at its sole discretion, increase its consumption or ceiling at any time during the Services Period, subject to paying the additional licence fees in accordance with the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing.

## 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.

## Backups

### Unless otherwise specified in the Order Form:

#### the Customer must take and maintain adequate backups of the data that is loaded into the Cloud Services; and

#### 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.

### Where it is specified in the Order Form that it is the Supplier's responsibility to backup any data that is loaded into the Cloud Services, the Supplier must:

#### perform an initial backup of such data;

#### take and maintain adequate and regular backups of such data; and

#### carry out any other Data Services relevant to data backup specified in the Order Documents.

### A backup undertaken under clause 2.5(b) must be undertaken in a manner which enables the relevant data to be accurately and completely restored, in the event that any failure of the Cloud Services causes damage to, or loss of, that data.

## Records of usage and audits

### If specified in the Order Form, the Supplier:

#### must supply the Customer with reporting and monitoring tools to assist the Customer to verify its compliance with the licensing terms under this Module; and

#### may, acting reasonably, undertake audits in accordance with this clause 2.6 to verify the Customer's compliance with the licensing terms under the Agreement. All audits under this clause will be conducted at the Supplier's sole cost.

### All audits under this clause 2.6 must be conducted in accordance with the auditing timeframe and procedure specified in the Order Documents.

### Upon completion of each audit, the Supplier must promptly provide the Customer's Representative with a copy of the audit report or findings.

### 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.

## Additional Cloud Services terms

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

# Restrictions

### Except to the extent permitted by Law or by the Agreement, the Customer must not without the Supplier's written consent:

#### remove or alter any copyright or other proprietary notices appearing in the Cloud Services;

#### reverse engineer, decompile, dissemble or otherwise attempt to discover the Cloud Services' source code other than in accordance with any applicable escrow agreement; or

#### do, or omit to do, any additional things specified in the Order Form.

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

# Data

## Customer Data

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

## Supplier’s security controls for viewing and accessing Customer Data

### Where the Supplier, the Supplier's Personnel or any third party associated with the Supplier are able to view or access Customer Data in the course of providing the Cloud Services or any other Supplier's Activities, then the Supplier must ensure that:

#### such access is only in accordance with the Agreement;

#### such access is via a secure virtual private network;

#### only the Supplier’s Personnel who have undergone security awareness training in accordance with clause 21.3(c) (Audits and compliance) of the Agreement are able to view or access Customer Data;

#### 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;

#### all access is monitored by the Supplier and under the Supplier's control and supervision at all times; and

#### except where expressly authorised by the Agreement or by the Customer in writing, persons are not able to download, extract, edit, store, copy (whether electronic or hardcopy), print or otherwise retain any Customer Data.

### If requested by the Customer, the Supplier must promptly:

#### notify the Customer in writing of how it will comply (or is complying) with its obligations under this clause 4.2; and

#### 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.

## Storage and transfer of Customer Data

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

### For the purposes of clause 19.3(b) (Location of Customer Data) of the Agreement, under this Module the Supplier may transfer, store, process, access, disclose or view Customer Data outside New South Wales, Australia:

#### where necessary to comply with any applicable Law or a binding order of an Authority (such as a subpoena or court order) imposed on the Supplier, provided that the Supplier gives the Customer reasonable notice of any such legal requirement or order to enable the Customer to seek a protective order or other appropriate remedy;

#### via remote access for the sole purpose of accessing or viewing Customer Data to perform support and maintenance services, to the extent permitted in the Order Form; or

#### where otherwise permitted under clause 19.3 (Location of Customer Data) of the Agreement,

#### and, in any event, subject to, and in compliance with, all other provisions of the Agreement, including the Data Location Conditions.

### Nothing in this clause 4.3 relieves the Supplier of its obligations to protect and keep Customer Data secure in accordance with the Agreement, including the Supplier's obligations under clause 20 (Privacy) of the Agreement.

## 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 or to a location other than that specified in the Order Form without:

#### notifying the Customer in writing at least six months prior to such proposed change or such other timeframe specified in the Order Form; and

#### obtaining the Customer's prior written consent which may be given or withheld at the Customer's sole discretion.

### The Supplier must not propose changing the location of any data centres to any location that is identified as an "excluded location" in the Order Form or that would cause the Supplier to breach its obligations under the Agreement.

### The Supplier must ensure that the notice it provides under clause 4.4(a) sets out:

#### the proposed change to location and any associated change to data centre conditions;

#### the date on which the Supplier proposes the change will occur;

#### the reason for the proposed change;

#### any impact of such changes on the Customer’s or Permitted Users' ability to access, use and interact with the Cloud Services;

#### the proposed data migration and security measures that the Supplier will apply; and

#### such other details as reasonably required by the Customer.

### The Supplier agrees to provide all assistance reasonably requested by the Customer to assess the proposed change to the data centre location.

### The Supplier acknowledges and agrees that where the Supplier or its Personnel changes the data centre location with respect to the Cloud Services:

#### the Supplier has no entitlement to additional costs as a result of the data centre change (including, the costs of any data migration or backup); and

#### the change to the data centre location will be at the Supplier's sole cost.

### Without limiting the Customer's termination and other rights and remedies under the Agreement and at Law, the Customer may with written notice to the Supplier and its sole election:

#### immediately terminate the Agreement; or

#### remove all or any aspect of the Cloud Services from scope,

#### where the Supplier changes the data centre location (or signals its intention to do so) without the Customer's prior written consent or otherwise fails to comply with its obligations under this clause 4.4. The Supplier will have no Claim against the Customer where the Customer exercises its rights under, or seeks to enforce, this clause 4.4.

## Media decommissioning process

### 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:

#### 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

#### it complies with any additional requirements in respect of decommissioning that may be set out in the Order Form.

### If requested by the Customer, the Supplier must provide the Customer with a report or certification showing that clause 4.5(a) has been complied with.

## Data control and other requirements

### The Supplier must:

### implement and comply with all relevant data retention and disposal requirements specified in the Agreement; and

### ensure that the accessibility or usability of Customer Data does not change detrimentally in any respect, subject to any agreed downtime of the Cloud Services.

PART C: SUPPORT SERVICES

# Provision of Support Services

## Application

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

## Support Period

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

## General

### The Supplier must carry out the Support Services specified in the Order Form.

### The Supplier must carry out the Support Services:

#### in accordance with the requirements in this Part C and any additional requirements specified in the other Order Documents;

#### to meet any applicable Service Levels;

#### in a manner that is consistent with the Customer's operating requirements (if any) and the Specifications; and

#### in a manner that causes minimal disruption to Permitted Users and the Customer's operations.

## Help desk

### If the Order Form specifies that the Supplier will provide help desk Services, the Supplier must provide help desk Services during the times of operation and in accordance with the Specifications and any other requirements of the Agreement.

### The Supplier must:

#### respond to, and investigate, requests to the help desk in a timely and efficient manner and in accordance with any requirements and Service Levels specified in the Order Documents; and

#### ensure the help desk is provided by Personnel who are sufficiently qualified and experienced to resolve and escalate issues.

PART D: GENERAL

# Training

## Training Services

### This clause 6 only applies where it is specified in the Order Form that the Supplier will provide training Services or Deliverables.

### Unless otherwise specified in the Order Documents, the Supplier must:

#### provide training Services and any training materials at the times and in accordance with the requirements specified in the Order Documents; and

#### prepare and submit to the Customer's Representative for approval, by the date specified in the Order Documents, a training Plan for carrying out the training Services. The training Plan must:

##### describe the type of training Services to be provided (for example, user training, "train-the trainer" training or awareness training);

##### describe how the training will be delivered;

##### specify the responsibilities of both parties in connection with the training, including any Customer Supplied Items to be provided in connection with the training;

##### specify any maximum and/or minimum number of attendees per training course; and

##### include such other detail as specified in the Order Documents.

### For clarity, the training Plan is a Document Deliverable. Clause 8 (Document Deliverables) of the Agreement therefore applies to the training Plan, including any updates to it.

### Training will occur at the location(s) specified in the Order Documents or such other location(s) agreed by the Customer in writing.

## Training Reports

### Where specified in the Order Form, the Supplier must provide the Customer's Representative with written reports in relation to the provision of training Services (**Training Reports**). Unless otherwise specified in the Order Form, the Training Reports must cover:

#### the status of the training;

#### any issues that the Supplier has encountered in delivering the training;

#### any "lessons learnt" or areas for future improvement; and

#### such other details as set out in the Order Form.

### The Training Reports must be provided by the Supplier on a fortnightly basis for the duration of the training Services or at such other intervals as set out in the other Order Documents.

# Additional and ancillary Deliverables and Services

## Provision of additional and ancillary Deliverables and Services

### The Supplier must supply:

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

#### Data Services; and

#### the provision of Non-ICT Services and associated Deliverables; and

### all other goods and services that are incidental or ancillary to the provision of the Deliverables and Services under this Module and that are required to ensure that the Cloud Services complies with the Specifications and other requirements of the Agreement.

## Requirements

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

# Records

### The Supplier must keep and maintain full and accurate records of all Deliverables and Services provided under this Module in accordance with the Agreement and this clause 8.

### Unless otherwise specified in the Order Documents, the records must include the following details:

#### any issues in relation to the Deliverables and Services that have arisen or been reported by the Customer;

#### a record of any Deliverables provided as part of the Cloud Services, including the:

##### date provided;

##### quantity provided; and

##### name and (where applicable) serial number of the Deliverables;

#### any repairs, replacements or other remedial action taken by the Supplier or its Personnel in relation to any Deliverables (or parts or components) that have been supplied as part of the Cloud Services;

#### any Delays associated with the provision of the Deliverables and Services and the reason for those Delays;

#### any actions that the parties need to take, or decisions that need to be made, to ensure the provision of the Deliverables and Services in accordance with the requirements of the Agreement;

#### the progress of the Deliverables and Services against any Project Plan; and

#### such other records in relation to the Deliverables and Services that are specified in the Order Form.

### The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 8 to the Customer's Representative in accordance with the times set out in the Order Documents or as otherwise reasonably required by the Customer.

# Exceptions

### The Supplier is not liable for any failure of the Cloud Services to comply with the Agreement to the extent arising as a result of:

#### any Critical CSI not operating in accordance with the Agreement;

#### any misuse of the Cloud Services by the Customer;

#### 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:

##### such combination, operation or use is authorised under the Agreement;

##### 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

##### such combination, operation or use should have been reasonably anticipated by the Supplier having regard to the nature and purpose of the Cloud Services;

#### damage caused by the operation of the Cloud Services other than in accordance with any recommended and reasonable operating procedures specified in the Order Form and User Documentation; or

#### 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:

##### introduced or carried out by the Supplier or its Personnel;

##### caused or contributed to by any wrongful act or omission of the Supplier or its Personnel; or

##### due to the Supplier or its Personnel breaching the Agreement, including any failure to comply with the security obligations under the Agreement.

### The Customer may, at its sole discretion, request the Supplier to provide Services in respect of correcting or resolving any of the issues set out in clause 9(a) and, if so, the Supplier must provide such Services on a time and materials basis, based on the rates and charges specified in the Payment Particulars or as otherwise agreed between the parties in writing. However, any issue that results from one or more of the circumstances specified in clauses 9(a)(iii)A to 9(a)(iii)C or clauses 9(a)(v)A to 9(a)(v)C must be rectified at the Supplier's sole cost and in accordance with the Agreement.

Annexure A: Definitions and interpretation

* 1. Definitions and interpretation
     1. Definitions

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

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

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

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

### Software as a Service;

### Platform as a Service; or

### Infrastructure as a Service.

**Customer Provided Data** means the Customer Data provided by the Customer to the Supplier (or extracted by the Supplier as part of providing the Supplier's Activities) and in respect of which the Supplier is to provide the Data Services. Customer Provided Data includes any data derived or generated from the Customer Provided Data as a result of the provision of the Supplier's Activities.

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

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

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

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

**Permitted Users** means:

### Customer Users; and

### such other persons specified in the Order Form or who the Supplier has permitted to access and use the Cloud Services in accordance with the Agreement.

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

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

**Support Services** means the support and maintenance Services to be provided by the Supplier in respect of the Cloud Services and as specified in the Order Form.

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

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

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

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

* + 1. Interpretation

Unless as otherwise expressly specified, in this Module:

### the rules of interpretation set out in Schedule 1 (Definitions and interpretation) of the Agreement will apply to this Module; and

### a reference to a clause or Part is a reference to a clause or Part in this Module.