

**The Supplier must do the following:**

**1. Services.**

- provide the Services in the Customer Order in accordance with the Contract Specifications and with due skill and care to a professional standard and any other standard specified in the Customer Order;

**2. Deliverables.**

- provide the Deliverables (including any reports and Documentation) in accordance with the Customer Order;
- promptly notify the Customer if unable to provide all or part of the Deliverables by the relevant delivery date;
- provide to the Customer a Project Implementation and Payment Plan (PIPP) for approval and inclusion in this Contract.

**3. Products.**

- deliver the Products in the Customer Order to the Customer free from all encumbrances and must meet any standard specified in Customer Order.
- grant to the Customer a non-exclusive licence to use any Licensed Software on the Customer's equipment on the terms set out in the Class of Licence and this Contract.

**4. Invoice.**

- submit a correctly rendered invoice to the Customer, that:
  - (a) is correctly addressed and calculated in accordance with the Contract;
  - (b) relates only to the Deliverables that have been accepted by the Customer;
  - (c) is for an amount which, together with all previously correctly rendered invoices, does not exceed the Contract Price;
  - (d) includes any purchase order number, the name and phone number of the Contract Manager and identification if the Supplier is a small business; and
  - (e) is a valid invoice in accordance with the GST Act.

**5. Insurance.**

- hold and maintain each of the following insurance;
  - (a) public liability insurance with an indemnity of at least \$5 million in respect of each claim for the period of contract;
  - (b) product liability insurance with an indemnity of at least \$5 million for the total aggregate liability for all claims for the period of contract;
  - (c) workers' compensation insurance in accordance with applicable legislation; and
  - (d) professional indemnity insurance of \$1 million for all claims made by the Customer during the contract period and for at least four years after the end of the Customer Contract. and
- if requested, provide a certificate of currency or evidence of adequate self insurance for each of the above insurances to the satisfaction of the Customer.

**6. Indemnity and Liability.**

- indemnify the Customer, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:
  - (a) a default or any unlawful, malicious or negligent act or omission on the Supplier's part, its officers, employees, agents or subcontractors; or
  - (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's Intellectual Property Rights or moral rights, that are enforceable in Australia; subject to:
    - Liability being reduced to the extent that any unlawful, malicious or negligent act or omission of the Customer or their officers, employees or contractors contributed to the loss, damage, cost, compensation or expense and;
    - Supplier and Customer using reasonable efforts to mitigate any loss.
- To the extent permitted by law, liability is capped at the greater of \$150,000 or two times the Contract Price, except where that liability arises from
  - (a) bodily injury (including sickness and death);
  - (b) loss of, or damage to, tangible property;
  - (c) infringement of a third party's intellectual property rights; or
  - (d) breach of the Contractor's obligations of confidentiality, for which there is no financial cap on the Supplier's liability.

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- In calculating the cap on liability, any amounts payable as performance rebates, liquidated damages or refunds are included in determining whether the limitation on liability has been reached;
- Neither party is liable to the other for any Consequential Loss (including under an indemnity).

### **7. Approvals.**

- at its own cost, obtain and maintain any licences and/or other approvals required for the lawful provision of the Deliverables.

### **8. Supplier Warranties**

- warrants that:
  - the Services will during the Warranty Period be performed in accordance with the requirements of the Contract Specifications set out in the Customer Order and in any user documentation, in all material respects and with due care and skill;
  - all information provided to the Customer is correct;
  - the Deliverables provided under this Contract are compatible with and will work with the Customer's existing systems and processes as set out in the Contract Specification;
  - it owns all Intellectual Property Rights necessary to grant this licence and will procure any necessary consent in relation to moral rights as defined in the Copyright Act 1968 (Cth), to provide the Deliverables, Services and material to the Customer and to allow the Customer to use the Deliverables for their usual purpose and in the manner contemplated in this Contract;
  - the provision of the Deliverables in accordance with the Contract will not infringe any third party's Intellectual Property Rights.
- ensure that the Customer receives all relevant third party warranties in respect of the Deliverables. If the Supplier is a manufacturer, the Supplier must provide to the Customer all standard manufacturer's warranties in respect of the Deliverables the Supplier has manufactured

### **9. Security and Safety.**

- comply with any security and safety requirements as specified in the Customer Order or of which the Supplier is or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

### **10. Specified Personnel.**

- ensure that the Specified Personnel set out in the Customer Order provide the Deliverables and are not replaced without the prior written consent of the Customer. At the Customer's request, and at no additional cost to the Customer, the Supplier must promptly replace any Specified Personnel that the Customer reasonably considers should be replaced with personnel acceptable to the Customer.

### **11. Subcontracting.**

- make available to the Customer the details of all subcontractors engaged to provide the Deliverables under the Contract. Subcontracting the whole or part of the Supplier's obligations under the Contract will not relieve the Supplier from any obligations under the Contract.
- ensure that any subcontract imposes on the subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

### **12. Performance by Supplier**

- allow the Customer to conduct service and performance reviews of its performance of the Contract.
- take responsibility for the acts and omissions of its employees, agents and subcontractors as if they were its own acts and omissions
- promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract.

### **13. Assignment.**

- not assign any of their rights under the Contract without the prior written consent of the Customer.

### **14. Privacy**

- collect, use, access, retain and disclose personal information in connection with the Contract in accordance with the requirements of the Privacy and Personal Information Protection Act 1998 (NSW).

**The Customer must do the following:**

**15. Payment.**

- pay the invoiced amount within 30 days after receiving a correctly rendered invoice.
- pay simple interest at a rate calculated in accordance with Section 22 of the *Taxation Administration Act (NSW) 1996* on any unpaid amount which is not in dispute, calculated daily from the day after payment was due up to the day that payment is made, where:
  - the Customer is a NSW Government Body
  - the Customer fails to pay when payment was due, that is, within 30 days of receipt of a correctly rendered invoice;
  - the Supplier is a Small Business identified as such on the correctly rendered invoice or statement and provided any verifying documentation requested;
  - the amount of interest payable exceeds \$20.00...
- NOTE - payment is payment on account only and is not an admission of liability or evidence the obligations under the Contract have been completed satisfactorily.

**16. Customer Warranties.**

- warrants that it will supply any customer supplied item in accordance with the requirements stated in the Customer Order Form and that to the best of its knowledge and belief, it has the necessary Intellectual Property Rights and has procured the necessary consents in relation to moral rights as defined in the Copyright Act 1968 (Cth) to grant to the Supplier rights to use any customer supplied item for the purpose of performing the Supplier's obligations under this Contract.

**General:**

**17. Price.**

- The Contract Price is the maximum price payable for the Deliverables and is exclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas.
- The Customer is not required to pay any amount in excess of the Contract Price including, without limitation, the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.

**18. Confidential Information.**

- The Supplier must not disclose to any person, other than the Customer, any Confidential Information relating to the Contract or the Deliverables, without the prior written approval of the Customer.
- The Supplier must take all reasonable steps to ensure that all personnel performing the Services do not disclose to any person the Customer's Confidential Information or use the Confidential Information other than for the purposes of performing the Services under this Contract.
- This obligation will not be breached where the Supplier is required by law or a Stock Exchange to disclose the relevant information.
- At any time, the Customer may require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to non-disclosure of the Customer's Confidential Information in the form acceptable to the Customer.
- The Customer must not disclose any of the Supplier's Confidential Information to any person without prior written approval, unless disclosure of this information is required by law or by Parliament.
- The Customer is not bound to keep any information in connection with the Contract confidential except for the Supplier's Confidential Information. The Customer will not be in breach of any confidentiality agreement where they are required by Parliament or by law to disclose the information.

**19. Acceptance.**

- Where Acceptance Testing of a Deliverable is specified in the Customer Order, the acceptance criteria, acceptance test data, time table for acceptance testing and acceptance, the party responsible for the supply of any equipment needed for acceptance testing and other details of acceptance testing must be agreed in the Customer Order or within 15 Business Days prior to the date when the Customer requires Acceptance Testing to commence.
- The Customer may accept or reject the relevant Deliverables within 2 Business Days after delivery of the Deliverables to the delivery location or within such other period agreed by the Customer and the Supplier in writing. If the Customer does not notify the Supplier of acceptance or rejection within the 2 Business Day period (or agreed period), the Customer will be taken to have accepted the Deliverables on the expiry of the 2 Business Day period (or other agreed period). The Customer may reject the Deliverables where the

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Deliverables do not comply with the requirements of the Contract. If the Customer rejects the Deliverables, the Customer may:

- (a) require the Supplier to repair or modify the Deliverables within a reasonable period determined by the Customer, at its sole cost, so that the Deliverables meet the requirements of this Contract; or
  - (b) require the Supplier to provide, at its sole cost, replacement Deliverables which meet the requirements of the Contract within a reasonable period determined by the Customer; or
  - (c) terminate the Contract in accordance with the termination clause.
- The Supplier must, at its own cost, promptly remove any rejected Deliverables from the Customer's premises. Replacement, repaired or modified Deliverables are subject to acceptance under this clause. The Supplier will refund all payments related to the rejected Deliverables unless replacement or repaired Deliverables are accepted by the Customer.

### **20. Title and Risk.**

- Title to the Deliverables transfers to the Customer upon its acceptance by the Customer.
- The risk of any loss or damage to the Deliverables remains with the Supplier until their delivery to the Customer at the delivery location.

### **21. Intellectual Property.**

- The Supplier retains Intellectual Property Rights in any Existing Material of theirs. The Customer retains Intellectual Property Rights in any Existing Material of the Customer.
- All Intellectual Property Rights in any New Material will belong to the Supplier upon its creation unless otherwise specified in the Customer Order.
- The Supplier grants to the Customer a non-exclusive, irrevocable, perpetual, worldwide, fee-free licence (including a right to sublicense) transferrable licence to use, modify, adapt and publish any New Material the Supplier owns and the Deliverables and any adaptation of the New Material or Deliverables, for any purpose other than commercial exploitation.
- The Customer grants to the Supplier and its contractors, a non-exclusive non transferrable licence to use any customer supplied item to the extent necessary to perform its obligations under the Contract.

### **22. Termination by Customer.**

- The Customer may terminate the Contract in whole or in part, by providing to the Supplier Notice in writing, if:
  - (a) the Supplier does not deliver all of the Deliverables to the delivery location by the relevant delivery date;
  - (b) the Customer rejects any of the Deliverables in accordance with the Acceptance clause;
  - (c) the Supplier breaches the Contract and the breach is not capable of remedy;
  - (d) the Supplier does not remedy a breach of the Contract which is capable of remedy within the period specified by the Customer in a notice of default issued to the Supplier; or
  - (e) the Supplier is unable to pay all its debts when they become due, or if incorporated –have a liquidator, administrator or equivalent appointment under the Corporations Act 2001 (Cth) appointed to it; or if an individual –become bankrupt or enter into an arrangement under Part IX or Part X of the Bankruptcy Act 1966 (Cth).

### **23. Termination or Reduction in Scope for Convenience by Customer.**

- The Customer may in its absolute discretion at any time terminate the Contract, in whole or in part, by notifying the Supplier in writing. If the Customer issues such a notice, the Supplier must cease all work in accordance with the notice; comply with any directions given by the Customer; and mitigate all loss, costs (including the costs of compliance with any directions) and expenses in connection with the termination.
- Where the Contract is terminated under this clause, the Customer will be liable for payments to the Supplier only for Deliverables accepted before the effective date of termination (to a maximum of the Contract Price less any payments already made), and any unavoidable reasonable costs incurred by the Supplier that are directly attributable to the termination, if these amounts are substantiated to the satisfaction of the Customer.
- The Supplier will be entitled to profits for the proportion of the Deliverables accepted before the effective date of termination but will not be entitled to anticipated profit on any remaining part of the Contract that is terminated.

### **24. Termination by the Supplier.**

- The Supplier may terminate the Contract by providing the Customer with Notice in Writing if the Customer has committed a Fundamental Breach of this Contract and the Customer has not rectified that Fundamental Breach within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Supplier specifying the details of the breach.

## 25. Dispute Resolution.

- For any dispute arising under this Contract:
  - (a) both Contract Managers will try in good faith to settle the dispute by negotiation;
  - (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a notice setting out the details of the dispute;
  - (c) within five Business Days, each Contract Manager will nominate a senior representative not having prior direct involvement in the dispute;
  - (d) the senior representatives will try in good faith to settle the dispute by negotiation; and
  - (e) failing settlement within a further 10 Business Days, the parties will be required to commence alternative dispute resolution through the Office of the NSW Small Business Commissioner.
  - (f) the dispute should not be subject to proceedings before a court until the Small Business Commissioner has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute. The Commissioner's certificate will be structured to inform the Court whether the parties participated in the dispute process, if a party did not participate or if the matter was only partly resolved through the process. The Customer and the Supplier will each bear their own costs for dispute resolution. Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue performance under the Contract.
- The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

## 26. Waiver.

- If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

## 27. Variation.

- No agreement or understanding varying or extending the Contract, including in particular the scope of the Deliverables, the cost, the schedule of timing or change to the PIPP, is legally binding upon either party unless in writing (includes an exchange of emails confirming the agreed variation).

## 28. Notices.

- Any notice or communication under the Contract will be effective if it is in writing, from one Contract Manager and delivered to the other Contract Manager at the postal address, or email address or facsimile number set out in this Contract.

## 29. Survival.

- Clauses 5 (Insurance), 6 (Indemnity and Liability), 19 (Intellectual Property) and 16 (Confidential Information) survive termination or expiry of the Contract.

## 30. Applicable Law.

- The laws of New South Wales apply to the Contract.

## 31. Entire Contract.

- The Contract represents the parties' entire agreement in relation to the subject matter of the Contract and excludes any prior representations, communications, contracts, statements and understandings, whether oral or in writing which are superseded and of no effect.

## 32. Definitions.

**"Acceptance Testing"** means any acceptance test that the Deliverable is required to undergo in accordance with agreed criteria between the Supplier and the Customer.

**"Actual Acceptance Date"** means the date the Deliverable is accepted or deemed accepted by the Customer. If there are no Acceptance Tests specified in Customer Order for the particular Deliverable, the actual acceptance date will occur 2 Business Days following the delivery of the Deliverable (or where a Deliverable is to be downloaded from the internet, 2 Business Days from the day that the Deliverable is first made available to the Customer) unless the Customer notifies the Supplier within the 2 Business Day period that the Deliverable is rejected. If the Deliverable is required to undergo Acceptance Tests, then the actual acceptance date will occur on the date the Customer issues a certificate of acceptance or at the end of the last day of the 3 Business Days period from the end of the Acceptance Tests, which ever date occurs first, unless the Customer notifies the Supplier within the 3 Business Days period from the end of the Acceptance Tests that the Deliverable is rejected or conditionally accepted.

**"Business Days"** means any day that is not Saturday, Sunday or a public holiday in New South Wales.

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**“Class of Licence** means specific rights that are granted by the Supplier to the Customer to use the Licensed Software that are stated in the Customer Order, and may include the Licence period, number and type of permitted users, number, type or capacity of any hardware on which Licensed Software may be used, or other attribute which defines the Customer’s right to use the Licensed Software.

**“Confidential Information”** means information that is by its nature confidential; or is communicated by the disclosing party to the confidant as confidential; or the confidant knows or ought to know is confidential but excludes any information which the confidant can establish was in the public domain, unless it came into the public domain due to a breach of confidentiality by the confidant or another person, independently developed by the confidant or in the possession of the confidant without breach of confidentiality by the confidant or other person.

**“Consequential Loss”** means any loss recoverable at law: (a) other than a loss, damage or expense that would be suffered or incurred by any person in a similar situation to the person suffering or incurring the loss, damage or expense; or (b) which is a loss of profits, loss of revenue, loss of business opportunities, loss of anticipated savings and damage to goodwill, loss of data or the value of any equipment; (c) and any cost or expense incurred in connection with either (a) or (b).

**“Contract”** means the legally binding agreement between the Customer and the Supplier for the provision by the Supplier of Services, Products or Deliverables as set out in the Customer Order under these general terms and conditions.

**“Contract Price”** means the price inclusive of GST, payable in Australian dollars, by a Customer for the Service, Product or Deliverable under this Contract.

**“Contract Manager”** means the Customer’s authorised manager of this Contract and its authorised manager of this Contract.

**“Contract Specification”** means all of the technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable to be provided by the Supplier under the Contract as specified in the Customer Order and if no specifications are specified in the Customer Order, the User Documentation that is provided with the Deliverable.

**“Customer”** means the person or body corporate specified in the Customer Order that enters into the Contract with the Supplier, but does not include the Customer’s personnel.

**“Customer Order”** means the order placed by the Customer for the provision of Services, Products or a Deliverable from the Supplier and forms part of the Contract.

**“Deliverable”** means any Product, Service or output from any Service that is required to be provided to the Customer under the Contract.

**“Escrow Agreement”** means an agreement under which an independent third party receives the source code or object code of certain software from the Supplier for delivery to the Customer upon the fulfilment of certain pre-specified conditions.

**“Existing Material”** means the Licensed Software or any material that is developed prior to the commencement date of this Contract, or developed independently of the Contract, and in both cases is incorporated into a Deliverable under this Contract.

**“Fundamental Breach”** means a breach of the Contract by the Customer which prevents the Supplier from carrying out its obligations under this Contract.

**“Intellectual Property Rights”** means all intellectual property rights including copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or other protected rights, existing worldwide; and any licence, consent, application or right, to use or grant the use of, or apply for the registration of any of the rights referred to above, but does not include the right to keep confidential information confidential, moral rights as defined in the Copyright Act 1968 (Cth), business names, company names or domain names.

**“Licensed Software”** means the standard off the shelf software provided by the Supplier to the Customer and includes any updates or new releases of that software that may be provided to the Customer from time to time.

**“New Material”** means any material that is newly created by or on behalf of the Supplier during the performance of its obligations under this Contract, incorporated into a Deliverable and delivered to the Customer in accordance with the

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requirements of the Contract, except for any material that is Existing Material belonging to the Customer or to a third party or any adaptation, translation or derivative of that Existing Material.

**“Notice in Writing”** means a notice in writing (but not by email) authorised by the Supplier or notice in writing authorised by the Customer.

**“Product”** means hardware and Licensed Software only.

**“Project Implementation and Payment Plan (PIPP)”** means the plan regarding the implementation of the project and associated payment arrangements.

**“Service”** means anything provided that is not a Product under this Contract, being one or more of the ICT services set out in Schedule 1 as may be updated from time to time.

**“Small Business”** means an enterprise that employs or contracts with an enterprise that employs less than the full time equivalent of 20 persons on the day that the Contract is signed. If the enterprise forms part of a group, this test is applied to the group as a whole.

**“Specified Personnel”** means key personnel who are required to provide the Services, Products or Deliverables under this Contract and are specified in the Customer Order.

**“User Documentation”** means its standard off the shelf documents that describe the features and functions of a Product or Service and excludes any training materials.

**“Warranty Period”** means in relation to hardware, 365 days from the Actual Acceptance Date; in relation to Licensed Software, 90 days from the Actual Acceptance Date and in relation to Services where there is an Acceptance Test process, 30 days from the Actual Acceptance Date.

## SCHEDULE 1

***“Service” means anything provided that is not a Product including but not limited to Development Services, Software Support Services, Contractor Services, Professional Services, Training Services and includes the following service categories: analysis and statistics, asset-materials management, business intelligence, collaboration, communication, content management, customer initiated assistance, customer preferences, customer relationship management, data management, development and integration, document management, documentation and training, financial management, forms management, human capital-workforce management, human resources, knowledge discovery, knowledge management, maintenance and support, management of processes, organisational management, records management, reporting, search, security management, site cabling, supply chain management, systems management, testing services, visualisation, enterprise resource planning systems implementation and managed systems and information and asset managed systems implantation and managed services.***