

**NSW EDUCATION STANDARDS AUTHORITY AND
PEARSON AUSTRALIA GROUP**

NAPLAN SERVICES

EXECUTED as a deed

SIGNED, SEALED AND DELIVERED by the signatory for and on behalf of the State of New South Wales by its NSW Education Standards Authority but not so as to incur any personal liability in the presence of:

.....
Signature of signatory
Signature of witness
.....
Name of signatory (block letters)
.....
Name of witness (block letters)
.....
Date

EXECUTED by Pearson Australia Group Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

.....
Signature of company secretary
Signature of director
.....
Name of director (block letters)
.....
Name of company secretary (block letters)
.....
.....
.....

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CONTRACT DETAILS

Contract Commencement Date (Clause C 2)	6 January 2020
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Customer Representative (Clause C 8) and notices (Clause C 22)	Name	Ruth Mahon
	Position	Head of NAPLAN
	Address	Level 4, 117 Clarence st, Sydney, NSW 2000
	Email	Ruth.mahon@nesa.nsw.edu.au

Supplier Representative (Clause C 8) and notices (Clause C 22)	Name	Lawrence Anderson
	Position	Vice President, Assessment Services
	Address	Unit 4, 100 Station St, Nunawading, VIC 3131
	Email	Lawrence.anderson@pearson.com

Reports (Clause C 8.2)	Frequency of reports: To be confirmed at the kick off meeting
	Details in a report: To be confirmed at the kick off meeting

Review meetings (Clause C 8.3)	Face-to-face kick off meeting in Sydney in January/February 2020
	Weekly update meetings via teleconference from January to September
	Face-to-face close out meeting in Sydney in November 2020
	Ad hoc meetings, as requested

Customer Liability Cap (Clause C 17.1) for each Customer Contract	\$10 million
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Supplier Liability Cap (Clause C 17.2) for each Customer Contract	\$20 Million
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Insurance Policies (Clause C 16)

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
Broadform Public and Products	<p>[\$10 million] for any single occurrence and unlimited in the aggregate as to the number of occurrences</p> <p>The total aggregate liability during any one period of insurance for all claims arising out of the Supplier's Products shall not exceed [\$20 million*]</p>	<input checked="" type="checkbox"/>
Workers Compensation	As required by the laws of each relevant State and Territory	<input checked="" type="checkbox"/>
Other		<input type="checkbox"/>

Customer Terms

C 1. Customer Contract

C 1.1 Parts of Customer Contract

The Customer Contract consists of:

- (a) the Special Conditions if any, specified in the Order;
- (b) these Customer Terms;
- (c) the other parts of the Order;
- (d) the Supply Schedule for the Goods and Services;
- (e) the other Schedules; and
- (f) the Dictionary.

If there is an inconsistency between the parts referred to in paragraphs (a) to (f) above, then the provision in the part higher in the list prevails to the extent of the inconsistency.

C 2. Term

C 2.1 Initial Term of Customer Contract

The Customer Contract commences on the Customer Contract Commencement Date and continues until expiry of the Customer Contract Initial Term unless terminated earlier in accordance with the Customer Contract.

C 2.2 Extended Term of Customer Contract

The Customer may extend this Customer Contract for the additional period or periods specified in the Supply Schedule, by giving the Supplier at least 30 days notice before expiry of the Initial Term or the then current Extended Term, as relevant.

C 3. Goods

C 3.1 General

The Supplier must supply the Goods (and perform the incidental services relating to those Goods) to the Customer in accordance with the Customer Contract to meet the Specifications.

C 3.2 Tested Goods

The Supplier must ensure that the Goods are identical to the Tested Goods, if any.

C 3.3 Packaging

The Supplier must ensure that all Goods are packaged in accordance with the Specifications.

C 3.4 Delivery

- (a) The Supplier must deliver the Goods and Documentation to the Delivery Address in accordance with the Delivery Timeframe and the Service Levels.
- (b) If requested in the Order, before handing over the Goods and Documentation, the Supplier must:
 - (i) sight the staff identification tag;
 - (ii) obtain the signature; and
 - (iii) record the full name and staff number,of the Customer Representative that takes receipt of the Goods and Documentation and keep such record for the Customer Contract Term ("**Proof of Delivery**"). If requested by the Customer, the Supplier must provide to the Customer the relevant Proof of Delivery.

C 3.5 Errors and Defects

If Goods delivered to the Customer under the Customer Contract:

- (a) do not conform with this clause C 3(Goods); or
- (b) fail to comply with a representation or warranty specified in clause C 15.1 (Representations and warranties in respect of Goods and Services),

then the Customer, irrespective of whether it has paid for the Goods, may reject the Goods by giving written notice to the Supplier ("**Rejection Notice**").

C 3.6 Rejection Notice

If a Rejection Notice is issued by the Customer in respect of any Goods, in addition to any other rights the Customer may have under the Customer Contract or by law, the Supplier must, at the Customer's option:

- (a) immediately refund any moneys paid in advance for the Goods (if applicable); or
- (b) immediately replace the Goods at the Suppliers cost.

C 3.7 Warranty repairs

If the Goods are or become defective in any way during the Warranty Period, then, at the Customer's absolute discretion:

- (a) the Supplier must immediately replace or repair the Goods at the Supplier's cost; or
- (b) the Customer may return the Goods to the Supplier and may terminate the Customer Contract in respect of identical Goods which have not yet been delivered. The Supplier must fully refund any amounts paid for the Goods that the Customer does not retain.

C 3.8 Facilities to repair

The Supplier agrees to ensure that facilities for the repair of the Goods are available at the Repair Location for the Warranty Period.

C 3.9 Title and risk

The parties acknowledge and agree that:

- (a) Goods becomes the property of the Customer on delivery of the Goods to the Delivery Address;
- (b) the risk of loss or damage to the Goods passes to the Customer on delivery of the Goods to the Delivery Address in accordance with this clause C 3 (Goods); and
- (c) if any Goods are re-taken by the Supplier, the risk of loss or damage to the Goods passes back to the Supplier upon removal from the Customer's premises.

C 4. Services

C 4.1 General

The Supplier must provide the Services to the Customer to a standard that meets or exceeds any applicable Services Levels.

C 4.2 Incidental Services

The Supplier must provide (without additional charge) any incidental or related services not specifically described in the Customer Contract which are required for the proper performance or use of the Services.

C 4.3 Capability Levels

The Supplier must ensure it maintains sufficient capability and resources in relation to Services to meet its obligations under the Customer Contract.

C 4.4 Access to Sites

- (a) In accessing a Site the Supplier must comply with the Customer's policies and procedures applicable to access to that Site.
- (b) The Supplier acknowledges that it will not have possession, lease or licence to any Site.

- (c) At all reasonable times the Supplier must permit the Customer (including its authorised employees and agents) to have access to the Services and to the premises of the Supplier and its Subcontractors. This may include for the purpose of surveillance, audit, inspection, testing, certification and recording of information in any form or for any other reasonable purpose required by the Customer in connection with the Customer Contract.
- (d) Subject to compliance by the Supplier with clause C 4.4(a), the Customer must give the Supplier sufficient access to the Site to allow the Supplier to perform the Services.

C 4.5 Secrecy and Security

The Supplier must comply, and must ensure that its Personnel comply, with the secrecy and security requirements of the Customer as set out in the Special Conditions, or as notified by the Customer to the Supplier from time to time.

C 4.6 Warranty rectification

If the result achieved by the Services is or becomes defective in any way during the Warranty Period then the Supplier must immediately re-perform the Service or remedy the defect at the Supplier's cost.

C 5. Other Supplier Obligations

C 5.1 Transition in

The Supplier must act in good faith, and do all things necessary, to assume the provision of the Goods and Services as required by the Customer Contract, including ensuring that it complies with the requirements of, and dates specified in, any agreed transition in plan.

C 5.2 Service Levels and Service Credits

If the Supplier fails to meet any Service Level, then the Supplier must at no additional cost to the Customer promptly:

- (a) at the Customer's option, pay to or credit the Customer, the Service Credits;
- (b) if requested by the Customer, in the case of Services re-perform those Services which gave rise to the failure to meet the Service Level;
- (c) use all reasonable endeavours to correct the issue which caused the failure to meet the Service Level;
- (d) arrange all additional resources reasonably necessary to deliver the Goods or perform the Services in accordance with the Service Level as soon as practicable; and
- (e) if requested by the Customer, provide a detailed report on the steps taken by the Supplier to prevent similar future non-compliance with the Service Levels.

C 5.3 Conflict of interest

If the Supplier finds itself in a position of conflict of interest in relation to the provision of the Goods or Services to the Customer, then the Supplier must immediately notify the Customer of this conflict of interest and the Supplier must immediately resolve the conflict of interest to the Customer's reasonable satisfaction.

C 5.4 Corruption or Unethical Conduct

Suppliers must comply with the requirements of the Customer Business Ethics Statement, which is available at the link below.

If a Supplier, or any of its officers, employees, agents or sub-contractors is found to have:

- a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Principal, Customer or the NSW Government in connection with the Customer Contract;
- b) committed corrupt conduct in the meaning of the Independent Commission Against Corruption Act 1988;
- c) a record or alleged record of unethical behaviour; or not complied with the requirements of the Customer's Business Ethics Statement available at: <http://www.services.nsw.gov.au/about-us/business-ethics>

- d) improper conflicts of interest by the Supplier,
 - i. the Customer reserves the right to terminate the Customer Contract.
 - ii. The Customer may, in its discretion, invite the Supplier to provide written comments within a specified time before the Customer terminates the Customer Contract on the basis of this clause.

C 5.5 Standard of performance

The Supplier must perform its obligations under the Customer Contract:

- (a) in accordance with best industry practice;
- (b) with all due care, skill and diligence expected of a professional service supplier and in a proper and workmanlike manner; and
- (c) in a cost effective manner consistent with the required level of quality and performance.

C 5.6 Licences and Approvals

The Supplier must obtain at its own cost all licences, approvals and consents necessary to perform the Services and meets its obligations under the Customer Contract.

C 5.7 Compliance with the NSW Government: Small and Medium Enterprise Policy Framework

To the extent that the Small and Medium Enterprise Policy Framework applies to the provision of goods or services under the Customer Contract, the Supplier must comply with the requirements of the Small and Medium Enterprise Policy Framework as follows:

- (a) Depending on the threshold value of the procurement to be made via competitive quotes, the Supplier acknowledges that it may be required to complete a SME Participation Plan (SMEPP);
- (b) Supplier acknowledges that, where a SMEPP is required in competitive quotes, reliance will be placed on SMEPP in the evaluation of the quotation submitted by the Supplier and in the Customer entering into any agreement with the Supplier;
- (c) Supplier agrees to comply with the requirements and commitments provided for in any future SMEPP tendered by the Supplier and to take all steps reasonably required to enable the Customer to monitor compliance by the Supplier with any future SMEPP; and
- (d) Supplier and the Customer agree that the Customer may establish mechanisms to monitor compliance by the Supplier with the requirements and its commitments under any future SMEPP. The Supplier and the Customer agree that non-compliance by the Supplier with any future SMEPP commitments will entitle the Customer to terminate the Customer Contract for cause. Further, the Supplier agrees that the Customer may take into consideration non-compliance by the Supplier with any future tendered SMEPP when evaluating tenders submitted by the Supplier in the future for other agreements.

C 5.8 Comply with requirements

The Supplier must:

- (a) ensure that the Goods and Services comply with all relevant laws that relate to or otherwise apply to the Goods and Services (as applicable);
- (b) comply with all laws, codes and Standards relating to its supply of Goods and Services, including the Building Code of Australia (as applicable);
- (c) comply with all Customer standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with the Customer Contract) but including the applicable Government-wide procurement policies at [url]; and
- (d) comply with all other reasonable requirements and directions of the Customer in relation to the Goods and Services, including that the Supplier must reasonably co-operate with other Customer suppliers.

C 5.9 Project Management

Day to day liaison on all issues, including performance of obligations relating to the Specifications, will be through the Customer's Project Manager and the Supplier's Project Manager.

C 5.10 Co-operation

The Customer and the Supplier must do all they reasonably can to co-operate in all matters relating to this Customer Contract, but their rights and responsibilities under this Customer Contract remain unchanged unless the parties agree in writing to vary them.

C 5.11 Duty not to hinder performance

Each party must do all it reasonably can to avoid hindering the performance of the other under this Customer Contract.

C 5.12 Compliance with the NSW Government: Small and Medium Enterprise Policy Framework

To the extent that the Small and Medium Enterprise Policy Framework applies to the provision of goods or services under the Customer Contract, the Supplier must comply with the requirements of the Small and Medium Enterprise Policy Framework as follows:

- (a) Depending on the threshold value of the procurement to be made via competitive quotes, the Supplier acknowledges that it may be required to complete a SME Participation Plan (SMEPP);
- (b) Supplier acknowledges that, where a SMEPP is required in competitive quotes, reliance will be placed on SMEPP in the evaluation of the quotation submitted by the Supplier and in the Customer entering into any agreement with the Supplier;
- (c) Supplier agrees to comply with the requirements and commitments provided for in any future SMEPP tendered by the Supplier and to take all steps reasonably required to enable the Customer to monitor compliance by the Supplier with any future SMEPP; and
- (d) Supplier and the Customer agree that the Customer may establish mechanisms to monitor compliance by the Supplier with the requirements and its commitments under any future SMEPP. The Supplier and the Customer agree that non-compliance by the Supplier with any future SMEPP commitments will entitle the Customer to terminate the Customer Contract for cause. Further, the Supplier agrees that the Customer may take into consideration non-compliance by the Supplier with any future tendered SMEPP when evaluating tenders submitted by the Supplier in the future for other agreements.

C 6. Change control

C 6.1 Change request

Either party may request a change to:

- (a) the scope, packaging or description of any Goods or Services; or
- (b) the requirements of a Supply Schedule;

(each a “**Change**”) by issuing a notice in writing to the other party.

C 6.2 Change request by the Customer

If a Change is requested by the Customer, the Supplier must provide to the Customer within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause C 6.5 (Requirements for Change Proposal).

C 6.3 Change request by the Supplier

If the Change is requested by the Supplier, the Supplier must include a Change Proposal with the request for Change or provide the Change Proposal at such later date as the parties may otherwise agree.

C 6.4 Assistance from the Customer

Where the Supplier requires information from the Customer in order to properly prepare a Change Proposal, the Customer will provide all such information reasonably requested within a reasonable period from the date of the request.

C 6.5 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change; and

- (b) specify all changes to the relevant Contract Price, the relevant timeframes and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes.

Any adjustment to the Contract Price must be based on the Supplier's actual direct costs as a result of the Change, including a reasonable profit allowance.

C 6.6 Acceptance or rejection of a Change Proposal

The Customer may accept or reject a Change Proposal at any time within 20 Business Days of receiving the Change Proposal. Where the Customer accepts a Change Proposal, the parties will execute a Change Notice on those terms and the Customer Contract will be varied accordingly, with effect from the date of execution of the Change Notice.

The Supplier can only reject any Change Request from the Customer if it can demonstrate to the Customer's satisfaction that the proposed change would adversely affect the provision of the Deliverables or that it is not technically feasible to implement. If the Customer disputes the Supplier's refusal under this clause, the dispute will be resolved in accordance with clause 23.

C 6.7 Costs adjustment

On each anniversary of the Customer Contract Commencement Date, the Supplier may seek an adjustment to the Contract Price.

C 7. Confidentiality and privacy

C 7.1 Confidentiality

- (a) Each party must keep the other party's Confidential Information confidential and not use it other than for the purpose of exercising its rights and performing its obligations under this Customer Contract.
- (b) Each party must establish and maintain reasonable measures to safeguard the other party's Confidential Information from unauthorised use or access. Each party must notify the other party immediately on becoming aware of any suspected or actual unauthorised use or disclosure of the other party's Confidential Information.
- (c) A party may disclose the other party's Confidential Information to any of its officers, employees, agents, contractors and legal, financial and other professional advisers to the extent necessary to enable it to exercise its rights and perform its obligations under this Customer Contract. A party who makes a disclosure under this clause must first ensure that the person is bound by confidentiality obligations no less restrictive as the party's obligations in this Customer Contract.
- (d) A party may disclose the other party's Confidential Information to the extent it is required by any applicable Laws or government policy.
- (e) No piece or body of information will be regarded as in the public domain merely because it contains information in the public domain or is covered by a general disclosure which is in the public domain.

C 7.2 Privacy

- (a) If the Supplier provides data services (being services relating to the collection, processing, disclosure or use of personal information or that provide for access to such information), the Supplier acknowledges that it is a 'public sector agency' within the meaning of section 3 of the *Privacy and Personal Information Protection Act 1988* (NSW) (**the PPIP Act**). The Supplier agrees it will comply with the PPIP Act including in respect of the provision of Deliverables under this Customer Contract:
 - (i) to use, access, retain or disclose personal information obtained during the course of providing the Deliverables under the Customer Contract only for the purpose for which the personal information was acquired;
 - (ii) not to do any act or engage in any practice that would breach the Information Protection Principles in the PPIP Act (**IPPs**), or which if done or engaged in by the Customer, would be a breach of that IPP;
 - (iii) to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the IPPs as if it were the Customer carrying out and discharging those obligations;

- (iv) to notify the individuals whose personal information the Supplier holds, that complaints about acts or practices of the Supplier can be investigated by the Privacy Commissioner;
 - (v) to comply with all reasonable directions of the Customer in relation to the care and protection of personal information held in connection with the Customer Contract and take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
 - (vi) to immediately notify the Customer if the Supplier becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Supplier or any subcontractor;
 - (vii) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause.
- (b) The Supplier must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Customer Contract contains provisions to ensure that the subcontractor has the same obligations as the Supplier has under this clause.

C 7.3 Customer Data

- (a) Customer Data is and will remain the property of the Customer at all times, including after completion of the Customer Contract. Except as required by law, the Supplier must:
- (i) not use Customer Data for any purpose other than directly in relation to the performance of its obligations under this Customer Contract;
 - (ii) not, and must ensure that its Personnel will not, sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Customer Data;
 - (iii) not make any Customer Data available to a third party other than a subcontractor approved by the Customer and then only to the extent necessary to enable the approved subcontractor to perform its part of the Supplier's obligations under this Customer Contract; and
 - (iv) other than to the extent necessary to enable the Supplier to perform its obligations under this Customer Contract, not remove or transfer Customer Data to any third party without obtaining the prior approval of the Customer.
- (b) The Supplier must establish and maintain safeguards against the destruction, loss or alteration of any Customer Data in the possession or control of the Supplier that:
- (i) are consistent with and no less rigorous than those maintained by the Customer to secure that data; and
 - (ii) comply with all applicable Laws and any procedures specified by the Customer concerning the Customer's data security.
- (c) The Supplier must return Customer Data to the Customer immediately on termination or expiration of this Customer Contract or on request by the Customer at any time.
- (d) The Supplier must:
- (i) comply with all data security requirements in respect of access to Customer Data as notified to it in writing from time to time;
 - (ii) prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to Customer Data; and
 - (iii) notify the Customer immediately and comply with all directions of the Customer if the Supplier becomes aware of the contravention of any of Customer Data security requirement.

C 7.4 Provision of Information to Government Agencies

The Customer can make available to any Government Agency any information about the Supplier, including any information provided by the Supplier to the Customer and any information relating to the Supplier's performance under this Customer Contract, to the Supplier's financial position.

The Supplier acknowledges that the Customer's provision of the Supplier's information to any Government Agency under this clause is privileged under Section 30 of the *Defamation Act 2005* (NSW)

The Supplier releases and indemnifies the Customer, the State of New South Wales and the Customer's Personnel from any and all loss, liability, damages, and expenses (including legal fees) suffered or incurred by any of them to the extent such loss, liability, damage and expense is suffered or incurred, as a result of disclosure of any of the Supplier's information by the Customer to any other Government Agency in accordance with this clause where such information is false or misleading

C 7.5 No disclosure of the terms of the Customer Contract

Subject to clause C 7.6 (Disclosure of details of Customer Contracts with the private sector), except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of the Customer Contract to any person other than its Representatives on a confidential basis.

C 7.6 Disclosure of details of Customer Contracts with the private sector

The Supplier acknowledges that the Customer may be required to publish certain information concerning the Customer Contract in accordance with ss 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW). If the Supplier reasonably believes that any part of the Customer Contract contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise the Customer in writing, identifying the provisions and providing reasons so that the Customer may consider seeking to exempt those provisions from publication.

C 7.7 Publicity

The Supplier may only make press or other announcements or releases about the Customer Contract and the transactions related to it:

- (a) with the express, written approval of the Customer; or
- (b) as required to be made by law or the rules of a stock exchange provided that the Supplier gives the Customer as much prior notice as is reasonably practicable and the opportunity to review and comment on the form and text of the disclosure before the disclosure is made.

C 7.8 Compliance with privacy requirements

The Supplier must:

- (a) comply with the Customer's privacy policies (and each specific privacy policy of the Customer in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by the Customer or by third parties) as notified in writing to the Supplier from time to time as if it were bound by that policy;
- (b) comply with the *Privacy Act 1988* (Cwlth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- (c) comply with all directions by the Customer:
 - (i) relating to the means by which the Customer complies with the *Privacy and Personal Information Protection Act 1998* (NSW), the Customer's privacy policies, and all other applicable laws, codes and privacy policies; and
 - (ii) co-operate with the Customer in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

C 7.9 Provide information

On request by the Customer, the Supplier will promptly provide all reasonable assistance to enable the Customer to comply with its obligations under the Customer Contract and at law, including providing details of any person (for example, a related body corporate or any other private sector entity in which the Supplier has an interest) that:

- (a) will be involved in performing any of the Supplier's obligations under the Customer Contract; or
- (b) will receive a benefit under the Customer Contract.

This clause C 7 survives the termination of the Customer Contract for any reason whatsoever.

C 8. Representatives, reporting and audits

C 8.1 Responsibilities

The Customer Representative and the Supplier Representative will be responsible for the co-ordination and management between the parties of the Customer Contract, including ensuring the performance by the parties of their respective roles and responsibilities.

C 8.2 Reports

The Supplier must provide to the Customer the reports with the content and in the frequency and form (electronic or physical) set out in the Order.

C 8.3 Review meetings

The Supplier Representative must attend meetings with the Customer Representative at a place and time to be notified to the Supplier by the Customer on the frequency set out in the Order to:

- (a) review the performance of the Supplier in relation to the Customer Contract and the Contract Price incurred by the Customer up to that date, including any faults in the Goods or provision of any of the Services over the previous review period and any actions undertaken by the Supplier to resolve the relevant faults;
- (b) discuss any other issues in relation to the Goods, the Services or the Customer Contract.

C 8.4 Additional reports and review meetings

The Customer may request additional reports and review meetings to those required to be provided under clauses C 8.2 and C 8.3 (as set out in the Order). The Supplier will provide these additional reports and review meetings at no additional cost to the Customer.

C 8.5 Records and inspection

The Supplier must, and must ensure all Subcontractors:

- (a) keep and maintain all necessary Records during the Customer Contract Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by the Customer, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit the Customer to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with the Customer Contract; and
- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

C 8.6 Annual audit

The Customer may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with the Customer Contract.

C 8.7 Costs of audit

The auditors' costs incurred by the Customer in the audit under clause C 8.6 (Annual audit) will be paid by the Customer. However, where the auditor objectively determines that the performance by the Supplier falls below the Service Levels or identifies breaches of the Customer Contract by the Supplier, all the costs of the Customer (including third party auditor fees) in respect of that audit will be paid by the Supplier.

C 8.8 Costs

Unless expressly provided otherwise in this clause C 8 (Representatives, reporting and audits), the Customer and the Supplier will each pay their own costs and expenses in connection with this clause C 8 (Representatives, reporting and audits).

C 9. Contract Price, invoices and payments

C 9.1 Contract Price and invoicing

Subject to this clause C 9 (Contract Price, Invoices and payments), in consideration of the Supplier supplying the Goods and performing the Services, the Customer will pay to the Supplier the

Contract Price. The Supplier is not entitled to recover any charge or expenses additional to the Contract Price for the supply of Goods, the performance of the Services, the provision of any benefit or the performance of any acts, even if required to do so under the Customer Contract, unless the Supply Schedule provides otherwise.

C 9.2 Payment of amounts due to or in respect of employees

The Customer may but is not obliged to (unless otherwise required by law) pay any amounts owing by the Supplier to or in respect of an employee of the Supplier who has carried out work in connection with the Customer Contract provided that:

- (a) the time for payment has passed;
- (b) the Supplier has not given the Customer a completed Contractor Statement in the form attached in respect of the period for which the amounts are owed; and
- (c) the Customer first gives the Supplier not less than 5 Business Days' notice that it intends to make the payment.

Without limiting any rights the Customer may have under section 127 of the *Industrial Relations Act 1996* (NSW), the Supplier must credit or pay the amount to the Customer as required by clause C 9.8 (Amounts due to the Customer) at the Customer's option.

C 9.3 Payment of invoices

The Customer is not required to pay any amount to the Supplier unless it has received a correctly rendered invoice for that amount. Unless the Supply Schedule specifies otherwise, the Customer must pay each correctly rendered invoice within 30 days after receipt of that invoice.

C 9.4 Interest

Where payment is not made within the period specified in clause C 9.3, the Customer must pay simple interest on the unpaid amount calculated daily from the day after payment was due up to and including the day that payment is made, where interest exceeds A\$20. The interest rate is determined under section 22 of the *Taxation Administration Act 1996*. The appropriate interest rate is available from the NSW Office of State Revenue website at www.osr.nsw.gov.au/taxes/other/taa/rates/.

C 9.5 Invoice Timing

The Supplier will issue an invoice for the Contract Price in accordance with the Invoice Timing or if there is no Invoice Timing established for the relevant Goods or Services, then:

- (a) in respect of Goods, on delivery of all Goods under that Customer Contract; and
- (b) in respect of Services, on completion of all Services under that Customer Contract, unless otherwise agreed in writing by the Customer.

C 9.6 Correctly rendered invoice

For the purposes of the Customer Contract, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice;
- (b) the Supplier is entitled to issue the invoice under C 9.5 (Invoice Timing);
- (c) the amount claimed in the invoice is correctly calculated under that Customer Contract;
- (d) the invoice includes the Customer purchase order number, cost centre number and general ledger code and is addressed to the Customer Representative and set out in a manner that identifies the Customer Contract, the Goods and/or Services which the invoice covers and itemises each amount claimed, to a level of detail satisfactory to the Customer acting reasonably;
- (e) the invoice is accompanied by documents that adequately demonstrate to the Customer the Goods supplied, the Services that were performed and the basis on which the amounts are claimed; and
- (f) the invoice is accompanied by a completed Contractor Statement in the form attached in respect of the period to which the invoice relates.

C 9.7 Disputed invoices

Where the Customer considers that an invoice is not correctly rendered the Customer will issue to the Supplier within 10 Business Days after receipt of the invoice a notice setting out the reasons and identifying any amounts which are in dispute. The Supplier must then cancel that invoice and reissue the invoice for the undisputed amount.

C 9.8 Amounts due to the Customer

Each amount payable by the Supplier to the Customer under an indemnity, warranty, reimbursement, rebate or refund obligation, or default event under the Customer Contract is a debt due and payable to the Customer on demand. Any demand must be accompanied by any relevant verifying documentation and, if the amount payable is a taxable supply must be a Tax Invoice. At the Customer's option the Supplier must pay or credit the amount to the Customer, within 30 days after issue of the demand or in accordance with the time otherwise set out in the Customer Contract.

C 9.9 Payment does not affect other rights or obligations

Payment of money under clause C 9.1 (Contract Price and invoicing) is not evidence:

- (a) that the Customer accepts any Goods or Services under the Customer Contract;
- (b) of any waiver by or estoppel against the Customer in relation to any right or action which the Customer may have at any time against the Supplier;
- (c) that the Supplier has carried out its obligations under the Customer Contract; or
- (d) of the value of any of the Goods or Services.

C 9.10 Set-off

A Customer may set off any amount owing by the Customer to the Supplier against any amount due for payment by the Supplier to the Customer under the Customer Contract.

C 10. Taxes and GST

C 10.1 Taxes

The Supplier is responsible for all Taxes arising from or relating to the Customer Contract, and must pay Taxes which are imposed on the Supplier arising from or relating to the Customer Contract, except for any income tax or capital gains tax payable by the Customer.

C 10.2 GST

The parties agree that:

- (a) unless expressly stated otherwise, all amounts payable by the Customer to the Supplier under the Customer Contract are inclusive of GST;
- (b) if a supply under the Customer Contract is subject to GST, and the consideration payable or to be provided for the supply is not inclusive of GST, then the party receiving the supply must pay to the party making the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate;
- (c) the additional amount is payable at the same time as the consideration for the supply is payable;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount; and
- (e) if a party is entitled to be reimbursed or indemnified under the Customer Contract, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

C 10.3 Withholding tax

If a law requires the Customer to deduct an amount in respect of Taxes from a payment under the Customer Contract, then:

- (a) the Customer agrees to deduct the amount for the Taxes; and

- (b) the Customer agrees to pay an amount equal to the amount deducted to the relevant Government Agency as required by applicable law and give the original receipts to the Supplier.

C 11. Supplier Personnel

C 11.1 Supplier Personnel

The Supplier must ensure that the Supplier Personnel are suitably qualified, experienced and competent for their role in providing the Goods and Services.

C 11.2 Removal of Supplier Personnel

The Supplier must promptly remove and replace any particular Supplier Personnel as reasonably requested by the Customer. The parties acknowledge that it is reasonable for the Customer to request the removal or replacement of a Supplier Personnel if there has been any breach of the Customer Contract by that Supplier Personnel.

C 11.3 Information about Supplier Personnel

If requested to do so by the Customer, the Supplier must provide to the Customer:

- (a) a list of any of the Supplier Personnel;
- (b) accurate information about the identity, qualifications, job history and character of each of the Supplier Personnel; and
- (c) completion of any reference checks undertaken

C 12. Time of the Essence

The Supplier acknowledges that time is of the essence in completing any obligations under the Customer Contract in relation to the time to complete Milestones, or where the due date or time of their performance has been specified in the Specifications.

C 13. Intellectual Property Rights

C 13.1 Existing Intellectual Property Rights

All Intellectual Property Rights of the parties existing before the date of the Customer Contract will be retained by the relevant party.

C 13.2 New Intellectual Property Rights

The Supplier assigns or will procure the assignment to the Customer, on creation:

- (a) Intellectual Property Rights in all modifications made to the Customer IP by the Supplier or its Subcontractors; and
- (b) if specified in the Order, all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services.

C 13.3 Supplier Licence

The Supplier grants to the Customer a, perpetual, royalty-free, non-exclusive, irrevocable licence:

- (a) to Use the Supplier IP (including all Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services that are not assigned to the Customer) to the extent necessary for the Customer to receive the full use and benefit of the Goods and Services; and
- (b) sub-licence any of the rights granted under clause C 13.3(a) to any person, but only in relation to the use or receiving benefits of the Goods or Services.

C 13.4 Customer Licence

The Customer grants to the Supplier, and to the extent necessary any relevant Subcontractor, for the Customer Contract Term, a royalty free, non-exclusive, non-transferable licence to Use the Customer IP only to the extent necessary to provide the Goods and Services.

C 13.5 Confidentiality

Nothing in clause C 13.3 (Supplier Licence) and C 13.4 (Customer Licence) removes or limits the obligations of confidentiality under clause C 7 (Confidentiality and privacy).

C 13.6 Know-how use

Subject to clause C 7 (Confidentiality and privacy) and clause C 13.1 (Existing Intellectual Property Rights), each of the Customer, the Supplier and any Subcontractor will be free to use its general knowledge, skills and experience and any ideas, concepts, know how, methodologies and techniques related to the scope of the Goods, Services or the Customer Contract.

C 13.7 Indemnity

The Supplier must (either directly itself or by procuring Subcontractors to do so):

- (a) at the Customer's request and sole option:
 - (i) defend at no cost to the Customer, all Infringement Claims; or
 - (ii) provide, at no cost to the Customer, all reasonable assistance required by the Customer to defend any Infringement Claim;
- (b) indemnify the Customer against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that the Customer may sustain or incur as a result of an Infringement Claim; and
- (c) satisfy any settlement of or judgement given in an Infringement Claim.

C 13.8 Other remedies

If, as a result of any Infringement Claim, the Customer is prevented from using the Goods or the results of the Services, the Supplier must, at the Customer's option and at the Supplier's cost:

- (a) promptly procure for the Customer the right to use the Goods or the results of the Services (as applicable) on reasonable commercial terms as contemplated under the Customer Contract free of any claim or liability for infringement;
- (b) promptly procure for the Customer replacement goods or materials which comply with the relevant Specifications; or
- (c) promptly modify the Goods or materials so that they cease to infringe those rights (while still complying with the applicable Specifications).

C 14. Sub-contracting

C 14.1 Subcontracting

The Supplier must not sub-contract a material part of its obligations under the Customer Contract without the prior written approval of the Customer. The Customer may give or withhold its approval in its absolute discretion and may impose conditions on its approval.

C 14.2 Responsibility for Subcontractors

The Supplier is responsible for all acts and omissions of Subcontractors as if they were those of the Supplier and the Supplier indemnifies the Customer against all costs, expenses and liabilities incurred by the Customer in connection with the acts or omissions of any Subcontractors.

C 15. Warranties and representations

C 15.1 Representations and warranties in respect of Goods and Services

The Supplier represents and warrants that:

- (a) the Goods:
 - (i) will meet the Specifications and all other applicable requirements under the Customer Contract;
 - (ii) be of good quality, fit for purpose and free from defects and omissions in material, design or workmanship;

- (iii) upon title passing to the Customer, will be unused and free from any charge or encumbrance; and
- (iv) will comply with all laws that are related in any way to the Goods;
- (b) the Services:
 - (i) will be performed with due care and skill and in accordance with industry best practice;
 - (ii) will meet or exceed the Service Levels;
 - (iii) will be used with materials that are:
 - (A) fit for the purpose for which they are supplied and used; and
 - (B) will comply with any applicable specifications or requirements;
- (c) to the best of its knowledge, no conflict of interest of the Supplier, its employees, agents or Subcontractors exists or is likely to arise in the performance of its obligations under the Customer Contract;
- (d) the Supplier and the Supplier Personnel will not infringe the Intellectual Property rights or Moral Rights of any person in providing the Services or otherwise performing the Customer Contract;
- (e) the Goods or Services and their use will not:
 - (i) result in a breach of any law or mandatory codes;
 - (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
 - (iii) constitute a misuse of any person's confidential information; or
 - (iv) result in the Supplier or any Related Bodies Corporate of the Supplier breaching any obligation that it owes to any person.

C 15.2 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause C 15 (Warranties and representations), the Supplier must give written notice to the Customer detailing that matter and its likely impact on the Supplier's ability to comply with this clause C 15 (Warranties and representations).

C 16. Insurance

C 16.1 Insurance

Before the Customer Contract Commencement Date the Supplier must obtain, and thereafter maintain, the policies of insurance listed in the Order during the Customer Contract Term, on terms that are reasonably satisfactory to the Customer.

C 16.2 Evidence of insurance

On request by the Customer, the Supplier must provide certificates of currency proving that the policies of insurance required under the Customer Contract have been effected and are current. A certificate of currency provided under this clause must be issued by the insurance company providing insurance and must contain all details reasonably requested by the Customer, including a summary of all risks covered and any exclusions.

C 16.3 Supplier notification

The Supplier must notify the Customer within two Business Days of any event which affects or may affect the Supplier's compliance with this clause C 16 (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by the Customer Contract.

C 17. Liability

C 17.1 The Customer's liability

Subject to clause C 17.3 (No limitation):

- (a) the aggregate liability of the Customer to the Supplier under or in respect of the Customer Contract whether in contract, tort (including negligence), statute or any other cause of action, is limited to the Customer Liability Cap; and

- (b) the Customer will not be liable to the Supplier under or in respect of any Customer Contract whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

C 17.2 Supplier's liability

Subject to clause C 17.3 (No limitation):

- (a) the aggregate liability of the Supplier to the Customer under or in respect of the Customer Contract whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the Supplier Liability Cap; and
- (b) the Supplier will not be liable to the Customer under or in respect of any Customer Contract whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

C 17.3 No limitation

Nothing in the Customer Contract operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of clause C 7 (Confidentiality and privacy);
- (d) the Supplier's liability under clause C 12 (Intellectual Property Rights);
- (e) liability of either party for unlawful or illegal acts or conduct; or
- (f) the Customer's liability to pay such of the Contract Price as is due and payable.

C 17.4 Consequential Loss Definition

- (a) Subject to clause C 17.4(b) Consequential Loss:
 - (i) means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the Customer Contract, as the probable result of the relevant breach; and
 - (ii) includes loss of profit or loss of anticipated savings.
- (b) Consequential Loss does not include:
 - (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement Goods or Services;
 - (iv) cost of repairing Goods; and
 - (v) legal fees on a full indemnity basis.

C 17.5 Financial security

If specified in a Supply Schedule, the Supplier must provide the financial security in the amount and form specified in that Supply Schedule. The Customer will hold the financial security as security for the due and proper performance of all the obligations of the Supplier under the Customer Contract, and the relevant Supply Schedule will set out the terms that will apply to the use and application of the financial security.

C 18. Force Majeure

C 18.1 Notice of a Force Majeure Event

A party does not breach the Customer Contract and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:

- (a) sets out details of the Force Majeure Event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure Event;

- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

C 18.2 Obligations of affected party

A party affected by a Force Majeure Event must:

- (a) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
- (b) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.

C 19. Termination

C 19.1 Termination for cause

The Customer may terminate the Customer Contract in full or in part immediately on notice to the Supplier if:

- (a) the Supplier breaches that Customer Contract and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as the Customer states, of receiving notice from the Customer requiring the breach to be remedied;
- (b) the Supplier becomes Insolvent;
- (c) the Supplier assigns or purports to assign its rights otherwise than as permitted by that Customer Contract; or
- (d) the Supplier undergoes a Change of Control.

C 19.2 Termination on notice

The Customer may terminate the Customer Contract in full or in part by giving not less than 60 days' written notice to the Supplier.

C 19.3 Force Majeure

If:

- (a) a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days; or
- (b) if the Customer (in relation to the Customer Contract) reasonably considers the Force Majeure Event will not cease within that period,

then the Customer may immediately terminate the Customer Contract on notice to the Supplier.

C 19.4 Termination of the Customer Contract by Supplier for cause

The Supplier may only terminate the Customer Contract if the Customer has failed to pay an amount due to the Supplier under that Customer Contract which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier proposes to exercise its rights under this clause C 19.4 (Termination of the Customer Contract by Supplier for cause) if payment is not made.

C 20. Events following termination or expiry

C 20.1 Obligations on termination of a Customer Contract

On termination of the Customer Contract for any reason, the Supplier must pay that Customer:

- (a) any fees paid by the Customer to the Supplier in advance for Goods and Services not yet supplied under that Customer Contract (as applicable); and
- (b) any Service Credits accrued up to the date of termination under that Customer Contract.

C 20.2 Early termination charges

If the Customer terminates the Customer Contract (or part of the Customer Contract) for convenience pursuant to clause C 19.2 (Termination on notice), then if the Supplier is able to demonstrate to the Customer's reasonable satisfaction that prior to receiving notice of termination:

- (a) the Supplier has irrevocably acquired or committed with a third party to acquire Goods for the purposes of fulfilling the terminated Customer Contract (or part of it), then the Customer must either (at the Customer's election):
 - (i) acquire those Goods from the Supplier for the applicable Contract Price; or
 - (ii) reimburse the Supplier for the Supplier's out of pocket costs for those Goods less the proceeds which the Supplier receives on sale of those Goods (having taken all reasonable steps to sell the goods and to maximise the price received); or
- (b) the Supplier has incurred or irrevocably committed with a third party to incur costs for the purposes of providing Services under the terminated Customer Contract (or part of it) and the Supplier has not at the time of termination become entitled to charge for those Services, then the Customer must reimburse the Supplier for those costs which the Supplier incurs.

C 20.3 Mitigation

The Supplier must take all reasonable steps to mitigate the costs referred to in this clause C 20.2 (Early termination charges) and the Customer will not be required to pay costs to the extent that they could have been avoided or reduced by taking such steps. The Supplier must provide the Customer with evidence reasonably satisfactory to the Customer to substantiate any claim under this clause C 20.2 (Early termination charges).

C 20.4.1 Disengagement Period

For 6 months following the expiry or termination of a Customer Contract (or part thereof), the Supplier will provide such assistance reasonably requested by the Customer for the supply of the Goods and Services (as applicable) to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer, including:

- (a) acting in good faith to the Customer and providing reasonable co-operation with a third party supplier nominated by the Customer, and
- (b) providing the Customer data, information and materials that may be required to enable transacting with a new provider as requested by the Customer.

C 20.4.2 Within 3 months of entering into the Customer Contract, the Supplier shall provide a transition services plan to the Customer together with estimated charges. In the event the Customer requires any additional services at the expiry or termination of the Agreement, the Supplier shall provide a fixed price quote upon request. All charges for transition services provided in the disengagement period shall be payable in advance on the termination or expiry date unless otherwise agreed in writing. The provisions of C20.4 and C20.4A shall survive the Customer Contract.

C 20.5 Survival

C 21. Clauses C9 (Contract Price, invoices and payments), C7 (Confidentiality and privacy), C 10 (Taxes and GST), C 12 (Time of the Essence

The Supplier acknowledges that time is of the essence in completing any obligations under the Customer Contract in relation to the time to complete Milestones, or where the due date or time of their performance has been specified in the Specifications.

Intellectual Property Rights), C 17 (Liability), C 24 (Disputes), C 25 (General) and Supply Schedules survive the termination or expiry of the Customer Contract, as do any rights and remedies accrued before termination or expiry.

C 22. Notices

C 22.1 Form

Unless stated otherwise in the Customer Contract, all notices, certificates, consents, approvals, waivers and other communications in connection with the Customer Contract must be in writing.

C 22.2 Other notices and communications

A notice, consent, request or any other communication under the Customer Contract must be:

- (a) left at the address of the addressee, or
- (b) sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
- (c) sent by facsimile to the facsimile number of the addressee specified in the Order or notified by the receiving party; or
- (d) sent by email to the email address specified in the Order or as notified by the receiving party.

C 22.3 Time of receipt

A notice, consent, request or any other communication is deemed to be received:

- (a) if by delivery, when it is delivered;
- (b) if posted, the earlier of the date of receipt and three Business Days after posting if within Australia or seven, if posted to or from a place outside Australia;
- (c) if a facsimile, the earlier of the time the addressee receives and the next Business Day after the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) if an email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

C 23. Assignment, novation and piggybacking

C 23.1 Assignment or novation by the Customer

The Customer may assign any of its rights under the Customer Contract, or may novate its rights and obligations under the Customer Contract:

- (a) without the consent of the Supplier to any department, government agency or any other body created by or under legislation of the State of New South Wales for the purpose of administering the functions or discharging the role of the Customer or to any government sector agency within the meaning given to that term in the *Government Sector Employment Act 2013* (NSW); or
- (b) with the consent of the Supplier, which must not be unreasonably withheld or delayed, to any other person.

The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause C 23.1 (Assignment or novation by the Customer).

C 23.2 Assignment or novation by the Supplier

The Supplier must not assign its rights under the Customer Contract or purport to novate its rights and obligations under the Customer Contract without the prior written consent of the Customer.

C 23.3 Piggybacking by other NSW Agencies

If any government agency (as defined in the *Public Works and Procurement Act 1912 (NSW)*) requires the Supplier to supply to it the Goods and Services (other than under this Customer Contract) then the Supplier agrees that it will enter into a separate contract with that government agency on terms provided in this Customer Contract as though the Customer entered into this Customer Contract on behalf of that government agency, having regard only to necessary changes to reflect that the Goods and Services are to be supplied to the government agency.

C 24. Disputes

C 24.1 Dispute Notice

Either party may give written notice of a Dispute to the other party ("Dispute Notice"). A party giving a Dispute Notice must provide details of the history and circumstances of the Dispute and give reasons for why the party is disputing the issue.

C 24.2 Escalation

At the expiration of 5 Business Days from the date of the Dispute Notice, unless the Dispute has otherwise settled, the Dispute may be submitted to the dispute resolution process described in clause C 24.3 (Process).

C 24.3 Process

Any Dispute submitted to the dispute resolution process will be dealt with in the following manner:

- (a) The Dispute will be referred initially to the Customer Representative and the Supplier Representative. The parties' representatives will attempt to settle the Dispute within 5 Business Days of the referral;
- (b) if the Customer Representative and the Supplier Representative are unable to resolve the Dispute within those 5 Business Days, or other such period as is agreed, the Dispute will be referred to the parties' respective senior management at a level deemed appropriate by each party given the nature of the Dispute; and
- (c) if the Dispute remains unresolved after a further 5 Business Days of the period referred to in clause C 24.3(b), or other such period as is agreed, the parties will refer the Dispute to mediation by a single mediator in accordance with the procedure described below in clause C 24.4 (Mediation).

C 24.4 Mediation

Subject to this clause, if the parties agree to refer a Dispute to mediation, the mediation will be administered by the Australian Commercial Disputes Centre ("ACDC") and will be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated into this deed. In the event that the Supplier is a "small business" (being an Australian or New Zealand based firm that has an annual turnover of under \$2 million in the latest financial year), then the parties agree to refer the Dispute to the Small Business Commissioner for mediation.

C 24.5 Right to terminate and interlocutory relief

This clause C 24 (Disputes) does not affect either party's rights to:

- (a) terminate the Customer Contract under clause C 19 (Termination) or otherwise; or
- (b) commence court proceedings seeking interlocutory relief.

C 24.6 Parties to continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under the Customer Contract.

C 25. General

C 25.1 Access to information

- (a) This clause C 25.1 only applies to the extent that the Supplier is required to provide goods or services to the public on behalf of the Customer.
- (b) Within 3 days of receiving a written request by the Customer the Supplier must provide the Customer with immediate access to information referred to in section 121(1) of the *Government Information (Public Access) Act 2009* (NSW) (but excluding information referred to in section 121(2) of the *Government Information (Public Access) Act 2009* (NSW)) contained in records held by the Supplier at the Supplier's expense and in such medium as the Customer may reasonably require. This is an essential term of the Customer Contract.
- (c) The Customer will consult with the Supplier before releasing any information obtained from the Supplier where required under section 54 of the *Government Information (Public Access) Act 2009* (NSW).

C 25.2 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless the Customer Contract expressly states otherwise.

C 25.3 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

C 25.4 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under the Customer Contract.

C 25.5 Remedies cumulative

The rights and remedies provided in the Customer Contract are in addition to other rights and remedies given by law independently of the Customer Contract.

C 25.6 Variation and waiver

A provision of the Customer Contract or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

C 25.7 Indemnities

The indemnities in the Customer Contract are continuing obligations, independent from the other obligations of the parties under the Customer Contract and continue after the Customer Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under the Customer Contract.

C 25.8 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, the Customer Contract or any part of it.

C 25.9 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of the Customer Contract and other related documentation except for stamp duty.

C 25.10 Counterparts

The Customer Contract may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

C 25.11 Governing law and jurisdiction

The Customer Contract is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

C 25.12 Severability

If any part or provision of the Customer Contract is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of the Customer Contract will continue to operate.

C 25.13 Further assurance

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under the Customer Contract; and
- (b) to give effect to the intentions of the parties and the transactions contemplated by the Customer Contract, including execution and delivery of documents and other instruments.

C 25.14 Entire agreement

The Customer Contract constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

DICTIONARY

Business Days means a day other than a Saturday, Sunday, public holiday in Sydney or 24 or 31 December.

Change is defined in clause 6 of the Customer Terms;

Change of Control occurs, in respect of an entity when:

- (a) a person who did not have Control of the entity at the Commencement Date acquires Control of the entity; or
- (b) a person who did have Control of the entity at the Commencement Date ceases to have Control of the entity.

Change Notice means a notice executed by the parties setting out an agreed Change and the variations to the Customer Contract relating to that Change.

Change Proposal means a proposal issued by the Supplier detailing the variations which would be applicable to implement a Change.

Contract Price means the charges set out in a Supply Schedule for the Goods and Services.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Confidential Information in relation to a **Customer** means all Information disclosed (including inadvertently) by the Customer, an Eligible Customer or any of their Representatives in connection with the Customer Contract, all Information disclosed by a third party which the Customer is required to keep confidential and all Information created by the Supplier in the course of providing the Services or in respect of Intellectual Property Rights owned by the Customer including:

- (a) confidential information of the Customer or a third party to whom Customer owes an obligation of confidentiality;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

Confidential Information in relation to a **Supplier** means all Information, other than Confidential Information of a Customer, disclosed to the Customer by the Supplier or any Representative of the Supplier for or in connection with the Customer Contract including:

- (a) Information which, either orally or in writing, is designated or indicated as being the property or confidential information of the Supplier;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets and information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

Consequential Loss has the meaning given in clause C 17.4 (Consequential Loss Definition).

Control of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

- (c) whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cwlth).

Customer means the Eligible Customer that has placed an Order for Goods and/or Services.

Customer Contract Term means, if applicable, in respect of a Customer Contract, the term of that Customer Contract.

Customer IP means Intellectual Property Rights owned by or licensed to the Customer and made available to the Supplier or a Subcontractor for the purposes of the performance by the Supplier of its obligations under a Customer Contract.

Delivery Address means the address specified in the Order for delivery of the Goods.

Delivery Timeframe means the timeframe for delivery of the Goods set out in the relevant Supply Schedule.

Discloser means the party disclosing Confidential Information.

Dispute includes any dispute, controversy, difference or claim arising out of or in connection with a Customer Contract, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Documentation means the documentation set out in a Supply Schedule and all other documentation which is necessary to enable a Customer to make full and proper use of the Goods.

Early Termination Fee means the fee calculated in accordance with the relevant Supply Schedule.

Eligible Customer means:

- (a) a government agency as defined in the *Public Works and Procurement Act 1912*; and
a public body as defined by clause 6 of the Public Works and Procurement Regulation 2014.

Excluded Information means Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of the Customer Contract or an obligation of confidence owed to the Discloser; or
(b) Recipient can prove was already known to it at the time of disclosure by the Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
(c) Recipient acquires from a source other than the Discloser where such source is entitled to disclose the Information.

Force Majeure Event means a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time and includes:

- (a) natural events like fire, flood, or earthquake;
(b) national emergency;
(c) terrorist acts (including Cyberterrorism) and acts of vandalism; or
(d) war.

Further Term means the period identified in the Customer Details as the Further Term.

Goods means all goods set out in a Supply Schedule as required to be provided by the Supplier under a Customer Contract in accordance with the Customer Contract.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999, as amended from time to time.

GST Exclusive Market Value has the meaning given to it in the GST Act.

Information means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Goods, the Services or the Customer Contract;
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clause 12.

A person is **Insolvent** if:

it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

- (a) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (b) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the parties to that Customer Contract); or
- (c) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of 0, 0 or (a) above; or
- (d) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (e) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to a Customer Contract reasonably deduces it is so subject); or
- (f) it is otherwise unable to pay its debts when they fall due; or
- (g) something having a substantially similar effect to 0 to (f) happens in connection with that person under the law of any jurisdiction.

Input Tax Credit has the meaning it has in the GST Act.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Invoice Timing means the timing for issue of invoices set out in a Supply Schedule.

Moral Rights means any moral rights including the rights described in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the Copyright Act 1968 (Cwth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

Order means a valid order issued to a Supplier in accordance with the Customer Terms.

Ordering Process means the process for ordering Goods and Services set out in a Supply Schedule.

Permitted Circumstances means, in respect of a Recipient, a disclosure by that Recipient of the Discloser's Confidential Information to:

- (a) the Recipient's Representatives who require the Confidential Information for the purposes of the Customer Contract; or
- (a) to enable the Recipient to obtain professional advice in relation to the Customer Contract; or
- (b) with the consent of the Discloser; or
- (c) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
- (d) if the Recipient is required to do so in connection with legal proceedings relating to the Customer Contract or other deed between the parties.

Proof of Delivery has the meaning given to it by clause

Receiver includes a receiver or receiver and manager.

Recipient means the party receiving Confidential Information.

Records means records and documentation relating to the Customer Contract (including Goods, Services, Service Levels, Service Credits and/or Contract Price).

Related Bodies Corporate has the meaning it has in the Corporations Act.

Relevant Offence means an offence specified by an Eligible Customer in its Order

Repair Location means the location set out in the relevant Supply Schedule as the Repair Location.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

Service Credits means an amount calculated in accordance with the relevant Supply Schedule in respect of the failure by the Supplier to meet one or more Service Levels that are set out in that Supply Schedule.

Service Levels means the minimum performance levels set out in a Supply Schedule.

Services means all services set out in a Supply Schedule required to be provided by the Supplier under a Customer Contract.

Specifications means the specification for the Goods set out in a Supply Schedule.

Subcontractor means subcontractors of the Supplier.

Supplier IP means Intellectual Property Rights owned by or licensed to the Supplier or a Subcontractor for the provision of Goods and Services.

Supplier Liability Cap means the Supplier liability cap set out in the Customer Contract Details.

Supplier Personnel means employees, partners, agents and sub-contractors (including employees of sub-contractors) of the Supplier.

Supplier Representative mean the person identified in the Customer Details as the Supplier Representative, as varied by notice to the Customer from time to time.

Supply Schedule means the Schedule detailing the Goods and/or Services that the Supplier will, on receipt of an Order, supply to an Eligible Customer.

Tax Invoice has the meaning given to it in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any related interest, penalties, fines and

expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of the Customer, but excluding GST.

Term means the period commencing from the Commencement Date and ending on the date that the Customer Contract is terminated or expires.

Tested Goods means the model or sample of goods which was provided to an Eligible Customer for testing purpose as a representation of the Goods, if any.

Use means to load, run, execute, display, distribute, copy, perform or access.

Warranty Period means the periods set out in a Supply Schedule.

REFERENCES TO CERTAIN GENERAL TERMS

Unless the contrary intention appears, a reference in the Customer Contract to:

(variation or replacement) a document (including the Customer Contract) includes any variation or replacement of it;

(clauses, annexures and schedules) a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to the Customer Contract;

(law) law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);

(dollars) an amount of money is a reference to the lawful currency of Australia;

(calculation of time) a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;

(next day) if an act under the Customer Contract to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and

(time of day) time is a reference to Sydney time.

(Headings) Headings are included for convenience only and are not to affect the interpretation of the Customer Contract.

SUPPLIER'S STATEMENT

Regarding Worker's Compensation, Payroll Tax and Payment

For the purposes of this Statement a "Supplier" is a person (or other legal entity) that has entered into a contract with a "principal" to carry out work.

This Statement must be signed by a "Supplier" (or by a person who is authorised, or held out as being authorised, to sign the statement by the contractor) referred to in any of s175B Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007, and s127 Industrial Relations Act 1996 where the "Supplier" has employed or engaged workers or contractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal (Notes 1 and 5).

The Customer is entitled to withhold payment until this Statement is provided (*see note 2*).

SUPPLIER'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Supplier's Legal Name:..... ABN:.....

Supplier's Trading Name:.....

of.....
(Address of Contractor)

has entered into a contract with..... ABN:.....
(Name of Principal)

Contract number/identifier

The Period of work this Statement applies to is for work between:/...../.....and...../...../.....inclusive,
subject of the payment claim or invoice number dated:/...../.....

I, a Director or a person authorised by the Supplier on whose behalf this Statement is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Statement and declare the following to the best of my knowledge and belief:

Statement Validity Period

This Statement applies to all work performed by the Supplier for the Customer in respect of the above Contract for the period stated above (*Notes 3 and 4*)

<input type="checkbox"/> All workers engaged by the Supplier in respect of the works have been paid (<i>see Note 6</i>)
<input type="checkbox"/> All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of currency for workers compensation insurance valid for the period covered by this Statement; or <input type="checkbox"/> The Supplier is an exempt employer for workers compensation purposes (<i>see Note 7</i>).
<input type="checkbox"/> The Supplier is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees; or <input type="checkbox"/> The Supplier is not required to be registered.
<input type="checkbox"/> The Supplier has not engaged any subcontractors for the Contract or works, or <input type="checkbox"/> The Supplier has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)

SignatureFull Name.....

Position/Title Date/...../.....

Attach Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Notes

1. A Supplier is any person or company who carries out work under a contract of any kind for any business of the Customer. References to “Subcontractor” and “Principal Contractor” in the legislation mentioned below have been changed in this Statement to “Supplier” and “Principal” respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* (“IRA”), section 175B of the *Workers Compensation Act 1987* (“WCA”) and Schedule 2 Part 5 of the *Payroll Tax Act 2007* (“PTA”). These provisions allow the Customer to withhold payment from a Contractor without any penalty unless and until the Supplier provides to the Customer a Statement declaring that:
 - a. All workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Supplier either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Supplier's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Supplier is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (e.g. the principal accounting officer).
5. A Statement is not required where the Customer is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration /payment to which they are entitled.
7. An employer is exempt from taking out workers compensation insurance if the employer has reasonable grounds for believing that the total amount of wages that will be payable by the employer during the financial year to workers employed by the employer will be not more than \$7500, unless:
 - (a) the employer employs a person under a training contract (i.e. an apprentice or trainee), or
 - (b) the employer is a member of a group for workers compensation purposes, or
 - (c) the Workers Compensation Market Practice and Premiums Guidelines provide otherwise.

(see section 155AA of the WCA).

Statement Retention

The Customer will keep a copy of this Statement for 7 years. If the Supplier obtains a similar statement from its subcontractor then the Supplier must keep that statement for 7 years.

Offences in respect of a false Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(8) of the PTA.

Further Information

These notes are not intended as legal advice and Suppliers should obtain their own professional advice if they have any questions about this Statement or these Notes.

For more information, visit the SIRA website www.sira.nsw.gov.au, Revenue NSW website www.revenue.nsw.gov.au, or NSW Industrial Relations www.industrialrelations.nsw.gov.au. Copies of the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 can be found at www.legislation.nsw.gov.au

SUPPLY SCHEDULE – GOODS AND SERVICES

The following documents provide details of the Supply Schedule for Goods and Supply Schedule for Services:

1. Contractor's tender response to the RFT Number NESA-19-007 (NAPLAN 2020: Print, distribution, data capture and reporting services (Section 1); and marking centre services (Section 2)).
2. NESA's specifications as set out in EOI NESA-19-006 (NAPLAN 2020: Print, distribution, data capture and reporting services (Section 1); and marking centre services (Section 2)) and specifically at
 - Attachment A Statement of Requirements Section 1
 - Attachment B Statement of Requirements Section 2.

These documents are attached as an Annexure to this agreement.