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

Core& One for Licensed Software

***Guidance note: This Agreement is for low risk procurement up to $1,000,000 (exclusive of GST). Refer to Core& Guidelines for further details.***

This is an agreement for procurement of the following licensed software and associated services.

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

This agreement is made up of:

1. the core terms - version 1 December 2019 (“**Core Terms**”)
2. the annexed solution requirements for licensed software (“**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 22 (**Seller Terms**) of these Solution Requirements applies to the incorporation of any Seller Terms.

# 

# This Agreement is between:

## “us” the Buyer

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

## “you” the Seller

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

**Content**

[1. Terms used in these Solution Requirements 4](#_Toc26439240)

[Part A: Software 4](#_Toc26439241)

[2. Scope of Software 4](#_Toc26439242)

[3. What is the licensing model? 4](#_Toc26439243)

[4. Delivery of Software 5](#_Toc26439244)

[5. Licensing Period 5](#_Toc26439245)

[6. Our rights in relation to the Software 6](#_Toc26439246)

[7. Our obligations 6](#_Toc26439247)

[8. Acceptance 7](#_Toc26439248)

[9. Open source components 8](#_Toc26439249)

[Part B: Support & Maintenance Services 9](#_Toc26439250)

[10. Services 9](#_Toc26439251)

[11. Support & Maintenance Services 9](#_Toc26439252)

[12. Locations for Support Services 10](#_Toc26439253)

[13. Support requests 11](#_Toc26439254)

[14. Service levels 11](#_Toc26439255)

[15. Escalation process for Support & Maintenance Services 12](#_Toc26439256)

[Part C: Fees and general terms 13](#_Toc26439257)

[16. Fees 13](#_Toc26439258)

[17. Invoicing 13](#_Toc26439259)

[18. Subcontracting 14](#_Toc26439260)

[19. Relevant policies and standards 14](#_Toc26439261)

[20. Additional security requirements 14](#_Toc26439262)

[21. Insurance 15](#_Toc26439263)

[22. Seller terms 15](#_Toc26439264)

[23. Your contact person for notices and any issues relating to this Agreement 15](#_Toc26439265)

[24. Our contact person for notices and any issues relating to this Agreement 16](#_Toc26439266)

[Add attachments if required 17](#_Toc26439267)

### 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: Software
* Part B: Support & Maintenance Services
* Part C: Fees and general terms

### Part A: Software

### Scope of Software

You will provide the following “**Licensed Software**” to us, with the functions and features as described below:

|  |
| --- |
| *Insert description of software, and details of functions and features of the software. Add attachments or links if required* |

Any user materials you provide with the Software must be complete and of sufficient quality to enable a competent user to exercise the rights of use under this agreement.

The Software, including any fixes, patches, upgrades, new releases and enhancements, must be free of any harmful code or any defect that when as permitted under this Agreement the Software is used by us in our devices or systems, would impair or interfere with their operation.

### What is the licensing model?

The Software is licensed to us in accordance with the following licensing model and licensing metrics:

|  |
| --- |
| *Add overview of the licensing model. For example:*   * *Is it a user licence (with limits on number of users)?* * *Is it a concurrent user licence (with limits on number of concurrent users)?* * *Is it a processor licence?* * *It is an enterprise-wide licence (with parameters of enterprise-wide usage to be defined)?* * *Is it an unlimited licence agreement (ULA)?* |

Specific details of the licensing metrics are as follows:

| **Software** | **Unit type** | **Quantity** |
| --- | --- | --- |
| *List software* | *Include user/device/ other unit identifiers* | *List number licensed where applicable* |
|  |  |  |

If the number of fully paid-up licences exceeds our requirements at any time:

* you agree that we may by notice to you novate our excess licences (including associated rights and obligations) to another NSW government agency or entity
* the novation of any excess licences will take effect from the date the relevant NSW government agency or entity consents to the novation
* we will notify you of the effective novation date and all relevant details of the incoming NSW government agency or entity
* from the effective novation date, the relevant NSW government agency or entity is responsible for compliance with this Agreement in its use of the licences and associated services

we remain responsible for our acts and omissions in relation to the novated licences that occurred before the effective novation date

**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 this Software, the following alternative arrangements apply:

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

### Delivery of Software

You will deliver the Software to us as follows:

|  |
| --- |
| *[Indicate how the software is delivered – e.g. licence keys for download.]* |

### Licensing Period

You agree to provide the Licensed Softwarefrom:

|  |  |
| --- | --- |
| the “**Commencement Date**”: | *Add commencement date* |

for the “**Licensing Period**”: (choose option 1 or 2 and mark with an X).

|  |  |  |  |
| --- | --- | --- | --- |
|  | Option 1 – perpetual licence: | Software is licensed on a perpetual basis | |
|  | Option 2 – term licence: | Software is licensed for the initial licensing period | *Specify initial licensing period* |
| On 30 days’ notice, we may extend the licensing period for: | *Add renewal period(s) or state “not applicable”* |

### Our rights in relation to the Software

You license us to use the Software and any accompanying materials for the Licensing Period. .

Any third-party components of the Software are licenced to us on the same terms as this Agreement(unless expressly agreed otherwise between the parties).

You will deliver the Software to us by the following means:

|  |
| --- |
| *[Insert software delivery arrangements, may be activation by licence key or other means]* |

We may:

* access, use, install, test and run the Software on our devices or our systems in any of our environments
* configure, adapt and create derivatives of the Software using the tools and functionality that you make available
* make copies of the Software for evaluation, training, disaster recovery, back up and archiving purposes
* after termination or expiry of this Agreement, retain a copy of the Licensed Software and any user materials as required for our record keeping purposes or applicable law
* exercise the following additional rights:

|  |
| --- |
| *[Add additional rights in relation to Software or state “not applicable”]* |

### Our obligations

We must:

* include your copyright and proprietary notices on each copy of the Software
* keep written records of the location and use of each copy of the Software
* provide a copy of such records to you on request
* on reasonable notice, allow you to appoint an independent auditor to verify that we are using the Software in accordance with this Agreement.

You cannot install any tools or applications on our systems to conduct software audits unless we agree in advance.

If the results of an audit demonstrate that our usage of the Software has exceeded our licensing rights, we will pay for those additional licences on the same terms under this Agreement, without any penalties.

We will not do anything to prejudice your right, title and interest in the Software that is inconsistent with our rights under this Agreement.

## We will not:

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

## except as permitted under this Agreement or applicable law.

The following additional restrictions will apply (if any):

|  |
| --- |
| *Insert any other restrictions on our use of the* ***Software****, or state “not applicable”* |

### Acceptance

If we do not require acceptance testing of the Software, the Software is accepted by us on the expiry of seven days after we receive the licence keys or licence confirmations which enable us to download the Software (**7 Day Acceptance Period**), except where we notify you during that 7 Day Acceptance Period that the Licensed Software does not comply with this Agreement.

Where we do require acceptance testing, the following process applies:

| **Test type** | **Description** | **Acceptance Criteria** | **Responsibility** | | |
| --- | --- | --- | --- | --- | --- |
| Has responsibility  for testing? | Provides data or test cases | Provides guidance and support |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

The Software is accepted by us:

* when we first use the Software in a production environment.
* when we notify you that we accept the Software following acceptance testing.
* or 30 days following installation of the Software on our systems, except where we notify you that the Software does not comply with this Agreement

whichever occurs first.

You must promptly remedy or replace any Software or any licence keys that do not comply with this Agreement. Where you fail to do so within a reasonable period, we may give you notice of termination under clause 16 (**Termination for cause**) of the Core Terms, following which you will have a further 14 days to remedy such failure before termination takes effect.

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

* our failure to comply with the terms of this Agreement
* our use of the Software in ways that do not comply with the user materials
* modifications to the Software that are not made by you or authorised by you under this Agreement
* our use of the Software in combination with other products that adversely affects the performance of the Software
* harmful code that is introduced into the Software by us or by others acting on our behalf.

### Open source components

Choose option 1 or 2 and mark with an X:

|  |  |  |
| --- | --- | --- |
|  | Option 1: | The Software does not include open source components. |
|  | Option 2: | The Software includes the following open source components: |
| *[Insert details of open source components]* |

You must ensure that the use of open source components:

* does not impede your ability to comply with your obligations under this Agreement
* does not require us to disclose, license or otherwise make available any of our materials or Buyer Data to any third party.

### Part B: Support & Maintenance Services

### Services

You must:

Select relevant options and mark with an **X**.

|  |  |
| --- | --- |
|  | Configure, install and test the Software in our systems or in any of our environments in accordance with the Software specifications |
|  | Integrate the Software with our other software or systems |
|  | Demonstrate the Software |
|  | Provide training in the use of the Software |

### Support & Maintenance Services

“**Support & Maintenance Services**” comprise the Maintenance Services and Support Services set out in this Part B.

Where we elect to acquire Support & Maintenance Services for the Software,you must provide them to a standard that ensures that the Licensed Software continues to perform in accordance with this Agreement and the user materials.

You agree to provide Support & Maintenance Servicesfrom the Commencement Date, continuing for the “**Support & Maintenance Period**” as follows:

|  |  |
| --- | --- |
| Initial Support & Maintenance Period: | *Add initial Support & Maintenance Period* |
| On 30 days’ notice, we may extend the Support & Maintenance Period for: | *Add renewal period(s) or state “not applicable”* |

#### Maintenance Services

“**Maintenance Services**” comprise:

* fixes, patches, upgrades, new releases and enhancements of the Software and updated user materials as you generally make available to your customers, which we may take up at our option
* any additional maintenance services specified below:

|  |
| --- |
| *Insert additional support and maintenance services – or write “not applicable”* |

For each new release or version the Software, you must offer Maintenance Services for a minimum period of 2 years after you deliver it to us, and we may procure those Maintenance Services at our election.

#### Support Services

“**Support Services**”include the following helpdesk services:

*[Complete details or write “not applicable”]*

| Help desk level | Who is responsible? | | Available hours |
| --- | --- | --- | --- |
| *[Insert Level 1 etc]* |  | |  |
| *[Insert Level 2, 3 etc]* |  | |  |
| *Scope of your help desk services* | *[Include scope]* | | |
| *Your contact details for* ***support services***: | Email |  | |
| Telephone |  | |
| Self service |  | |

“**Support Services**” also include:

|  |
| --- |
| *Insert other support services e.g. onboarding/installation assistance, advisory services, training, other – or write “not applicable”* |

#### Excluded Services

The following services are excluded from the scope of Support & Maintenance Services:

|  |
| --- |
| *[Seller to identify any services which are expressly excluded form Support & maintenance Service – otherwise write “Not applicable”]* |

### Locations for Support Services

You must only perform Support Services (including those Support Services performed via remote access) in Australia, and from the following locations approved by us outside Australia (if any):

|  |
| --- |
| *[Add a list of locations where Support Services may be completed outside Australia – otherwise write “Not applicable”]* |

### Support requests

We will provide you with the following details when we issue a request for Support Services:

* Software version or release number and/or licence keys
* 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
* any additional requirements set out below:

|  |
| --- |
| *Add any additional requirements which apply in relation to the Software* |

### Service levels

You will process our support requests and provide Support Services in 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 Software will be classified as follows:

| Priority levels for Service Levels | |
| --- | --- |
| Priority 1 incident: | Our systems, processes or operations are critically affected by the defect or incident in theSoftware |
| Priority 2 incident: | Either:   * 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 Software affects our systems, processes or operations, but normal processes and operations are able to 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”]* |

### Escalation process for Support & Maintenance Services

If we are not satisfied with how our support 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 Software and Support & Maintenance Services as follows:

| **Licensed Software and services** | **Price per Unit**  **AUD (GST exclusive)** | **Quantity** | **Extended price**  **AUD (GST exclusive)** |
| --- | --- | --- | --- |
| Software | *Add unit price* | *Add quantity* | *Add extended price* |
| Support & Maintenance 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 Support & Maintenance Services are bundled into licence fees, write “Included in Software Fees” | | | |

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

### 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 Software and the Support & Maintenance Services:

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

**ICT accessibility**

Where required by us, the Software and/or the Support & Maintenance Services must meet Accessibility Standard AS EN 301 549.

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

|  |  |  |
| --- | --- | --- |
|  | Option 1: | The Software 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 Software. |

### 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. Refer to relevant prequalification scheme for guidelines on insurance requirements.* |

### 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 Support & Maintenance 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: |  |
| Role: |  |
| Phone: |  |
| Email: |  |
| Address: |  |

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

|  |  |
| --- | --- |
| Name: |  |
| 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 22 (**Seller Terms**) of these **Solution Requirements**.

Please identify each attachment below:

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