

**Services Module (Long Form ICTA)**

**For the Professional Services Purchasing Arrangement**

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| Information | **Guidance note**: This Services Module may be used for the provision of ICT Services (Non-Cloud), including:* Support Services for both Hardware and Software (but not Licensed Software or Software as a Service);
* Development Services;
* Systems Integration Services;
* Data Services;
* Professional Services;
* Managed Services;
* Secondee Services;
* Services relating to training; and
* the additional and ancillary Services and Deliverables specified in this Module.

This Module should not be used to procure Software Support Services with respect to Licensed Software. Instead, for such Services, the Customer should use the Software Module (Non-Cloud) which covers Services with respect to Licensed Software and Software Support Services for Licensed Software. The Hardware and Other ICT Deliverables also includes Hardware Support Services. Either this Module or the Hardware and Other ICT Deliverables could be used for the provision of such Support Services. If the Customer is not procuring Hardware and if Hardware Support Services are being procured with other Services within the scope of this Module, it is preferable to use this Module to reduce the number of Modules that you need to complete. |

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Services 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 ICT 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 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 and its Personnel’s expertise in providing the Services under this Module.

## Services Period

Except for any Support Services or Secondee Services, all Services under this Module must be provided for the Term or for such other period specified in the Order Form (**Services Period**).

PART B: SUPPORT SERVICES

# Provision of Support Services

## Application

This Part B applies where it is specified in the Order Form that the Supplier will provide Support 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 all Support Services:

#### in accordance with the requirements in this Part B 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 Customer 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.

# Software Support Services

## Application

This clause 3 applies where it is specified in the Order Form that the Supplier will provide Software Support Services.

## Updates and New Releases

### This clause 3.2 applies where the Supplier provides Software Support Services and Updates and/or New Releases form part of those Software Support Services.

### The Supplier must offer and provide the Customer all:

#### Updates applicable to the Software; and/or

#### New Releases applicable to the Software,

### at no additional cost and when the Update and/or New Release becomes available, except where otherwise specified in the Order Form (in relation to either Updates or New Releases, or both).

### All Updates and New Releases that the Supplier provides must conform to the security and other requirements of the Agreement and must not reduce or diminish the functionality, performance or availability of the Software.

### To the extent reasonably practicable, the Supplier must:

#### provide the Customer with written notice of all Updates and New Releases prior to installation; and

#### if requested to do so by the Customer, at the Supplier's sole cost (unless otherwise specified in the Order Form), demonstrate the extent to which the relevant Update and New Release is capable of providing the functionality and performance specified in the Specifications and Order Documents (including, where available, through the provision of release notes pertaining to the Update and New Release).

### Subject to clauses 3.2(f) and 3.2(g), 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 3.2 and a refusal by the Customer to implement an Update or New Release will not affect the Customer's entitlement to the Deliverables and Services.

### Notwithstanding the above, the Customer must accept any Update that is designed to correct or redress a security vulnerability that is affecting the Software (**Security Correction**) but only to the extent that the Update complies with clause 3.2(c) and such other conditions specified in the Order Form.

### 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 the Order Form) continue to maintain the version of the Software that the Customer is using for 18 months (or such other period as specified in the Order Form) 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:

#### the Software may have its usefulness reduced over time;

#### the Supplier may not be able to remedy any Defects in the Software; and

#### the Supplier is not responsible for any Defect in the Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the Update or New Release been installed.

### If the Customer accepts an Update or New Release the:

#### Specifications with respect to the Software will be deemed to be amended to the extent that the specifications for the Update and New Release supersede the existing Specifications;

#### 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;

#### 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

#### Agreement will continue to apply in all respects to the Update and New Release.

## No restriction

Nothing in this clause 3 is intended to reduce or restrict the Supplier's obligations to respond to and redress Defects and 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 the Agreement.

# Support Services for Hardware and Other ICT Deliverables

## Application

This clause 4 applies where it is specified in the Order Form that the Supplier will supply Support Services with respect to the Hardware and/or Other ICT Deliverables.

## Provision of Support Services

The Supplier must carry out the Support Services with respect to the Hardware and/or Other ICT Deliverables specified in the Order Form. These Support Services may include either Preventative Maintenance or Remedial Maintenance (or both), as well as such other Support Services specified in the Order Form.

## Preventative Maintenance

### Where specified in the Order Form, the Supplier must carry out Preventative Maintenance to ensure that the Deliverables remain in good working order and comply with the Specifications and other requirements of the Agreement.

### Preventative Maintenance will be carried out outside Business Hours or at such other times as specified in the Order Form or agreed by the Customer in writing.

### Except to the extent specified in the Order Form, as part of Preventative Maintenance the Supplier must:

#### maintain the Deliverable and any Machine Code to a standard that ensures continued performance in accordance with the Specifications and other requirements of the Agreement;

#### make available all necessary fixes, patches, upgrades and new releases and enhancements for the Machine Code and other software components incorporated within the Deliverable; and

#### detect problems in relation to the Deliverables 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.

### 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.

## Engineering changes

### Unless otherwise specified in the Order Form, the Supplier must make available to the Customer all engineering changes to any Hardware and Other ICT Deliverables that:

#### are designed to improve the safety, performance and reliability of the Deliverables; and

#### the Supplier generally makes available to its other customers.

### The Supplier must give the Customer advance written notice of all proposed engineering changes in accordance with any notice period specified in the Order Form. This notice should include sufficient particulars about the proposed engineering changes to enable the Customer to determine whether to implement the proposed engineering changes.

### 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 the Agreement (**Mandatory Engineering Changes**), the Customer may, at its sole discretion, elect not to proceed with any engineering changes.

### For any engineering changes that the Customer proceeds with, the Customer may (at its sole discretion) elect to either:

#### 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

#### allow the Supplier to Install the engineering change, at the Supplier's own cost.

### The Supplier must:

#### 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;

#### if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the engineering change; and

#### promptly following performance of the engineering change, make any necessary updates to the User Documentation in accordance with the Agreement.

### Except for Mandatory Engineering Changes, a refusal of the Customer to implement an engineering change will not affect the Customer's entitlement to the Deliverables and Services under the Agreement.

## Remedial Maintenance

### Where specified in the Order Form, the Supplier must provide Remedial Maintenance as specified in the Order Form and in accordance with the requirements of this clause 4.5.

### The Supplier must promptly, after being notified of a Defect or problem in relation to a Deliverable (including any Machine Code):

#### repair or restore the Deliverable to enable it to operate in accordance with the Agreement;

#### comply with any applicable Service Levels and response times specified in the Order Documents;

#### 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

#### comply with any other requirements specified in the Agreement.

### The Supplier must:

#### 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;

#### if requested by the Customer, explain to the Customer the reason for, and demonstrate to the Customer the effect of, the Remedial Maintenance; and

#### promptly following performance of the Remedial Maintenance make any necessary updates to the User Documentation in accordance with the Agreement.

PART C: OTHER SERVICES

# Development Services

## Application

This clause 5 applies where it is specified in the Order Form that the Supplier will supply Development Services.

## Performance requirements

The Supplier must provide the Software Solution and carry out the Development Services to ensure that the Software Solution is compatible with the Customer Environment and complies with the Specifications and other requirements specified in the Order Documents.

## Design process

### This clause 5.3 applies where it is specified in the Order Form that the Supplier must prepare a design specification with respect to the provision of the Software Solution and the Development Services (**Design Specification**).

### The Supplier must prepare a Design Specification for the Customer's approval by the date specified in the Order Documents or as otherwise agreed by the Customer in writing. The Design Specification must:

#### be based on, and consistent with, the Specifications;

#### enable the Software Solution to be installed within the Customer Environment; and

#### provide a detailed technical explanation of how the Software Solution will provide the functions specified in the Specifications, including, as applicable, details of the processes, visual displays, screen layouts, system flowcharts, user interfaces and data flows.

### The Design Specification will, when approved by the Customer in writing, become part of the Specifications.

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

## Development process

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

#### to ensure minimal disruption to the Customer and Customer Users; and

#### in a controlled and traceable manner to maintain the integrity and traceability of all changes to the Software at all stages of development.

### Without limiting the generality of clause 5.4(a), the Supplier must ensure that:

#### it identifies and documents all changes to the Software that it or its Personnel make or implement; and

#### any changes to the Software are developed and documented in a way which would enable future modification or development to the Software Solution without further reference to the Supplier.

### In the User Documentation, the Supplier must reference and document procedures to be undertaken in relation to the detection and remediation of development errors, faults and other Defects identified in respect of the Software Solution.

### The Supplier must continually monitor and assess the quality of all Development Services against any applicable Service Levels and any other criteria set out in the Specifications (including the Design Specification) and the Order Documents.

## Alternative project delivery methodology

### The parties may, in an Order Form, specify an alternative project design and development methodology to that set out in clauses 5.3 and 5.4, in which case that alternative project methodology will apply to the performance of the Development Services.

## Warranties in relation to Development Services

### The Supplier warrants that, without limiting any other warranties or commitments made by it in the Agreement, it:

### has established quality assurance arrangements for the provision of the Development Services; and

### will comply with, and maintain, those quality assurance arrangements for so long as it is providing Development Services under the Agreement.

# Systems Integration Services

## Application

This clause 6 applies where it is specified in the Order Form that the Supplier will provide Systems Integration Services.

## Provision of Systems Integration Services

### The Supplier must provide the Systems Integration Services specified in the Order Documents. Except to the extent otherwise set out in the Order Documents, the Systems Integration Services will include:

#### designing, providing, configuring, installing and testing the System; and

#### carrying out all other Systems Integration Services specified in the other Order Documents.

### The Supplier must carry out all Systems Integration Services in accordance with clause 6 and the other requirements of the Agreement.

### Except to the extent otherwise specified in the Order Documents, the Supplier will assume primary project management and control in relation to all Systems Integration Services, including:

#### coordinating the Supplier's Activities with the Customer and Other Suppliers (where applicable); and

#### managing project risks and discharging responsibilities which are identified as the Supplier's responsibility in the Order Documents.

### The Supplier must perform the Systems Integration Services at the times, and in accordance with the requirements, set out in the Order Documents (including any approved SI Plan and SI Specifications).

## SI Plan and SI Specifications

### The Supplier must, prior to performing the Systems Integration Services, prepare and deliver to the Customer for its approval:

#### a systems integration implementation plan for carrying out the Systems Integration Services (**SI Plan**); and

#### specifications for the System (**SI Specifications**).

### The SI Plan requirements and the SI Specifications will be specified in the Order Form.

### Where the requirements for the SI Plan are not specified in the Order Form, the SI Plan must, at a minimum, include:

#### an assessment and definition of:

##### the Customer Environment;

##### the System;

##### all relevant interfaces that are necessary in order for the System to properly interface with the Customer Environment;

##### the Customer's requirements and expectations in respect of the Systems Integration Services, including the Customer's business requirements and any objectives to be met by the Supplier in carrying out the Systems Integration Services;

##### the roles and responsibilities of the parties; and

##### any resources (including Customer Supplied Items) required to carry out the Systems Integration Services;

#### a strategy for the delivery of the Systems Integration Services that is appropriate for the Customer's needs, including the staging and implementation of the Systems Integration Services and associated testing;

#### a Data Migration Plan (where applicable); and

#### such other details specified in the other Order Documents.

### Unless otherwise specified in the Order Form, the SI Specifications must, at a minimum, include:

#### detailed technical and functional specifications for the System; and

#### such other details specified in the other Order Documents.

### For clarity, the SI Plan and SI Specifications are Document Deliverables. Clause 8 (Document Deliverables) of the Agreement therefore applies to the SI Plan and SI Specifications, including any updates to them.

## Warranties in relation to Systems Integration Services

### The Supplier warrants that:

### all components of the System will properly combine and interact with each other in accordance with the SI Specifications and other applicable requirements of the Agreement; and

### the System will be properly installed in accordance with any approved SI Plan.

# Data Services

## Application

### This clause 7 applies where it is specified in the Order Form that the Supplier will provide Data Services.

## Customer Provided Data

### Unless otherwise specified in the Order Form, to enable the Supplier to carry out the Data Services, the Customer will use its reasonable endeavours to extract and provide the Customer Provided Data to the Supplier:

#### in the format specified in the Order Form; and

#### at the times (including within any timeframes) and in accordance with any other requirements specified in the Order Documents.

### The Customer acknowledges and agrees that the Supplier's ability to carry out the Data Services may depend in whole or in part on the completeness and quality of the Customer Provided Data.

### If the Supplier identifies any errors or issues in relation to the Customer Provided Data (including due to data transmission issues), the Supplier must:

#### advise the Customer's Representative as soon as the Supplier becomes aware of the issue;

#### co-operate with the Customer to resolve the issue; and

#### not commence the Data Services until the issue has been resolved to the Customer's reasonable satisfaction.

### The Supplier acknowledges and agrees that Customer Provided Data is "Customer Data" as defined in Schedule 1 of the Agreement. For clarity (and without limiting those obligations in relation to Customer Data specified in Part C (Data and Security) of the Agreement):

#### the Supplier obtains no right, title or interest with respect to any Customer Provided Data, other than a right to use Customer Provided Data for the sole purpose of carrying out the Supplier's Activities in accordance with the Agreement;

#### as between the Supplier and the Customer, all rights in, and in relation to, Customer Provided Data remain with the Customer at all times and are not transferred; and

#### the Supplier must not dispose of any Customer Provided Data other than in accordance with the Agreement.

## Further restrictions

The Supplier and its Personnel must not attempt to use the Customer Provided Data in a manner that is contrary to the Privacy Laws or that attempts (without the Customer's express written authorisation) to:

### extract any Personal Information from the Customer Provided Data; or

### de-identify any Customer Provided Data.

## Backups

### Unless otherwise specified in the Order Form, the Customer must:

#### take a complete backup of the Customer Provided Data; and

#### test and retain the backup referred to in clause 7.4(a)(i),

### prior to giving a copy of the Customer Provided Data to the Supplier.

### Once Customer Provided Data is supplied to the Supplier or (where applicable) extracted by the Supplier, the Supplier:

#### is solely responsible for taking and backing up the Customer Provided Data; and

#### must ensure that all backups of Customer Provided Data:

##### occur securely and in accordance with the Agreement, including any requirements specified in the Order Form;

##### occur regularly and at the intervals or timeframes specified in the Order Documents; and

##### are undertaken in a manner which enables the Customer Provided Data to be accurately and completely restored, in the event of any damage to, or loss of, that Customer Provided Data.

## Data cleansing

If the Order Form states that data cleansing is to be performed by the Supplier, the Supplier must cleanse the Customer Provided Data by:

### eliminating records that are clearly duplicates;

### correcting misspellings and errors;

### ensuring that there are consistent descriptions, punctuation and syntax; and

### resolving any other obvious inaccuracies, omissions or inconsistency issues,

### to meet the level of accuracy and consistency stated in the Order Documents.

## Data analysis

### If the Order Form states that the Supplier is to provide data analytics Services with respect to the Customer Provided Data, the Supplier must conduct such analytics and, where specified in the Order Form, provide the Customer with the data analytics report(s).

### The Supplier must complete the data analytics Services at the times, and in accordance with the requirements, specified in the Order Documents.

## Data migration

### If the Order Form states that data migration Services must be performed by the Supplier, the Supplier must:

#### perform the data migration Services described in the Order Form. Unless otherwise specified in the Order Form, the data migration Services must include:

##### implementation of all activities set out in the Order Form and the Data Migration Plan for the migration of the Customer Provided Data;

##### completion of all necessary pre-migration activities to ensure the smooth migration of Customer Provided Data in accordance with the Agreement, including this clause 7;

##### development of appropriate business contingency arrangements should the migration of the Customer Provided Data not be successful; and

##### testing and acceptance of the migrated data in accordance with the requirements specified in the Order Documents; and

#### prepare a Data Migration Plan for the Customer's approval by the relevant Date for Delivery with respect to how the Supplier will effectively, securely and efficiently carry out any data migration activities in accordance with the requirements of the Agreement (**Data Migration Plan**).

### The Data Migration Plan must include (unless otherwise specified in the Order Documents):

#### an assessment and definition of the:

##### existing Customer systems from which the Customer Provided Data is to be extracted; and

##### Customer’s data migration goals;

#### a data migration strategy that is appropriate for the Customer’s needs and covers all appropriate planning and timetabling issues associated with the provision of the Data Services including the:

##### identification of the Data Services to be performed;

##### staging and implementation of the Data Services; and

##### preparation/pre-migration activities to be performed;

#### a description of any data conversion proposed to be undertaken as part of the data migration strategy and of the activities required to be performed; and

#### such other details specified in the other Order Documents.

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

## Tools and Methodologies

### Where the Data Services are to be performed using software, software tools, object libraries, methodologies or other tools owned by the Supplier or any other party (**Tools and Methodologies**), the Supplier must, at the Customer's request, provide the Customer with an overview of the Tools and Methodologies.

### Where the Tools and Methodologies are required to perform the Data Services, or the Customer requires access to any of them after the completion of the Data Services, the Supplier must:

#### where the Supplier owns any Tools and Methodologies, provide the Customer with a licence to use those Tools and Methodologies on the same licence terms as specified in clause 17 (Intellectual Property) of the Agreement; and

#### where any Tools and Methodologies are owned by a third party, comply with clause 17.7 (Third party Intellectual Property Rights) of the Agreement in relation to those Tools and Methodologies.

# Other Professional Services

## Application

### This clause 8 applies where it is specified in the Order Form that the Supplier is to provide Professional Services.

## General

### The Supplier must provide the Professional Services in accordance with these Module Terms and the requirements set out in the Order Form.

### The Professional Services must be provided to meet the Specifications, standards and Dates for Delivery under the Agreement.

## Timeframe for provision

Where the Supplier is providing the Professional Services at the Site, the Professional Services will be provided during Business Hours or at such other times as specified in the other Order Documents or agreed by the Customer in writing.

# Managed Services

## Application

This clause 9 applies where it is specified in the Order Form that the Supplier will provide Managed Services.

## General

### The Supplier must provide the Managed Services in accordance with these Module Terms and the requirements set out in the other Order Documents.

### The Managed Services must be provided to meet the Specifications, standards and Dates for Delivery under the Agreement.

## Transition-In Services

### Without limiting clause 7 (Transition-In) of the Agreement, where the Order Form specifies that the Supplier will provide Transition-In Services, the Supplier must (unless otherwise specified in the Order Form):

#### perform due diligence to understand the Customer's goals, requirements and expectations with respect to the provision of the Managed Services; and

#### develop a Transition-In Plan that:

##### sets out the Supplier's understanding of the Customer’s requirements in relation to the Managed Services and the objectives to be met by the Supplier;

##### specifies the Customer Users who will be supported by the Managed Services;

##### specifies any assets or items that may need to be procured in connection with the provision of the Managed Services;

##### specifies any resources required (including any Customer Supplied Items or Customer assistance); and

##### includes such other matters as specified in the Order Documents.

### The due diligence and other Transition-In Services must be commenced without delay and completed by the date specified in the Order Documents or as otherwise agreed by the Customer in writing.

### If, after completing the due diligence and other Transition-In Services, the Supplier reasonably determines that any:

#### aspect of the Managed Services are different to that set out in the Order Documents; or

#### assumptions set out in the Order Documents are not true,

#### then the Supplier may provide the Customer with a Change Request to vary the scope of the Managed Services to the sole extent reasonably necessary to reflect the true extent and nature of the Managed Services. Any such Change Requests will be addressed in accordance with the Change Control Procedure under the Agreement.

## Procedures Manual

### Where specified in the Order Form, the Supplier must provide to the Customer for approval a procedures manual for the carrying out of the Managed Services (**Procedures Manual**). The Procedures Manual must be provided by the date specified in the Order Documents.

### The Procedures Manual must specify:

#### the governance processes, procedures and protocols for dealing with the Customer and any third parties;

#### the procedures and proposals for managing Security Incidents;

#### the procedures and protocols for identifying and managing risks;

#### the procedures and protocols to identify and rectify Defects or failures in the delivery of the Managed Services; and

#### such other details specified in the Order Form.

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

## Managed Third Party Contracts

### This clause 9.5 applies where it is specified in the Order Form that the Supplier will assume responsibility for the management and performance of any Managed Third Party Contracts.

### The Supplier must perform the Supplier's Activities with respect to each Managed Third Party Contract as described in this clause 9.5 and the other Order Documents or as otherwise agreed between the parties in writing.

### The Supplier must use its best efforts to obtain the novation of each Managed Third Party Contract by the date specified in the Order Documents or as otherwise agreed by the Customer in writing. If a Managed Third Party Contract cannot be novated by this date:

#### the Supplier must use its best efforts to procure the right to assume management responsibility on behalf of the Customer in respect of the Customer’s rights and obligations under the relevant Managed Third Party Contract and the Customer must provide all reasonable assistance to the Supplier in that regard; and

#### if the Supplier cannot procure the rights specified in clause 9.5(c)(i), the parties will consult and co-operate with each other in order to agree and implement appropriate workarounds or other alternative solutions to enable the Supplier to provide the Managed Services. Such workarounds or other alternative solutions may include, if agreed by the parties, the Supplier entering into an agreement directly with the relevant Managed Third Party Contract supplier.

### Unless and until a Managed Third Party Contract has been properly novated to the Supplier in accordance with the Agreement, the Supplier must not without the express written approval of the Customer:

#### vary, terminate, repudiate, extend or exercise any rights under the Managed Third Party Contracts;

#### waive or purport to waive any rights of the Customer under the Managed Third Party Contracts;

#### grant any consent or approval, or exercise any of the Customer's rights under the Managed Third Party Contracts; or

#### purport to act for, or on behalf of, the Customer or bind the Customer in any respect, whether at Law or in contract.

### The Supplier must immediately notify the Customer's Representative in writing of any actual, suspected or alleged:

#### breach;

#### Claim;

#### dispute; or

#### matter or circumstance that impacts the Customer's or Supplier's rights and remedies (as applicable),

#### under, or in connection with, any Managed Third Party Contract.

### The Supplier must, if requested by the Customer, provide all necessary support and assistance required by the Customer in relation to the investigation, resolution and management of any of the matters or circumstances specified in clause 9.5(e).

### Unless otherwise specified in the Payment Particulars, all costs associated with the management and novation of Managed Third Party Contracts form part of the Price for the provision of the Managed Services.

### The parties may specify an alternative approach in relation to the administration of Managed Third Party Contracts in the Order Form, in which case they will comply with that alternative approach.

## Assets

### This clause 9.6 applies where the Order Form specifies that a transfer of Assets is required to carry out the Managed Services.

### From the date specified in the Order Form (or at such other time as agreed by the Customer), title to the Assets will be transferred from the Customer to the Supplier to enable the Supplier to provide the Managed Services. Once the transfer occurs, risk in the transferred Assets passes to the Supplier and the Supplier will be fully responsible for the Assets, including their condition and ongoing maintenance.

### The Customer warrants that, upon title passing to the Supplier in accordance with clause 9.6(b), the Assets will pass to the Supplier free and clear of all liens, security interests, mortgages and other encumbrances.

## Transition-Out Services

Without limiting clause 31 (Transition-Out Services) of the Agreement, where the Order Form specifies that the Supplier will provide Transition-Out Services, the Supplier must (unless otherwise specified in the Order Form):

### assist the Customer to transition the Managed Services to a new service provider or to the Customer; and

### if requested by the Customer:

#### assist the Customer to obtain the novation or assignment of the Managed Third Party Contracts to a new service provider or to the Customer;

#### deal with any Assets that were used in the provision of the Managed Services in accordance with the Customer's reasonable requirements; and

#### grant or assist the Customer (or new service provider) to procure sufficient rights and licences to continue using assets, software or other Materials used in the provision of the Managed Services.

# Secondee Services

## General

### Clause 10 applies where it is specified in the Order Form that the Supplier will provide Secondee Services.

### Secondee Services are provided to meet the Customer’s needs, including to strengthen the Customer’s teams and to perform specialist roles for the Secondee Services Period.

### The Supplier’s Secondees must:

#### perform the role(s) and meet the capabilities specified in the Order Form and in any applicable MICTA; and

#### work at the direction of the Customer, unless otherwise set out in the Order Documents.

### The parties acknowledge and agree that the Secondee Services form part of the Supplier’s Activities. The Supplier remains responsible for ensuring that Secondee Services are carried out in accordance with the Agreement.

## Secondee Services

### Any persons nominated by the Supplier to provide, or who carry out, Secondee Services, must:

#### be permanent employees of the Supplier;

#### perform the Secondee Services at the premises or such other locations specified in the Order Form;

#### be high quality workers that are suitable and experienced for the role(s) and capabilities specified in the Order Form and any MICTA, and hold all necessary skills, licences, qualifications and accreditations that are necessary to perform such role(s) and to meet such capabilities (**Qualifications**); and

#### be lawfully entitled to provide the Secondee Services.

### The Supplier must:

#### promptly on the Customer’s request, submit to the Customer a current resume (including references) for any proposed Secondee, as well as such other additional information about the Secondee’s or proposed Secondee’s experience and capabilities as reasonably required by the Customer; and

#### if required by the Customer, permit the Customer to interview proposed Secondees to enable the Customer to form a view as to the person’s suitability.

### The Supplier must not engage any of its Personnel to provide Secondee Services until the person has been approved by the Customer in writing to be a Secondee. Secondees approved as at the Commencement Date are specified in the Order Form.

### The Supplier must:

#### for the Secondee Services Period, act as the liaison between Secondees and the Customer, including to arrange meetings and other communications; and

#### if required by the Customer, promptly meet with the Customer to discuss any performance issues related to its Secondees or the Secondee Services.

### The Supplier must require that all Secondees supplied to perform the Secondee Services:

#### comply with all applicable confidentiality, security and other requirements under the Agreement;

#### use the Secondee’s best efforts to promote the interests and welfare of the Customer;

#### comply with all applicable Policies, Codes and Standards and any directions of the Customer as to the nature and scope of the Secondee Services;

#### are, and remain, suitably trained and participate in any induction or on-boarding programs directed by the Customer;

#### execute, if specified in the Order Form or required by the Customer, a deed of confidentiality and/or privacy substantially in the form of Schedule 6 (Deed of Confidentiality and Privacy) or such other deed as required by the Customer;

#### comply with the Customer’s off-boarding procedures; and

#### on the expiry or termination of their engagement:

##### stop work (subject to any handover or off-boarding obligations);

##### securely and safely return all security passes, Customer Data and any Customer equipment (including laptops) that was provided for the Secondee’s use as part of the Secondee Services; and

##### participate in any handover or off-boarding activities as reasonably required by the Customer.

### The parties acknowledge and agree that:

#### Secondees are not employees, officers or agents of the Customer. The Supplier must ensure that neither it or its Personnel represents any Secondees as such; and

#### in accordance with clause 11.7 of the Agreement, the Supplier must comply with all employment-related Laws. The Supplier is solely responsible for all workers’ compensation and employment-related obligations relating to its Secondees.

### It is agreed between the parties that Customer approved Secondees are Nominated Personnel and must not be replaced other than in accordance with the Agreement.

### Where a Secondee is replaced in accordance with the Agreement, the Supplier must, at its sole cost, ensure a seamless and timely replacement with another member of the Supplier’s Personnel with equivalent skills and experience and that meets the requirements of the Agreement.

## Secondee Services Period

### Subject to clauses 10.3(b) and 10.3(c), Secondee Services must be provided for the Secondee Services Period and on the days and during the hours specified in the Order Form or as otherwise agreed between the parties in writing.

### Notwithstanding any other provision under the Agreement, the Customer may, at its sole discretion and for any reason, with 2 Business Days’ prior notice to the Supplier (or such other notice period as agreed between the parties) do any of the following:

#### increase or change the days or hours that the Supplier’s Personnel perform the Secondee Services up to the maximum number of hours per week (if any) specified in the Order Form; or

#### reduce the Secondee Services Period, the days or hours of the Secondee Services or terminate their supply in full,

#### subject to any limitations specified in the Order Form.

### The Customer may with written notice to the Supplier terminate the Secondee Services with immediate effect where:

#### the Secondee engages in any corrupt, fraudulent or unlawful activities;

#### the Customer determines that the Secondee does not meet the requirements of the Agreement or any MICTA; or

#### the Supplier or its Secondees breaches the requirements of this clause 10.

### Unless otherwise agreed between the parties in writing, any reduction or termination under clauses 10.3(b)(ii) or 10.3(c) will not affect any other Supplier’s Activities being provided under the Agreement.

### The Customer’s sole liability under clauses 10.3(b)(ii) and 10.3(c) will be to pay for Secondee Services that have been provided in accordance with the Agreement.

## Reporting

### The Supplier must, within 10 Business Days of a request by the Customer, prepare and provide a written or electronic report to the Customer that lists all active and prior Secondees engaged pursuant to this Agreement and the duration of their engagement.

### The report must include the following details:

#### each Secondee’s name, role, daily or other rates and start and end dates;

#### the cumulative spend for each Secondee; and

#### such other information as reasonably requested by the Customer from time to time.

### The Customer may share such reports with the Contract Authority.

## Price and invoicing

### Unless otherwise specified in the Order Documents, the Secondee Services may only be provided on a time and materials basis at the daily rates for the relevant role as specified in the Order Documents.

### Daily rates will be capped at 8 hours per day, regardless of any hours worked by Secondees in excess of these hours. The Supplier will have no entitlement to be paid for hours worked by Secondees in excess of this cap. Where daily rates apply and any Secondee works less than 8 hours per day, the Supplier must apply a pro rata adjustment to the next invoice in order to reflect the hours actually worked by the Secondee.

### Unless otherwise agreed by the Customer in writing, the Customer will have no liability for any other costs or expenses relating to the Secondee Services or incurred by Secondees other than as specified in clause 10.5(a).

### Without limiting the other invoicing requirements under the Agreement, all invoices for Secondee Services must (unless otherwise required by the Customer) include a breakdown of the hours and days that the Supplier’s Personnel have worked during the period to which the invoice relates, and if required by the Customer, must include such other information and supporting documentation relating to the Secondee Services (including, for example, the tasks Secondees worked on).

## Secondee warranties

In nominating or providing a Secondee, the Supplier represents and warrants that:

### it has undertaken all necessary background and reference checks of the Secondee (including as specified in the Order Form);

### it is the Supplier’s informed view (including having regard to the background checks) that the Secondee is a fit and proper person to provide the Secondee Services and will meet the requirements of the Agreement;

### the Secondee has the necessary experience to provide the Secondee Services and holds the Qualifications and capabilities to the requisite levels and requirements as defined in the Agreement and in any applicable MICTA; and

### it is not aware of any matter or circumstance relating to the Secondee, which may adversely impact the Secondee Services or bring the Customer into disrepute.

## Privacy consents

### The Supplier is solely responsible for obtaining all necessary consents, in accordance with the Privacy Laws, in connection with the reporting, sharing and use of its Secondees’ Personal Information as contemplated under the Agreement, including clause 10. In supplying Personal Information to the Customer, the Supplier warrants and represents that it has all necessary consents to do so.

## Indemnity

In addition to the other obligations under the Agreement, the Supplier indemnifies the Indemnified Entities against any Losses arising out of, or in connection with any:

### breach by the Supplier or its Personnel of this clause 10; and

### false or misleading warranties or representations made or communicated by the Supplier in relation to its Secondees.

PART D: GENERAL

# Training

## Training Services

### This clause 11 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):

#### installation 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 Services under this Module and that are required to ensure that the Services comply 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 12.1 in accordance with all applicable requirements and timeframes under the Agreement.

# Records

### The Supplier must keep and maintain full and accurate records of all Services provided under this Module in accordance with the Agreement and this clause 13.

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

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

#### a record of any Deliverables provided as part of the 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 Services;

#### any Delays associated with the provision of the 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 Services in accordance with the requirements of the Agreement;

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

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

### Without limiting the generality of the foregoing, where the Supplier provides any:

#### Development Services, the Supplier must keep records that adequately detail and describe all changes to the Software; and

#### Managed Services, the Supplier must keep records relating to all actions and tasks the Supplier has taken, and the requests or communications it has made, with respect to any Managed Third Party Contracts.

### The Supplier must, at its sole cost, provide copies of the records required to be maintained and kept under this clause 13 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 Services or associated Deliverables 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 Services or associated Deliverables by the Customer;

#### in relation to Support Services for Hardware or Other ICT Deliverables, the Customer not implementing any Mandatory Engineering Changes;

#### in relation to Development Services for Software, the Customer's combination, operation or use of the relevant Software 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 Software on the basis that it 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 Development Services and the associated Software;

#### damage caused by the operation of any Deliverables 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 Services or associated 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 14(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 14(a)(iv)A to 14(a)(iv)C or clauses 14(a)(vi)A to 14(a)(vi)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:

1. **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.
2. **Assets** means the physical assets and items specified in the Order Form (or as otherwise agreed between the parties in writing) which are to be transferred to the Supplier in accordance with clause 9.6.
3. **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.
4. **Data Migration Plan** has the meaning given to this term in clause 7.7(a)(ii).
5. **Data Services** means any data Services specified in the Order Form to be provided by the Supplier in respect of the Customer Provided Data.
6. **Design Specification** has the meaning given to this term in clause 5.3(a).
7. **Development Services** means the Software development Services as described in clause 5.
8. **Hardware** means the physical ICT equipment, including all components and parts, specified in the Order Form which is to be acquired or maintained under the Agreement (as the case may be) and any substituted equipment, components or parts.
9. **Install** means the installation and set-up of the Hardware in accordance with this Module, including the integration of the Hardware into the Customer Environment, and **Installation** has a corresponding meaning.
10. **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 Hardware for the purpose of enabling the Hardware to function as specified in the Order Form and Order Documents. Machine Code excludes the operating system and any Licensed Software that is provided pursuant to the Software Module under the Agreement.
11. **Managed Services** means the managed services as described in clause 9.
12. **Managed Third Party Contracts** means a contract, deed or agreement with a third party as specified in the Order Form (or such other third party contracts, deeds or agreements as agreed between the parties in writing).
13. **Mandatory Engineering Changes** has the meaning given to this term in clause 4.4(c).
14. **Module** means this document (including Annexure A), which is the Services Module (Non-Cloud) under the Agreement.
15. **Non-ICT Services** means Services that form part of the Supplier's Activities, but which do not comprise ICT Services or Deliverables.
16. **Other ICT Deliverables** means ICT Deliverables and components and parts other than:
	1. Licensed Software provided under the Software Module;
	2. Hardware; or
	3. Deliverables provided under the Cloud Module.
17. **Preventative Maintenance** means scheduled maintenance Services required to be performed by the Supplier in accordance with clause 4.3 to ensure that the Hardware and Other ICT Deliverables remain in working order in accordance with the Specifications and other requirements of the Agreement.
18. **Procedures Manual** has the meaning given to this term in clause 9.4(a).
19. **Professional Services** means the professional Services required to be provided by the Supplier as described in the Order Form.
20. **Qualifications** has the meaning given to this term in clause 10.2(a)(iii) and includes any other licences, qualifications or accreditations for specific Secondee roles as specified in the Order Form and any MICTA.
21. **Remedial Maintenance** means unscheduled maintenance Services required to be performed by the Supplier pursuant to clause 4.5 to restore the Hardware and Other ICT Deliverables to a condition allowing performance in accordance with the Specifications and other requirements of the Agreement.
22. **Secondee** means a member or members of the Supplier’s Personnel that may be seconded to the Customer pursuant to these Module Terms. A Secondee must be a permanent employee of the Supplier.
23. **Secondee Services** means Services and roles that are supplied to the Customer by the Supplier and performed by Secondees, as specified in the Order Form.
24. **Secondee Services Period** means the period for the provision of the Secondee Services as specified in the Order Form, or if nothing is specified in the Order Form, 12 months from the Commencement Date.
25. **Security Correction** has the meaning given to this term in clause 3.2(f).
26. **Services Period** has the meaning given to this term in clause 1.3.
27. **SI Plan** has the meaning given to this term in clause 6.3(a)(i).
28. **SI Specifications** has the meaning given to this term in clause 6.3(a)(ii).
29. **Software** means, in relation to this Module, the software specified in the Order Form that is subject to the Software Support Services and/or Development Services, and where applicable, includes the Software Solution.
30. **Software Solution** means the Software to be implemented, developed or created by the Supplier for the Customer as stated in the Order Form.
31. **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 Order Form.
32. **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.
33. **Support Services** means the support and maintenance Services to be provided by the Supplier in respect of the Supported Deliverables and as specified in the Order Form.
34. **Supported Deliverables** means the Software, Hardware and other Deliverables (as well as all associated components and parts) that are specified in the Order Form and in respect of which the Supplier will provide the Support Services.
35. **System** means the system specified in the Order Form (or as otherwise agreed by the parties in the SI Plan). The System comprises the software, hardware and other ICT infrastructure to be integrated with the Customer Environment.
36. **Systems Integration Services** means the Services for Systems integration specified in the Order Form or other Order Documents and which is to be provided by the Supplier.
37. **Tools and Methodologies** has the meaning given to this term in clause 7.8(a).
38. **Training Reports** has the meaning given to this term in clause 11.2(a).
	* 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.