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

**Core& Combined – Solution Requirements**

Part A (Common Requirements) and Part B (Category Specific Requirements)

### Signing pages

# Version: 14 December 2020

***Guidance notes:***

* ***This Agreement is for low risk procurement up to $1,000,000 (exclusive of GST). Refer to Core& Guidelines for further details.***
* ***This Agreement is a consolidated version, designed to be used where procurement involves more than one type of Solution Requirements.***

This is an Agreement for the procurement of:

|  |
| --- |
| *Add summary details: name of supplier and overview of Solution Requirements to be provided* |

to meet the following business need:

|  |
| --- |
| *Add business need if appropriate* |

**Selected categories:** This procurement relates to the following categories:

*Please select from the following categories:*

[As-A-Service](#As_A_Service)

[Professional Services](#Professional_Services)

[Licensed Software](#Licensed_Software)

[Hardware](#Hardware)

This agreement is made up of:

1. the core terms – version: 1 December (“**Core Terms**”)
2. the solution requirements specified in Part A (Common Requirements) and Part B (Category Specific Requirements) for each of the procurement categories selected above (“**Solution Requirements**”)
3. any documents attached to the Solution Requirements

(this “**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 12 (**Seller Terms**) of these Solution Requirements applies to the incorporation of any Seller Terms.

|  |
| --- |
| The “**Solution Requirements**” are made up of:   * 1. “**Solution Requirements – Part A (Common Requirements)**”: being those common requirements which apply to all of the selected categories identified on the Signing Page; and   2. “**Solution Requirements – Part B (Category Specific Requirements)**”: being those requirements which relate to each specific category of procurement. The selected categories for this Agreement are identified on the Signing Page. |

### Signing Pages (cont)

# 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: | Click or tap to enter a 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: | Click or tap to enter a date. |

### Solution Requirements – Part A (Common Requirements)

The following requirements apply to this procurement. They are the common requirements which apply to all of the selected categories identified on the Signing Page.

### 1. 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
* References to “**Solution Requirements**” are references to:
  + these **Solution Requirements – Part A (Common Requirements)**; and
  + the **Solution Requirements –** **Part B (Category Specific Requirements)**
* The detailed scope of this procurement is documented in the **Solution Requirements – Part B (Category Specific Requirements)**. The aggregate scope is referred to throughout this Part A as the “**Required Solution**”

### 2. Agreement Period

You will provide the Required Solution for the “**Agreement Period**”:

* commencing on the Commencement Date set out below:

|  |  |
| --- | --- |
| **Commencement Date**: | Click or tap to enter a date.  *Add Commencement Date* |

* and continuing until the termination or expiry of all of the **Solution Requirements – Part B** (**Category Specific Requirements**) and any disengagement services we ask you to perform.

If required by us, you must provide a disengagement services plan within 3 months of the Commencement Date, addressing:

|  |
| --- |
| *Add details or state “not applicable”* |

and after termination or expiry of the Agreement, you must provide the disengagement services in accordance with the disengagement services plan that we have accepted.

Details relating to the duration of the term for each individual category are set out below.

| **Category specific details relating to Agreement Period:**  *Tick the relevant categories and complete duration details for each relevant category:* | | |
| --- | --- | --- |
| ☐ As-A-Service | As-A-Service term: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| ☐ Professional Services | ☐ Option 1: | *Add term for Professional Services* |
| ☐ Option 2: | Until all obligations are completed under this Solution Requirements for Professional Services. |

|  |  |  |  |
| --- | --- | --- | --- |
| 1. ☐ Licensed Software | **Licensing Period:** | | |
| ☐ Option 1 Perpetual | 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”* |
| **Support and Maintenance Period:** | | |
| 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”* |
| ☐ Hardware | Warranty Services Period: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |

### 

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

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

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

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

### 5. Summary details of Fees payable under this Agreement

We will pay the following fees under this Agreement:

|  |  |
| --- | --- |
| **Category** | **Fees** *Insert total amount of fees payable over the Agreement Period according to category. Full details of how Fees are calculated for each category should be included in Solution Requirements Part B.* |
| [As-A-Service](#As_A_Service) | $ |
| [Professional Services](#Professional_Services) | $  *Indicate whether fees are fixed or capped at $ level according to Part B options* |
| [Licensed](#Professional_Services) Software | $ |
| [Hardware](#Professional_Services) | $ |
| **Agreement Total ex. GST** | **$** |
| **GST** | **$** |
| **Agreement Total incl. GST** | **$** |

### 5. Invoicing

You may invoice at the frequency specified below:

|  |
| --- |
| *Add invoicing frequency according to category if applicable* |

Invoices should be sent to the following contact details:

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

### 6. Subcontracting

To subcontract any significant part of the Agreement, you must first have our consent. The full names and roles of those approved subcontractors are specified below:

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

### 7. 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 according to relevant category if appropriate – or write “Not applicable”* |

### 8. Location of Buyer Data

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

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

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

Details of any such consents provided by us (and the relevant conditions on which those consents are granted) are set out below:

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

### 9. Managing Buyer data

You must ensure that all Buyer Data in your possession, or otherwise managed by you, is retained throughout the Agreement Period and managed in accordance with the following requirements:

|  |  |
| --- | --- |
| Encryption requirements:   * data at rest. * data in transit. | *Add requirements – or write “Not applicable”* |
| Requirements relating to the storage of Buyer Data: | *Add requirements – or write “Not applicable”* |
| Technical mechanisms and processes for enabling us to access / extract Buyer Data at any time: | *Add requirements – or write “Not applicable”* |
| Controls to be applied by you for managing access to our Buyer Data: | *Add requirements – or write “Not applicable”* |
| Technical arrangements for extracting and returning Buyer Data at the end of the Agreement Period: | *Add requirements – or write “Not applicable”* |
| Technical arrangements for destruction of Buyer Data to prevent reconstitution of the Buyer Data | *Add requirements – or write “Not applicable”* |

### 10. Relevant policies and standards

You must comply with the following policies and/or standards relevant to the Required Solution:

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

**ICT accessibility:** Where required by us, the Required Solution must meet Accessibility Standard AS EN 301 549.

|  |
| --- |
| *Specify which areas of the Accessibility Standard AS EN 301 549 are required – or write “Not applicable”* |

### 11. 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

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.* |

### 12. Seller Terms

Where you:

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

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

* they conflict with, or limit, the operation of the Core Terms or the Solution Requirements
* they attempt to vary or expand the scope of any contractual matters governed by the Core Terms or the 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

### 13. Add attachments if required

You may attach responses to the information requested in any part of the Solution Requirementswhere additional space is required to complete those details.

Where you add any Seller Terms, they will be subject to the terms set out in section 12 (**Seller Terms**).

Please identify each attachment below:

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

### Solution Requirements – Part B (Category Specific Requirements)

The attached requirements apply to each of the selected categories of procurement. The selected categories for this Agreement are identified on the Signing Page.

Part B – Solution Requirements for As-A-Service~~[include]~~

### Service description

You will provide the following “**As-A-Service Solution**” to us:

|  |
| --- |
| *Add service description. Refer to attachment or link if required* |

### Who can use the As-A-Service Solution

The following people, or group, can use the As-A-Service Solution:

|  |
| --- |
| *Add the scope of the group of users permitted to use the As-A-Service Solution. For example, this may be a specified number of users, an entire agency, or may be linked to pricing ranges* |

### Details of Fees for the As-A-Service Solution

The Fees for the As-A-Service Solution comprise:

|  |
| --- |
| *Include all relevant details of how fees are calculated excluding GST.* |

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

### Estimated volumes and spend assumptions.

We estimate our approximate spend below. This is solely for our own internal purposes to assist in assessing the fees payable on a consumption basis and is not in any way contractually binding.

You must tell us if you become aware that we are likely to exceed these estimates.

|  |
| --- |
| *Add estimated volumes and spend assumptions* |

### Intellectual property

You license us to use the As-A-Service Solution and any accompanying materials for the Agreement Period.

**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 As-A-Service Solution, the following alternative arrangements apply:

|  |
| --- |
| *Add alternative intellectual property arrangements for the As-A-Service Solution – or write “Not applicable”* |

### Availability hours

You must make the As-A-Service Solution available to us:

* in accordance with the following availability commitments:

|  |
| --- |
| *Add availability commitments for the As-A-Service Solution* |

* and in accordance with any other service levels specified below:

|  |
| --- |
| *Add service levels, and refer to attachment or link if required. As an example, relevant service levels may include: performance, security, no data loss, provisioning time, service restoration time* |

### Support

If the As-A-Service Solution fails to comply with the Agreement, you must fix the problem as soon as reasonably possible and in accordance with relevant service levels.

You must provide help desk services as follows:

|  |  |
| --- | --- |
| Help desk services: | *Add help desk services description* |
| Help desk hours: | *Add help desk hours* |
| Help desk contact details: | *Add help desk contact details* |

### Performance monitoring and reporting

You will provide the following performance monitoring and reporting:

|  |  |
| --- | --- |
| Reporting on performance of the As-A-Service Solution: | *Add reporting on performance requirements* |
| Technical arrangements for enabling our performance monitoring of the As-A-Service Solution at any time: | *Add technical arrangements for performance monitoring* |

### Locations

You must only perform work associated with the As-A-Service Solution - including development work, hosting, operations, support and maintenance, and any work performed via remote access - in Australia, and from the following locations approved by us outside Australia (if any):

|  |  |
| --- | --- |
| Locations for all components of your As-A-Service Solution, including production systems, which are outside Australia: | *Add locations for all components of your As-A-Service Solution that are outside Australia - otherwise write “Not applicable”* |
| Locations for work associated with the As-A-Service Solution that is performed outside Australia | *Add locations where work may be performed outside Australia, and the type of work that is approved to be performed outside Australia – otherwise write “Not applicable”* |

### Changes to the As-A-Service Solution

We expect you will make changes to the As-A-Service Solution to ensure it keeps pace with technological advancements and improvements in methods of delivery.

This does not entitle us to new products or functionality which are not contemplated under this Agreement and are separately priced.

Regardless of any such changes, you must ensure the As-A-Service Solution continues to meet all of the requirements under this Agreement.

**Part B -** **Solution Requirements for Professional Services**

### Scope of the Professional Services

You agree to provide the following “**Professional Services**”:

|  |
| --- |
| *Add Professional Services – refer to attachment or link if required* |

### Requirements

You agree to provide Professional Services in accordance with the following requirements:

|  |
| --- |
| *Add requirements for the delivery of Professional Services, including an attachment or link if required – or write “Not applicable”. Requirements documents could include specifications, methodology documentation, technical architecture documentation, designs, proposal requirements, instructions, recommendations and other supporting documentation.* |

### Deliverables

As part of your Professional Services, you will provide these Deliverables:

|  |  |
| --- | --- |
| **Deliverables** | **Description** |
| *Add Deliverables* | *Add description of Deliverables* |

### Milestones

In performing the Professional Services, you agree to the following “**Milestones**” – together with the relevant “**Acceptance Criteria**” and “**Milestone Dates**” set out below:

|  |  |  |
| --- | --- | --- |
| **Milestones.** | **Acceptance Criteria.** | **Milestone Dates.** |
| *Add Milestones* | *Add Acceptance Criteria* | *Add Milestone Dates* |

To achieve a Milestone, the relevant Acceptance Criteria must be met by the specified Milestone Date, and confirmed by us in writing.

### Project schedule

Project schedule requirements: (choose option 1, 2 or 3 and mark with an X).

|  |  |  |
| --- | --- | --- |
|  | Option 1: | No project schedule is required. |
|  | Option 2: | You will meet the project schedule attached to this Agreement. |
|  | Option 3: | You will provide a draft project schedule for delivery of the Professional Services by: |
| Click or tap to enter a date.  *Add due date for delivery of draft project schedule* |
| The draft project schedule should align with the Milestones.  We may give feedback on your draft project schedule.  Following any amendments and our approval of the final version, you must meet that project schedule. |

Any changes to the project schedule will not change the Milestones. You must meet the Milestones unless they are changed through a variation to this Agreement.

### Out of scope

The following are excluded from the scope of Professional Services:

|  |
| --- |
| *Add out of scope items if required – or write “Not applicable”* |

### Personnel

The Professional Services will be performed by:

|  |  |  |
| --- | --- | --- |
| **Name.** | **Role.** | **Required skills and expertise.** |
| *Add names* | *Add roles* | *Add required skills and expertise* |

### Governance

You agree to participate in our governance, including attending meetings and providing status updates, on request.

### Reporting

You agree to provide the following reporting to us.

|  |
| --- |
| *Add reporting requirements, for example, monthly status updates, defect reports, governance packs – or write “Not applicable”* |

### Buyer dependencies

We understand that you are relying on us for the items listed below (“**Dependencies**”):

|  |
| --- |
| *Add Dependencies if any – otherwise write “Not applicable”* |

If we are unable to provide or perform any of these Dependencies, you are excused from performing the Agreement to the extent that you are impeded by the particular Dependency.

### Fees options

Select an option below: (choose option 1 or 2 and mark with an X).

|  |  |  |
| --- | --- | --- |
|  | Option 1: | Fixed fees - see further details below under Option 1. |
|  | Option 2: | Capped time and materials - see further details below under Option 2. |

If requested, you must provide documentation to show how your fee was calculated.

We will pay the fees specified below. We will also pay GST in accordance with applicable law.

#### Option 1: Fixed fees

For Option 1, fees are payable as follows:

* the fixed fees below are the maximum amount payable by us in connection with the Professional Services and the deliverables specified in section 3 (“**Deliverables**”) of these Solution Requirements for Professional Services
* the fixed fees include all taxes, except GST.
* the fixed fees include all expenses, unless listed in section 13 (“**Expenses**”) of these Solution Requirements for Professional Services.
* where you have calculated the fixed fees based on certain assumptions, they must be stated below.
* you can invoice us for the fixed fees after we give you written confirmation the applicable Milestone has been achieved.

**Calculation of fixed fees payable**:

|  |  |
| --- | --- |
| **Milestone which triggers payment.** | **Milestone payment amount.** |
| *Add Milestone if Option 1 is selected – otherwise write “not applicable”* | *Add Milestone payment amount if Option 1 is selected – otherwise write “not applicable”* |

**Assumptions made in calculating fixed fees**:

|  |
| --- |
| *Add assumptions (if any) if Option 1 is selected – otherwise write “Not applicable”* |

#### Option 2: Capped times and materials

Where fees are payable on a capped time and materials basis, you must:

* specify Estimated Fees, based on your “**Professional Services Rate Card**” and any assumptionsset out below (**Estimated Fees**)
* use your best endeavours to keep within the Estimated Fees (or any updated estimates approved by us).
* only charge for time spent in providing the Professional Services and Deliverables and any other tasks requested by us.
* not charge for time spent in account or relationship management and related functions.
* submit a time summary to us for each of the personnel charged on a weekly basis, or as otherwise agreed.
* notify us promptly if your Estimated Fees may be exceeded, or if you become aware any of your assumptions set out below are incorrect.
* invoice us following the end of each month the Professional Services and Deliverables are provided.

We will not pay any fees that exceed your Estimated Fees, except where we approve updates to your Estimated Fees in writing.

**Estimated Fees payable**: (complete if Option 2 is selected).

|  |
| --- |
| *(complete if option 2 is selected)* |

**Assumptions made in calculating Estimated Fees**: (complete if Option 2 is selected).

|  |
| --- |
| *Add assumptions (if any) if Option 2 is selected – otherwise write “Not applicable”* |

### Professional Services Rate Card

Please provide your **Professional Services Rate** **Card** below:

|  |
| --- |
| *Add rate card* |

### Expenses

You can only claim expenses:

* within the scope set out below.
* with our prior written approval.
* in accordance with our expense policy.
* without any profit margin or mark-up.
* if you provide copies of all receipts.

|  |
| --- |
| *Add the scope of expenses – otherwise write “Not applicable”* |

### Intellectual property rights

**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 Professional Services, the following alternative arrangements apply:

* all Deliverables you develop and provide to us are part of our Confidential Information and will be owned by us from the time they are created.
* where any Deliverables incorporate your Existing Materials, you license us to use those Existing Materials on a perpetual, non-exclusive, royalty-free basis as part of the Deliverables.

**Exceptions**

As an exception, we will not own the following Deliverables, but you license us to use them for any purpose other than commercial exploitation:

|  |
| --- |
| *Add details of any Deliverables owned by the Seller and licensed to the Buyer – or write “Not applicable”* |

**Part B -** **Solution Requirements for Licensed Software**

These Solution Requirements for Licensed Software are made up of:

* Division 1: Software
* Division 2: Support & Maintenance Services
* Division 3: Fees and general terms

### Division 1: 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.]* |

### 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.

### Division 2: 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 Division 2 of these Solution Requirements for Licensed Software.

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.

#### 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: |  |

### Division 3: Fees and General Terms

### Details of Fees

The Fees for Software and Support & Maintenance Services are calculated 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.

Part B - Solution Requirements for Hardware

These Solution Requirements for Hardware are made up of:

* Division 1: Hardware
* Division 2: Warranty Services
* Division 3: Fees and general terms

### Division 1: Hardware

### Scope of Hardware

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

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

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

### Technical Requirements

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

|  |
| --- |
| *Add base configuration* |
| *Add other Technical Requirements* |

### Delivery

You must deliver the Hardware:

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

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

On delivery, you must provide to us:

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

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

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

### Risk and title

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

Risk in the Hardware will transfer to us on delivery of the Hardware in accordance with our delivery instructions set out in section 3 (“**Delivery**”) of these Solution Requirements for Hardware.

### Hardware and replacement parts

The Hardware and any replacement parts must:

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

### Software Components

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

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

We will not:

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

except as permitted under this Agreement or under applicable law.

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

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

**New Materials**

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

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

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

### Right to reject Hardware

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

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

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

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

### Division 2: Warranty Services

### Warranty Services

“**Warranty Services**” comprise the services set out in this Division 2 of these Solution Requirements for Hardware

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

### Scope of Warranty Services

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

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

#### Commissioning services

You must provide the commissioning services selected by us below:

*Select relevant options and mark with an X.*

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

#### Basic maintenance

You must:

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

#### Help desk

You must provide the following help desk support:

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

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

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

#### Relocation

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

#### Other Services

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

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

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

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

### Access to our premises

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

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

### Service Levels

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

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

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

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

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

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

#### Exceptions

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

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

### Escalation process for Warranty Services

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

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

### Division 3: Fees and general terms

### Calculation of Fees

Fees for the Hardware and the Warranty Services **are calculated** as follows:

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

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

|  |
| --- |
| All delivery costs are included in the fees set out above, except where additional delivery fees are set out below:  *[Add delivery fees (if any) – or state “not applicable”]* |