

Services Agreement

Data Catalogue

Background

- A. Natural Hazards Research Australia (the Centre) is a not-for-profit public company limited by guarantee specialising in managing natural hazards research in the field areas of disaster risk reduction and disaster resilience.
- B. The Centre pursues, leads and co-ordinates world class research and training, the outcomes of which are used for the national public good. The Centre seeks to disseminate through its stakeholders, knowledge and understanding generated through research endeavours.
- C. The Centre has appointed the Supplier to provide the Product and Services.
- D. The Supplier has agreed to provide the Product and Services and has represented to Centre that it has the skills, resources and experience necessary to do so.
- E. The parties have agreed to enter into this Agreement to give effect to their intentions.

Details

Item no.	Item	Details
1	Natural Hazards and Disaster Resilience Research Centre Ltd t/as Natural Hazards Research Australia (Centre)	<p>ABN: 21 163 137 979</p> <hr/> <p>Contact name:</p> <hr/> <p>Position:</p> <hr/> <p>Address: Building 8, RMIT University, 360 Swanston Street, Melbourne, Victoria 3000Wurundjeri Country</p> <hr/> <p>Phone: 0406 684 568</p> <hr/> <p>Email: research@naturalhazards.com.au</p>
2	Supplier	<p>Name of supplier: [##Insert]</p> <hr/> <p>ABN: [##Insert]</p> <hr/> <p>Supplier representative name: [##Insert]</p> <hr/> <p>Position: [##Insert]</p> <hr/> <p>Address: [##Insert – we encourage organisations to include their Traditional Place name]</p> <hr/> <p>Phone: [##Insert]</p> <hr/> <p>Email: [##Insert]</p> <hr/> <p>Principal name: [##Insert]</p> <hr/> <p>Position: [##Insert]</p> <hr/> <p>Address: [##Insert – we encourage organisations to include their Traditional Place name]</p> <hr/> <p>Phone: [##Insert]</p> <hr/> <p>Email: [##Insert]</p>

Item no.	Item	Details	
3	Term	Start date:	The date on which this Agreement is signed by both parties.
		End date	##Insert
		Extension of term	12 months
4	Product and Services	As set out in the Schedule including: Product summary Included hardware descriptions Software descriptions Services summary Maintenance services and training.	
5	Documentation	##Insert	
6	Key personnel	Named in Item 2 of the Details.	
		##Insert any other Personnel of the Supplier that are key personnel necessary for the delivery of the Product and Services]	
7	Nominated third party material	##Insert details of any third party licences that the Centre must obtain in order to use the Product and Services Materials (ie if the Product and Services Materials cannot be used without such a licence) or state not applicable.]	
8	Deliverables & Milestone and Payment Dates	As listed in Schedule of this Agreement	
9	Price	##Insert total amount] ex GST Schedule 3	
10	Invoice details	Name	Natural Hazards Research Australia
		ABN	21 163 137 979
		Address	Building 8, RMIT University, 360 Swanston Street, Melbourne, Victoria 3000 Wurundjeri Country
		Attention	
		Email	accounts@naturalhazards.com.au
		Phone	0406 684 568
		Product and Services Invoice Code	##Insert

Item no.	Item	Details	
11	Insurance	Public liability	At least \$10 million
		Products liability	At least \$10 million per event
		Professional indemnity	At least \$10 million per event
		Workers compensation	The amount required by applicable State or Territory laws.
		Cyber Insurance	[At least \$10 million per event or an amount the Supplier is insured by a reputable insurance Supplier . ##Insert]
12	Subcontractors	[##Insert any pre-approved subcontractors or state Not Applicable]	
13	Supplier's liability cap	The amounts specified in Item 11 of the Details.	
14	Material	Including, but not limited to:	
		[## Insert the main expected Materials]	

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Agreed terms

1 Term

This Agreement starts on the Start Date and continues until the latter of the End Date or the date by which all Deliverables have been accepted under clause 7.2 (**Term**) unless terminated earlier in accordance with clause 23.1.

The Centre may extend the Term on the same terms and conditions for any extension period specified in the Details by giving the Supplier written notice by at least 30 Days before expiry of the current Term.

2 Scope of Agreement

2.1 Scope

- 2.1.1 The Centre appoints the Supplier to undertake the Product and Services in accordance with this Agreement.

2.2 Non-exclusivity

- 2.2.1 Nothing in this Agreement is to be taken to imply that the Centre may not appoint another person or suppliers to undertake the Product and Services and /or the Deliverables.

2.3 Precedence of Documents

- 2.3.1 The Agreement is comprised of the Centre's Statement of Requirements and this Agreement unless otherwise agreed in writing between the Parties.
- 2.3.2 If there is ambiguity or inconsistency between documents comprising the Agreement, the Agreement will have precedence to the extent of the ambiguity or inconsistency.

3 Product and Services

3.1 Product and Services

- 3.1.1 The Supplier must undertake and deliver the Product and Services to the Centre.
- 3.1.2 The Supplier must carry out the Product and Services in a diligent and competent fashion consistent and the Supplier must:
 - a. all due care and skill and generally accepted professional and ethical principles and standards of conduct;
 - b. generally accepted Australian business, accounting and financial standards and practices;
 - c. any Australian or international standards which are applicable to the performance of the Product and Services;
 - d. provide the Deliverables in accordance with the Agreement;
 - e. meet all Milestone Dates specified in the Agreement or as otherwise agreed in writing, and perform all other obligations in a prompt, diligent and competent manner, and with due care and skill;
 - f. provide, manage and maintain sufficient resources, including Personnel, equipment and facilities, to enable it to fulfil its obligations under the Agreement;
 - g. ensure that all Deliverables are of a high quality, professional standard and fit for their usual purpose and meet the Requirements;
 - h. comply with all reasonable directions of the Centre in relation to the Supplier's performance of the Agreement;
 - i. do anything and execute any document that the Centre reasonably requests, to give effect to this Agreement;
 - j. not, and must take reasonable steps to ensure that its supply chain does not, undertake acts which could constitute an offence involving Modern Slavery; and
 - k. implement due diligence procedures for its supply chain to ensure compliance with the Modern Slavery Act 2018 (Cth), where that Act applies to the Supplier and must ensure its own due diligence obligations under the Modern Slavery Act 2018 (Cth) are met.

3.2 Directions by the Centre

The Centre may give the Supplier reasonable directions as to:

- 3.2.1 the manner of the performance of the Product and Services; and
- 3.2.2 the application of standards and practices in the performance of the Product and Services, and the Supplier must comply with all such reasonable directions.

3.3 Equipment, Facilities and access to IT Systems

- 3.3.1 The Supplier must provide all equipment, facilities and other incidental items and materials necessary to complete the Product and Services.
- 3.3.2 All such equipment must be properly maintained and be appropriate for the purpose for which it is used or intended to be used.
- 3.3.3 The Supplier must, where access to the Centre's IT System is required to provide the Deliverables or is otherwise granted to the Supplier by the Centre:
 - a. only access and use that part of the Centre's IT System for which the Supplier is authorised, and to the extent necessary to perform the Agreement;
 - b. not tamper with, hinder the operation of (except as expressly permitted by the Centre) or make unauthorised modifications to the Centre's IT System or maliciously or negligently introduce any harmful code to the Centre's IT System.

3.4 Workplace health and safety

- 3.4.1 The Supplier must:
 - a. at all times comply, and ensure that the Supplier's Personnel comply, with all applicable work health and safety laws;
 - b. develop, maintain and implement a work health and safety management system that as a minimum complies with all work health and safety laws applicable to the Supplier;
 - c. and ensure that the Supplier's Personnel do not, at any time, cause the Centre to be in contravention of a work health and safety law.

3.5 Compliance with Laws

- 3.5.1 The Supplier must:
 - a. comply with all Laws in performing its obligations under the Agreement; and
 - b. ensure that the Deliverables comply with all Laws, including but not limited to the Modern Slavery Act 2018 (Cth), (where applicable to the Supplier);
 - c. obtain and maintain the authorisations described in the Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Agreement; and
 - d. comply with the Centre's policies which may apply to the Supplier's access to the Centre's Site, the Centre's IT System, the Centre's Personnel.

3.6 Warranties

- 3.6.1 The Supplier represents and warrants to the Centre that it will complete the Product and Services in:
- a. a timely and professional manner in accordance with this Agreement using appropriately trained and experienced Personnel;
 - b. a manner which is consistent at all times with best industry practice;
 - c. accordance with all applicable Laws, standards, specifications and procedures; and
 - d. the completion of the Product and Services will not knowingly, having made all reasonable investigations expected of a diligent, prudent professional carrying out the duties of the Supplier, infringe the Intellectual Property Rights of any person.
- 3.6.2 The Supplier warrants that all Products and Services accepted by the Centre will:
- a. comply with and perform in accordance with the Requirements;
 - b. be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment when used in accordance with the Documentation and if the Product and Services includes software that software will be free from any harmful code.

4 Payment

4.1 Price

- 4.1.1 In consideration for the Supplier providing the Deliverables in accordance with the Agreement the Centre must pay the Supplier the Price.
- 4.1.2 Unless otherwise stated in the applicable Schedule, the Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.
- 4.1.3 If the Agreement requires the Supplier to do or provide anything, and there is no separate Price specified for performing that obligation and no express right of the Supplier to charge the Centre an additional cost for performing that obligation, the Supplier must comply with the obligation at no additional cost.
- 4.1.4 The Supplier must not invoice the Centre, and the Centre is not required to pay, any amount except for the Price or any amount for which the Supplier has an express right to charge the Centre under the Agreement.

4.2 Invoices

- 4.2.1 The Supplier may invoice the Centre at the times and, where applicable, in the amounts set out in the applicable Schedule.
- 4.2.2 The Supplier must ensure that each invoice is a Correctly Rendered Invoice, and the Centre is not required to pay any invoice that is not a Correctly Rendered Invoice.
- 4.2.3 The Supplier must provide any further details in regard to an invoice that are reasonably requested by the Centre.
- 4.2.4 Unless expressly stated otherwise in the applicable Schedule, the Supplier may not:
 - a. invoice the Centre (and the Centre is not required to pay) for Deliverables until the relevant Deliverables have been provided, and the Deliverables meet the Centre's requirements; or
 - b. charge or pass through any fees, costs or charges associated with a payment method.
- 4.2.5 If the Supplier owes any amount to the Centre in connection with the Agreement the Centre may offset that amount, or part of it, against its obligation to pay a Correctly Rendered Invoice.

4.3 Time for payment

- 4.3.1 The Centre will pay each Correctly Rendered Invoice within 30 days of receipt.
- 4.3.2 If the Supplier refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Agreement, the Centre may withhold payment associated with that failure until the Supplier performs the relevant obligation in accordance with the Agreement.

5 Governance

5.1 Appointment of Supplier Representatives

- 5.1.1 The Supplier must appoint a person to be its Supplier Representative for the purposes of this Agreement.
- 5.1.2 The Supplier's Representative must be authorised by the Supplier to be the contact point for all Agreement matters for the Term of this agreement and to ensure that all actioned are completed in a timely manner.
- 5.1.3 Accordingly, the Supplier Representative must:
 - a. act as the agent for the Supplier on any matter arising out of or in connection with this Agreement;
 - b. be the first point of contact for any Disputes and Disputes relating to the operation of this Agreement in accordance with clause 23;
 - c. coordinate effort and input from the Supplier;
 - d. manage and administer this Agreement on behalf of the Supplier ;
 - e. hold authority to give and receive notices under this Agreement; and
 - f. act in accordance with this Agreement.
- 5.1.4 The Supplier Representative at the Start Date are the persons described in Items 2 the Details.
- 5.1.5 The Supplier may change its Supplier Representative at any time by giving notice to the other party. The notice must include the name, address, phone number and email address of the new Supplier Representative.

5.2 Communications

The Supplier must ensure that it and its personnel communicate with the other parties through the nominated Supplier Representative described in Item 2 of the Details, as amended from time to time in accordance with clause 5.1.5.

6 Documentation

6.1 Documentation

- 6.1.1 The Supplier must provide the Documentation to the Centre in either hard copy or electronic format as specified in the Schedule.
- 6.1.2 The Supplier must ensure that the Documentation is:
 - a. of a reasonable standard in terms of its presentation, accuracy and scope;
 - b. in the English language; and
 - c. in a form where all key terms, words and symbols are adequately defined.
- 6.1.3 During the Term the Supplier must:
 - a. supply, at no additional cost to the Centre, any revisions, replacements or additions to the Documentation so that the Documentation includes the most current and up-to-date versions generally available to Centres of the Supplier; and
 - b. correct any errors or inaccuracies in the Documentation, and promptly supply a duly amended version of the Documentation at no additional cost to the Centre.

7 Deliverables

7.1 Timing

The Supplier must complete the Deliverables and provide them to the Centre by the Milestone Dates.

7.2 Acceptance Testing

7.2.1 The Supplier must inspect and test all Deliverables to ensure that they meet the Requirements and have no apparent Defects, before delivery or installation (as applicable).

7.2.2 If and as specified in the Schedule, the parties will conduct testing of part or all of the Deliverables (Tested Items) to determine whether the Tested Items meet the Requirements.

7.2.3 If, the testing demonstrates that the Tested Item fails to meet the Requirements, then the Centre must notify the Supplier of the failure of the Tested Item to meet the Requirements and the Centre may, at its discretion, do one or more of the following:

- a. require the Supplier to modify the Tested Item, or supply a replacement Tested Item, so that it meets the Requirements, in which case the Centre may further review or conduct further testing;
- b. withhold payment of the Price payable in respect of the relevant Tested Item under until the Tested Item meets the Requirements;
- c. accept the Tested Item subject to a reduction in the Price as reasonably determined by the Centre to reflect the Defects in the Tested Item.

7.2.4 The Supplier must absorb all costs incurred to rectify or remedy any Deliverables not accepted by the Centre.

7.3 Acceptance of Deliverable

7.3.1 If the Centre is satisfied that a Deliverable conforms with the Requirements of this Agreement the Centre will accept the Deliverable by giving written notice to the Supplier.

7.4 No deemed acceptance

A Deliverable will not be accepted until the Centre has provided notice in accordance with clause 7.3.1.

8 Reports

8.1 Completed Deliverables Report

The Supplier must submit a report within 5 Business Days of a Deliverable being accepted under clause 7.3, containing

- 8.1.1 a description of the Deliverable;
- 8.1.2 the progress and outcomes achieved as a result of the Deliverable (e.g. in terms of quality, timing and budget);
- 8.1.3 any variations from the Deliverable;
- 8.1.4 the impact that achieving the Deliverable has or may have on any other Deliverable; and
- 8.1.5 any issues, opportunities or lessons that arose in relation to the Deliverable.

8.2 Quarterly reports

The Supplier must provide the Centre with a report in the format set out in Schedule 4 within 5 Business Days of the end of each quarter of the Term.

9 Personnel

9.1 Responsibility for Personnel

The Supplier must ensure that its Personnel:

- 9.1.1 comply with all the Supplier's obligations under this Agreement; and
- 9.1.2 act with all proper diligence and in good faith, and in a manner which is consistent with the Supplier's obligations under this Agreement.

9.2 Key Personnel

The Supplier must ensure that the Key Personnel:

- 9.2.1 are involved for the full duration of the Product and Services;
- 9.2.2 do not engage in any other activity in the course of their employment with, or engagement by, the Supplier which may, or may be likely to, hinder the performance of the Product and Services; and
- 9.2.3 are available to meet with the Centre as reasonably required by the Centre from time to time.

9.3 Unavailability of Key Personnel

The Supplier must inform the Centre as soon as possible if any of the Key Personnel become unavailable for any reason for a period exceeding 30 Business Days.

9.4 Other Personnel

Other Personnel may be involved in completing the Product and Services, however the Supplier must ensure that the Key Personnel have overall responsibility for performance of the Product and Services.

9.5 Suitability of Personnel

The Supplier must ensure that all Personnel have appropriate qualifications, registration and licences, are suitably trained and experienced and are capable of performing the Supplier's obligations under this Agreement.

9.6 The Centre not responsible

The Supplier acknowledges and agrees that:

- 9.6.1 the Centre is not and must not at any time be construed as the employer of any of the Supplier's Personnel for the purposes of any Law;
- 9.6.2 the Supplier is solely responsible and liable for the making of any payments in respect of superannuation, payroll or any other tax, Work Cover premium or any similar payments in relation to its Personnel;
- 9.6.3 it remains fully responsible for the delivery of the Product and Services under this Agreement and for all costs incurred in respect of its Personnel; and
- 9.6.4 it is liable for all acts and omissions of its Personnel as though they were acts or omissions of the Supplier itself.

10 Subcontracting

10.1 Approval

- 10.1.1 The Supplier must not subcontract (or allow a Subcontractor to subcontract) any part of the performance of this Agreement without the prior written approval of the Centre.
- 10.1.2 The Subcontractors specified in Item 12 of the Details have been approved by the Centre for the purposes of this clause 10.1.

10.2 Liability for subcontractors

- 10.2.1 If the Supplier is permitted to subcontract (including to a Subcontractor) any of the Supplier's obligations under this Agreement it is not relieved of its responsibility for the performance of its obligations under this Agreement.

11 Confidentiality and privacy

11.1 Duty not to disclose or misuse Confidential Information

- 11.1.1 Each party may disclose Confidential Information only:
- for the purposes of performing its obligations under this Agreement;
 - as required by law; or
 - as permitted or required in writing by the other party.
- 11.1.2 The parties may only use Confidential Information to perform their obligations under this Agreement.

11.2 Preservation of Confidential Information

Each party must take whatever measures are reasonably necessary to prevent the disclosure or misuse of Confidential Information, including:

- 11.2.1 complying with all security measures established to safeguard Confidential Information from unauthorised access or use;
- 11.2.2 implementing security practices against unauthorised copying, use and disclosure of Confidential Information; and
- 11.2.3 keeping Confidential Information under the party's control.

11.3 Return or destruction of Confidential Information

- 11.3.1 A party must immediately on termination of this Agreement or on the other party's written request at any other time:
- return to the other party Confidential Information provided to or obtained or accessed by the party under this Agreement; or
 - destroy Confidential Information so that it is incapable of being revived; and
 - provide a statutory declaration to the other party that all Confidential Information has been returned or destroyed in accordance with this clause.
- 11.3.2 A party may retain one copy of the Confidential Information to enable it to meet its record-keeping obligations under Laws.
- 11.3.3 This clause 11.3 does not require a party to retrieve copies of Confidential Information that have automatically been archived electronically.

11.4 Privacy

The parties agree to comply with the applicable Privacy Laws with respect to any Personal Information they collect, use or disclose in connection with this Agreement.

12 Cyber Security and Data Breaches

12.1 The purpose of this clause 12 is to set out the Supplier's obligations in respect of information and materials of the Centre:

- 12.1.1 in respect of which the Supplier has custody or control for purposes connected with this Agreement; or
- 12.1.2 which are accessed, transmitted or stored using, or on, the Centre's information systems or equipment under this Agreement (Centre Data).

12.2 The Supplier must:

- 12.2.1 do all things that a reasonable and prudent entity would do to ensure that all Centre Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- 12.2.2 provide protective measures for the Centre Data that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Centre Data; and
- 12.2.3 without limiting clauses 12.2.1 or 12.2.2, comply with all security regulations or procedures or directions as are specified in the Agreement or given by the Centre from time to time regarding any aspect of security of, or access to, the Centre's information, material or premises.

12.3 If the Supplier becomes aware of any actual or suspected:

- 12.3.1 action taken through the use of computer networks that result in an actual or potentially adverse effect on the Centre's information system and/or Centre Data residing on that system (Cyber Incident); or
- 12.3.2 any other unauthorised access or use by a third party or misuse, damage or destruction by any person (Other Incident),

12.4 the Supplier must:

- 12.4.1 notify the Centre in writing immediately (and no longer than 12 hours after becoming aware of the Cyber Incident or Other Incident); and
- 12.4.2 comply with any directions issued by the Centre in connection with the Cyber Incident or Other Incident, including in relation to:
 - a. notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Centre;
 - b. obtaining evidence about how, when and by whom the Centre's information system and/or the Centre Data has or may have been compromised, providing it to the Centre on request, and preserving and protecting that evidence for a period of up to 12 months;
 - c. implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
 - d. preserving and protecting Centre Data (including as necessary reverting to any backup or alternative site or taking other action to recover Centre Data).

12.5 The Supplier must, take out and maintain appropriate insurance to protect against the risks of a Cyber Incident in accordance with clause 21.

12.6 The Supplier must ensure that:

- 12.6.1 all subcontracts and other supply chain arrangements, which may allow or cause access to Centre Data, contain no provisions that are inconsistent with this clause 12; and
- 12.6.2 all Personnel and any Subcontractors who have access to Centre Data comply with clauses 12.2 and 12.3.

13 Conflict of interest

13.1 Supplier warranty

The Supplier warrants to the Centre that, to the best of its knowledge and having made diligent inquiries, at the Start Date no Conflict of Interest exists, is likely to arise or could reasonably be perceived to exist.

13.2 Obligation to take all reasonable steps

The Supplier must take all reasonable steps to ensure that no actual or potential Conflict of Interest arises or could reasonably be perceived to arise during the Term.

13.3 Obligation to notify

- 13.3.1 The Supplier must immediately notify the Centre of any matter that may give rise to a Conflict of Interest.
- 13.3.2 Upon receipt of notice given under clause 13.3.1, or whenever the Centre considers that a Conflict of Interest has arisen or is likely to arise, the Centre may direct the Supplier to resolve the Conflict of Interest to the satisfaction of the Centre within a reasonable period.
- 13.3.3 If the Centre determines that the Supplier has not resolved the Conflict of Interest to the sole and unfettered satisfaction of the Centre within the period specified, the Centre may terminate this Agreement pursuant to clause 24.2.

14 Occupational health and safety

- 14.1 The parties agree that the Supplier is responsible for all aspects of health and safety in the carrying out of the Product and Services and must:
- a. comply with and procure that its employees and contractors comply with all OHS Laws;
 - b. implement and maintain a system of obtaining and updating information on all OHS laws;
 - c. in carrying out the Product and Services, eliminate risks to health and safety so far as is reasonably practicable and if it is not reasonably practicable to eliminate risks to health and safety, then reduce those risks as far as is reasonably practicable (including risks to psychological health); and
 - d. without limiting the Supplier's obligations arising out of the Agreement or at law, notify the Centre immediately (and in any event within 12 hours of such matter arising) of any health or safety matters or incidents arising out of or in connection with the Agreement;
 - e. provide information to the Centre about any matter concerning occupational health and safety upon request, including but not limited to information about identified incidents, investigation of incidents, systems in place and information provided to or received from a regulator in response to an occupational health and safety incident or investigation.

15 Fraud and Corruption

15.1 The Supplier must comply with the Centre's Fraud and Corruption Policy (as amended from time to time) in the course of performing its obligations in relation to the Product and Services and otherwise during the Term this Agreement.

15.2 Fraud

15.2.1 The Supplier must:

- a. take all reasonable steps to prevent and detect Fraud in relation to the performance of this Agreement and the Product and Services; and
- b. ensure its, officers, employees, agents or subcontractors do not engage in any Fraud in relation to, or otherwise in connection with the Agreement or the Product and Services.

15.2.2 If the Supplier becomes aware of:

- a. any Fraud in relation to the performance of the Product and Services; or
- b. any other Fraud that has had or may have an effect on the performance of the Product and Services or otherwise in connection with this Agreement,

15.2.3 then it must notify the Centre within 5 Business Days of becoming aware of any suspected or detected Fraud affecting the Product and Services or this Agreement and actions taken by the Supplier in response.

15.2.4 The Supplier must, at its own cost, investigate any Fraud referred to in clause 15.2.2 in accordance with the Australian Government Investigations Standards available at www.ag.gov.au.

15.2.5 The Centre may, at its discretion, investigate any Fraud in relation to the Product and Services or the Agreement. The Supplier agrees (at its own cost) to cooperate and provide all reasonable assistance to the Centre with any such investigation.

15.2.6 Without limiting any other provision in this Agreement, if an investigation finds that the Supplier or its officers, employees, agents or subcontractors have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud, the Supplier must reimburse the Centre in full for costs associated with the investigation as a debt due and payable.

15.3 Anti-corruption

- 15.3.1 The Supplier will ensure that no offer, gift or payment, consideration or benefit of any kind that would or could be considered an Illegal or Corrupt Practice, will be made or received either directly or indirectly, as an inducement or reward in relation to the Supplier's performance under this Agreement, including the selection and engagement of any subcontractors by the Supplier.
- 15.3.2 The Supplier warrants that the Supplier, its officers, employees, agents and subcontractors will not engage in any Illegal or Corrupt Practice in relation to the Product and Services or the Agreement.
- 15.3.3 The Supplier agrees not to, and to take all reasonable steps to ensure that its officers, employees, agents and subcontractors do not engage in any practice that could constitute the offence of bribing a foreign public official contained in section 70.2 of the *Criminal Code Act 1995* (Cth).
- 15.3.4 The Supplier will notify the Centre within 5 Business Days of becoming aware of any suspected or detected Illegal or Corrupt Practice affecting the Product and Services and actions taken by the Supplier in response.

15.4 Criminal Code

- 15.4.1 The Supplier acknowledges that the giving of false or misleading information to the Centre may be deemed to be the giving of false or misleading information to the Commonwealth, which is a serious offence under section 137.1 of the Division 137 of the *Criminal Code Act 1995* (Cth).
- 15.4.2 The Supplier must ensure that its officers, employees, agents and subcontractors engaged in connection with the Product and Services or this Agreement are aware of the information contained in this clause.

16 Supplier Conduct

16.1 Supplier Conduct

- 16.1.1 The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in breach of any Law in connection with the Agreement (including any related procurement process) or any actual or potential Agreement with any entity for products and services similar to the Products and Services.
- 16.1.2 The Supplier warrants that it and its Personnel:
 - a. do not hold any office or possess any property;
 - b. are not engaged in any business or activity; or
- 16.1.3 The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made all reasonable enquiries, its Personnel, have not been convicted of an offence under a criminal code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of a criminal code.
- 16.1.4 The warranties in this clause 16.1 are provided as at the date of the Agreement and on an ongoing basis.
- 16.1.5 The Supplier warrants that it will immediately notify the Centre if it becomes aware that any warranty made in this clause 16 was inaccurate, incomplete, out of date or misleading in any way.

16.2 Use of logo and name

- 16.2.1 Neither party is permitted to use the name or logo of the other party without the prior written consent of the other party.

16.3 Reputation

The Supplier must not do or omit to do anything which may:

- 16.3.1 damage, bring into disrepute or ridicule the Centre's name, messages or reputation; or
- 16.3.2 attract public or media attention which may be prejudicial or otherwise detrimental to the Centre's name, messages or reputation.

17 Intellectual Property Rights

17.1 New Material

- 17.1.1 All Intellectual Property Rights in New Material vest in and are owned exclusively by the Centre with effect from the date of creation.
- 17.1.2 The Supplier irrevocably and unconditionally assigns to the Product and Services to the Centre including by way of an assignment of future Intellectual Property Rights, all of its Intellectual Property Rights in the Product and Services Material on creation.
- 17.1.3 The Centre grants the Supplier a non-exclusive, non-transferable, royalty-free licence for the Term (including the right to sub-license to any approved Subcontractor/s) to use the Product and Services Material solely for the purpose of the Supplier undertaking the Product and Services and performing its obligations under this Agreement.
- 17.1.4 The Centre grants the Supplier an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, sublicensable, non-transferable licence to exercise all such Intellectual Property Rights in the relevant New Material, for any purpose of the Supplier, subject to the Supplier removing any of the Centre's Confidential Information and Personal Information incorporated or otherwise contained in the New Material prior to exercising its rights under this clause and the Supplier will confirm to the Centre when this has been done.

17.2 Existing Material

- 17.2.1 This clause 17.2 does not affect ownership of any Existing Material.
- 17.2.2 The Centre grants the Supplier a non-exclusive, non-transferable, royalty-free licence for the Term to use the Centre Existing Material solely for the purpose of the Supplier undertaking the Product and Services and performing its obligations under this Agreement.
- 17.2.3 The Supplier grants the Centre a non-exclusive, perpetual, irrevocable, world-wide, royalty-free, transferable licence (including the right to sub-license to the Commonwealth for the purposes of the Grant Agreement) to use, copy, modify, reproduce, improve, publish, adapt, distribute, communicate the Supplier's Existing Material to the extent necessary to allow the Centre to enjoy the full benefit of the Product and Services Material.

17.3 Third Party Material

- 17.3.1 The Supplier warrants and represents to the Centre that:
- a. to the extent that it uses Third Party Material to perform its obligations under this Agreement, it has all necessary consents, including copyright and other Intellectual Property Right permission to use that Third Party Material; and
 - b. the Centre's use of Third Party Material will not infringe the Intellectual Property Rights of any third party.
- 17.3.2 Where the Centre has agreed to the inclusion of Nominated Third Party Material in the Product and Services, the Centre agrees that it will, where required, obtain a licence to use the Nominated Third Party Material from the relevant third party in order to exercise its rights to the Product and Services Material.

17.4 Intellectual Property Rights indemnity

- 17.4.1 The Supplier indemnifies the Centre from and against all Loss arising out of or in connection with any Claim by a third party that the Centre's or its Personnel's use of the Product and Services, New Material, Third Party Material, or the Supplier's Existing Material as permitted under this Agreement infringes their Intellectual Property Rights or Moral Rights (Third Party IP Claim).
- 17.4.2 Each party will promptly notify the other party if it becomes aware of any Third Party IP Claim.
- 17.4.3 Without limiting any of the Centre's rights, if a Third Party IP Claim is made, the Supplier will at its option, cost and without delay:
- a. procure the right for the Centre to continue to use the affected Materials;
 - b. modify the affected Materials to make those Materials non-infringing; or
 - c. replace the affected Materials with non-infringing Materials acceptable to the Centre.

18 Records

18.1 Maintain records

18.1.1 The Supplier must establish and maintain proper books of account of all transactions relating to the Funding and operating records necessary to afford a correct and complete record and explanation of all expenditure by the Supplier of the Funding, including:

- a. proper books of account; and
- b. disbursement records.

18.1.2 Such records must be maintained in accordance with accounting principles generally applied in commercial practice, to an auditable standard and as required by Law.

18.2 Inspection of records and audit

18.2.1 The Supplier must give the Centre, or a third party nominated by the Centre, access to the information referred to in clause 18.1, or in any other clause of this Agreement, to enable the Centre or the third party to:

- a. determine whether the Supplier is complying with all of its obligations under this Agreement; and
- b. ascertain any other matters reasonably considered by the Centre or the third party to be relevant to the performance of the Centre's obligations under this Agreement.

18.2.2 If requested by the Centre or a third party nominated by the Centre, the Supplier must provide to the Centre documentation evidencing costs, losses or expenses incurred by the Supplier in undertaking the Product and Services, or part of the Product and Services, as soon as possible and in any event within 5 Business Days of receiving such a request.

19 Warranties & Indemnities

19.1 Warranties

The Supplier warrants to the Centre that:

- 19.1.1 it has the power to enter into this Agreement and to carry out the Product and Services;
- 19.1.2 it has, or will have at the relevant time, all necessary approvals, consents and authorisations required to carry out the Product and Services;
- 19.1.3 the carrying out of the Product and Services will not breach any applicable Laws;
- 19.1.4 the Supplier's Personnel involved in the Product and Services:
 - a. have the necessary qualifications and experience to undertake and complete the Product and Services;
 - b. will devote their efforts and attention to the performance of the Product and Services; and
 - c. will complete the Product and Services in a timely and efficient manner, as required by and in accordance with this Agreement.

19.2 Indemnity

- 19.2.1 The Supplier indemnifies each of the Indemnified Parties from and against any Loss suffered or incurred by the Indemnified Party (including any Losses incurred or sustained in connection with a third party Claim) arising out of or in connection with this Agreement and:
- the death of, disease or injury to, any person caused or contributed to by the Supplier or the Supplier's Personnel;
 - the loss of, or damage to, any property caused or contributed to by the Supplier or the Supplier's Personnel;
 - any negligent, fraudulent, unlawful, reckless or wilfully wrongful act or omission of the Supplier or the Supplier's Personnel;
 - any breach of this Agreement or any Law by the Supplier or any of the Supplier's Personnel (including any warranty given by the Supplier under this Agreement being incorrect or misleading in any way); and
 - any Third Party IP Claim.
- 19.2.2 The Supplier's obligation to indemnify an Indemnified Party under clause 19.2.1 will be reduced proportionally to the extent that a negligent act or omission of, or breach of this Agreement, by the Indemnified Party has directly caused the Loss.
- 19.2.3 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties under this Agreement and is intended to be enforceable and to survive expiry or termination of this Agreement.
- 19.2.4 Each Indemnified Party must take all reasonable steps to mitigate any amounts payable pursuant to an indemnity.
- 19.2.5 It is not necessary for an Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

19.3 Consequential Loss

Notwithstanding any other provision in this Agreement, neither party will have any liability to make any payment to the other party, by way of indemnity, damages or otherwise, in respect of any Consequential Loss incurred or suffered by the other party as a result of any act, omission or neglect of the first party.

19.4 Effect of legislation

Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which cannot by Law be excluded, restricted or modified.

20 Limitation of liability

20.1 The liability of the Centre arising out of this Agreement is limited to an amount equal to the Funding paid or due to be paid under this Agreement less any amount already paid.

20.2 The liability of the Supplier arising out of this Agreement is limited to the amount specified in Item 13 of the Details, which amount does not apply to liability arising out of or in connection with:

- 20.2.1 personal injury or death of any person;
- 20.2.2 loss of, or damage to, tangible property and data;
- 20.2.3 any fraudulent or wilful act or omission of the Supplier or any of its Personnel;
- 20.2.4 a breach by the Supplier of its privacy or confidentiality obligations under this Agreement; or
- 20.2.5 the infringement of a person's Intellectual Property Rights.

21 Insurance

- 21.1 The Supplier must effect and maintain at all times during the Term the insurances specified in Item 11 of the Details.
- 21.2 On request from the Centre, the Supplier must provide evidence that the insurances required under clause 21.1 have been effected and are being maintained. Evidence the Centre may request includes a copy of the certificate of currency.

22 Variation

22.1 If the Supplier wishes to amend or vary the Deliverables it must submit a written proposal (Amendment Proposal):

- 22.1.1 detailing the nature of the proposed amendment or variation;
- 22.1.2 explaining why the amendment or variation is necessary; and
- 22.1.3 where the variation will lead to a delay in the delivery of 1 or more Deliverables that variation must be requested at least 15 Business Days before the relevant Milestone Date.

22.2 The Centre will in its sole discretion decide whether to approve or reject an Amendment Proposal made under clause 22.1 and will notify the Supplier of that decision within 20 Business Days of receipt of the Amendment Proposal.

23 Dispute resolution

23.1 Dispute

- 23.1.1 A party claiming that a Dispute has arisen must promptly give the other party a Dispute Notice.
- 23.1.2 A Dispute Notice must state it is a notice under this clause 23.1 and must specify in reasonable detail:
 - a. the particulars of the Dispute;
 - b. the facts relied on; and
 - c. the relief or outcome sought.

23.2 Negotiation

- 23.2.1 The parties must attempt to resolve all Disputes by escalation through the following process:
 - a. within 10 Business Days of the Dispute Notice date, the Centre's contact person specified in Item 1 of the Details and the Supplier Representative referred to in Item 2 of the Details must meet to discuss the Dispute;
 - b. if the Dispute remains unresolved 10 Business Days after the contact persons meet under clause a, the Chief Executive Officer or Managing Director (or equivalent) of each party must meet to discuss the Dispute.
- 23.2.2 If the Chief Executive Officers or Managing Directors (or equivalents) of the parties are not able to resolve the Dispute within 20 Business Days after referral to them under clause b, either party may refer the Dispute to mediation in accordance with clause 23.3.

23.3 Mediation

If the Dispute is referred to mediation by either party under clause 23.2.2:

- 23.3.1 the mediation will be administered by the Australian Disputes Centre (ADC) according to its mediation guidelines;
- 23.3.2 the parties will agree on a mediator within 10 Business Days of the referral, failing which the mediator will be provided by the ADC;
- 23.3.3 the parties must conduct the mediation within 20 Business Days of the mediator being appointed;
- 23.3.4 the mediation will take place in Melbourne, Australia or online;
- 23.3.5 each party will pay its own costs in relation to attendance at, and participation in, the mediation; and
- 23.3.6 the cost of ADC and the appointed mediator will be shared equally between the parties.

23.4 Performance during a Dispute

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

23.5 Dispute resolution before court proceedings

- 23.5.1 Subject to clause 23.5.2, the parties must attempt to resolve all Disputes under this clause before starting any court proceedings, other than court proceedings for interlocutory relief.
- 23.5.2 If a Dispute remains unresolved 60 Business Days after the Dispute Notice date, either party may commence court proceedings in relation to the Dispute.

23.6 No effect on right to terminate

This clause does not affect the rights of the parties to terminate this Agreement under clause 24.

23.7 Confidentiality

Any information or documents disclosed by a party during the Dispute resolution process:

- 23.7.1 must be kept confidential; and
- 23.7.2 may only be used to attempt to resolve the Dispute.

24 Termination

24.1 Termination for convenience

The Centre may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Supplier a minimum of 30 Business Days' notice.

24.2 Termination by the Centre

The Centre may terminate this Agreement immediately by notice to the Supplier if:

- 24.2.1 the Supplier does not comply with clauses 6.1.1 and 6.2.2.
- 24.2.2 the Supplier commits a breach of this Agreement which cannot be remedied;
- 24.2.3 the Supplier commits a breach of this Agreement and the Supplier :
 - a. fails to commence action to remedy the breach within 10 Business Days after the Centre has served notice requiring it to do so; or
 - b. having commenced action to remedy the breach, fails to complete that action as soon as possible and in any event, within 20 Business Days of the Centre's notice;
- 24.2.4 an Insolvency Event occurs in relation to the Supplier ;
- 24.2.5 a Change in Control occurs in relation to the Supplier ;
- 24.2.6 a Force Majeure Event continues for longer than 3 months;
- 24.2.7 the Supplier engages in any conduct that is contrary to the Supplier's occupational health and safety obligations under Law;
- 24.2.8 the Centre determines that the Supplier or any of its Personnel is guilty of conduct which:
 - a. is dishonest, fraudulent, deceitful or abusive;
 - b. is professional misconduct;
 - c. causes or may cause imminent and serious risk to the reputation, viability or profitability of the Product and Services;
 - d. is an indictable offence under Commonwealth or State crimes legislation (or equivalent in any jurisdiction);
 - e. is a contravention of a criminal or civil penalty provision under the Corporations Act (or equivalent in any jurisdiction);
 - f. adversely impacts the Supplier's ability to meet its obligations under this Agreement; or
 - g. adversely impacts on the Centre 's reputation.

24.3 Termination by Supplier

The Supplier may terminate this Agreement immediately by notice to Centre:

- 24.3.1 if a Force Majeure Event continues for longer than 3 months;
- 24.3.2 if Centre commits a breach of this Agreement and Centre:
 - a. fails to commence action to remedy the breach within 10 Business Days after the Supplier has served notice requiring it to do so; or
 - b. having commenced action to remedy the breach, fails to complete that action as soon as possible and in any event, within 20 Business Days of the Supplier's notice.

24.4 No compensation for termination

24.4.1 If this Agreement is terminated for any reason:

- a. the Supplier must, on receiving or issuing a termination notice under this Agreement, immediately:
 - ii. do everything possible to mitigate its Losses and Consequential Losses arising or which might arise in connection with termination;
 - iii. comply with any directions given by the Centre in connection with termination (including a direction to stop the completion of Deliverables and the Product and Services); and
 - iv. provide the Centre with a financial report within 20 Business Days containing a statement of payments and receipts made in respect of the Product and Services certified by a person undertaking the role of Chief Financial Officer (or comparable role) of the Supplier that includes a statement that the financial accounts are true and fair; and
- e. the Centre must:
 - vi. if applicable, pay the Supplier for any Deliverables completed in accordance with this Agreement but not yet invoiced as at the effective date of termination (calculated on a pro rata basis if required).

24.4.2 Except as provided for in clause 24.4.1, the Centre is not liable to the Supplier or its Personnel for any costs in connection with termination of this Agreement (including any Loss or Consequential Loss suffered or incurred by the Supplier in connection with termination).

24.5 Effect of termination or expiry

Termination or expiry of this Agreement will not affect:

- 24.5.1 any accrued rights or remedies of either party; or
- 24.5.2 the operation of clauses 26.3, 11, 13, 15, Error! Reference source not found., 17, c, 20, 26, 27 and this clause 24.5 or any other provision which, by its nature, are intended to survive termination or expiry of this Agreement.

25 Force Majeure Events

25.1 Suspension

If a Force Majeure Event directly prevents a party (**Affected Party**) from performing some or all of its obligations under this Agreement (**Affected Obligations**), then:

- 25.1.1 the Affected Obligations are suspended from the date the Force Majeure Event starts until the earlier of the date on which the Affected Party:
 - a. ceases to be prevented from performing some or all of its Affected Obligations; or
 - b. would have ceased to be prevented from performing some or all of its Affected Obligations if it had complied with clause 25.3; and
- 25.1.2 a failure of the Affected Party to perform the Affected Obligations during the period of suspension referred to in clause 25.1.1 is not a breach of this Agreement.

25.2 Notice of Force Majeure Event

If a Force Majeure Event occurs the Affected Party must, as soon as reasonably practicable, give written notice to the other party including:

- 25.2.1 particulars of the Force Majeure Event;
- 25.2.2 the likely duration of the Force Majeure Event;
- 25.2.3 each of the obligations which the Affected Party is unable to perform; and
- 25.2.4 the measures the Affected Party proposes to adopt to remedy or abate the Force Majeure Event.

25.3 Mitigation

While the Force Majeure Event is continuing the Affected Party must take all reasonable steps to:

- 25.3.1 minimise the duration of the Force Majeure Event; and
- 25.3.2 avoid or mitigate the effects of, and any Loss suffered or incurred by it or the other party as a result of, the Force Majeure Event.

25.4 End of Force Majeure Event

When a Force Majeure Event ceases to prevent the performance of the Affected Obligations, the Affected Party must immediately:

- 25.4.1 give written notice to that effect to the other party; and
- 25.4.2 resume performance of the Affected Obligations.

25.5 Termination due to Force Majeure Event

If a Force Majeure Event prevents the performance of the Affected Obligations for a continuous period of 60 Business Days, then either party may terminate this Agreement by giving written notice to the other.

25.6 Claims

Subject to clause 25.5, neither party is entitled to make any claim against, or be liable to, the other party in connection with a Force Majeure Event.

26 Definitions and Interpretation

26.1 Definitions

In this Agreement unless expressed or implied to the contrary:

Agreement means this agreement between the Centre and the Supplier including the Details and any Schedules.

Approved Purposes includes licence and sublicense rights to the extent necessary for the Centre to meet the obligations it has to the Commonwealth or its members, excluding Commercialisation. The Commonwealth's right to sub-licence includes and is not limited to the Commonwealth sublicensing to another Government agency who will have the same rights as the Commonwealth.

Business Days means Monday to Friday excluding public holidays in Melbourne, Australia.

CARE Data Principles means the principles regarding Indigenous Data Governance. The principles of care include choice, dignity, independence, partnership, privacy, respect, rights, safety, equality and inclusion, and confidentiality.

Centre's IT System means the physical and computing environment that is operated, maintained or provided by the Centre (or third parties relevant to the Deliverables under this Agreement and includes the Designated Environment).

Change in Control means any act, event or circumstance that results in or causes any variation, amendment or modification to the Control of the Supplier, where **Control** has the meaning given in section 50AA(1) of the Corporations Act.

Claims includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law (including negligence) or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Confidential Information means all information of a party (**Disclosing Party**) of any nature and in any form which is disclosed, made available, communicated by the Disclosing Party or delivered to or obtained by the other party (**Recipient**) in connection with this Agreement, which is about the Disclosing Party or its operations, dealings, organisation, Personnel, business, strategies, ideas, designs, Intellectual Property Rights, trade secrets or know how or is otherwise designated by the Disclosing Party as confidential (including the terms of this Agreement) or is by its nature confidential, but excludes information:

- a. which is in or which subsequently enters the public domain other than as a result of a breach of the Agreement;
- b. which the Recipient can demonstrate was in its possession prior to the Start Date;
- c. which the Recipient can demonstrate was independently developed by the it; or
- d. which is lawfully obtained by the Recipient from another person entitled to disclose such information.

Conflict of Interest means an actual or potential conflict of interest, or a conflict of interest that could reasonably be perceived to exist, between the Centre and the Supplier in relation to the performance of the Supplier's obligations under this Agreement.

Consequential Loss means:

- a. any loss of income, profits, revenue, business, business reputation, access to markets, denial of business opportunity or anticipated savings whether or not that loss or damage may reasonably be supposed to have been in the contemplation of the parties, when they entered this Agreement, as the probable result of that breach, act or omission;
- b. any loss of or damage to goodwill; or
- c. any business interruption, downtime costs, damage to credit rating or payment of liquidated sums or damages under any other agreement.
- d. Corporations Act means the *Corporations Act 2001* (Cth).
- e. Documentation means the Supplier's standard off the shelf documents or bespoke documents that describe the features and functions of the Product or Service, in a hard copy, electronic or online format that are provided by the Supplier to the Centre.
- f. Defect means a failure of a Deliverable to comply with the Requirements.

Deliverables means the deliverables for the Product and Services set out in Schedule 1

Designated Environment means the physical and computing environment with which the Deliverables must operate.

Details means the Agreement Details set out on page 3 of this Agreement.

Dispute means a dispute arising under or in connection with this Agreement.

Dispute Notice means a notice setting out details about a Dispute that is given under clause 23.1.

End Date means the end date of this Agreement specified in Item 3 of the Details.

Enhancements to a Party's Intellectual Property are features, capabilities and other developments that are not Improvements, but which can add to, or otherwise enhance the performance or functionality of that Party's Intellectual Property.

Existing Material means any Material and Intellectual Property Rights, other than New Material, which is made available, provided or used by a party under this Agreement and includes Third Party Material.

FAIR Data Principles means the principles (Findable, Accessible, Interoperable, and Reusable), published in Scientific Data in 2016, setting out guiding principles proposed by a consortium of scientists and organizations to support the reusability of digital assets.

Force Majeure Event means any:

- a. lightning strike, severe storm, earthquake, natural disaster, landslide, bushfire, mudslide or tsunami;
- b. sabotage, vandalism, malicious damage, riot or a 'terrorist act' as defined in the *Terrorism Insurance Act 2003* (Cth);
- c. explosion, flood or fire resulting from any of the events in paragraph (a) or (b);
- d. war (declared or undeclared), civil war, insurrection, invasion, rebellion, revolution, military action or usurped power, martial law, act of public enemy or embargo;
- e. ionising radiation, radioactive contamination, nuclear contamination or toxic, chemical or biological contamination; or
- f. epidemic, pandemic or public health emergency, or any resulting governmental action including work stoppages, mandatory business, service or workplace closures, full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions (for clarity, each stoppage or mandatory business, service or workplace closure full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions is to be treated as one event),

that is beyond the reasonable control of a party, was not caused by an act or omission of the party, and could not have been prevented, avoided, mitigated, remedied or overcome by the party taking steps a prudent and reasonable person would have taken in the circumstances.

Fraud means (without limiting the definition as set out in AS8001:2021) dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud. Fraud includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position for personal benefit. Examples include:

- a. theft of moneys or other property
- b. false invoicing
- c. false accounting / accounts receivable fraud
- d. credit card fraud involving the unauthorised use of a credit card or credit card number issued to another person
- e. deliberate falsification, concealment, destruction or use of falsified documentation used or intended for a normal business purpose
- f. improper use of information or position for personal benefit; or misuse of position in order to gain some form of financial advantage.

Fraud and Corruption Policy means the Centre's fraud and corruption policy available by the Centre.

Funding means the funding set out in Item 9 of the Details.

GST Law has the meaning given in the *A New System (Goods and Services Tax) Act 1999* (Cth).

Illegal or Corrupt Practice means (without limiting the definition as set out in AS 8001.2021) directly or indirectly:

- a. making or causing to be made, any offer, gift, payment, consideration or benefit of any kind to any party; or
- b. receiving or seeking to receive, any offer, gift, payment, consideration or benefit of any kind from any party,
- c. as an inducement or reward in relation to the performance of the Product and Services or this Agreement, which would or could be construed as an illegal or corrupt practice. Corruption includes dishonest activity in which a person associated with the Supplier acts contrary to the interests of the Centre and abuses their position of trust in order to achieve personal advantage or advantage for another person or the Supplier. This can also involve corrupt conduct by the Supplier, or a person purporting to act on behalf of and in the interests of the Supplier, in order to secure some form of improper advantage for the Supplier either directly or indirectly. Examples include:
- d. manipulation of procurement processes by selectively providing information to some bidders and not to others;
- e. receipt or the making of gifts or entertainment intended to achieve a specific or generic commercial outcome;
- f. bribing or accepting bribes or kick-backs to secure Agreements; or
- g. release of confidential information for other than.

Improvements to a Party's Intellectual Property are:

- a. developments that cannot be used independently of that Party's background Intellectual Property, and which require that Party's Background Intellectual Property for them to be used, and
- b. developments where the use of the improvement would infringe any pre-existing Intellectual Property rights of the Party.
- c. Indemnified Parties means the Centre and each of its directors, officers, employees, contractors and agents individually or collectively, as the case may be.

Insolvency Event means any of the following events:

- a. the Supplier, if an individual, commits an act of bankruptcy;
- b. the Supplier, its parent company or ultimate holding company becomes insolvent or unable to pay its debts as they fall due;
- c. a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Supplier or its parent company or ultimate holding company or the Supplier or its parent or ultimate holding company enters into a scheme of arrangement with its creditors or is wound up;
- d. the Supplier, its parent company or ultimate holding company assigns any of its property for the benefit of creditors or any class of them;
- e. an encumbrance takes any step towards taking possession or takes possession of any assets of the Supplier, its parent company or ultimate holding company or exercises any power of sale;
- f. the Supplier, its parent company or ultimate holding company has a judgment or order given against it in an amount exceeding \$1,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given; or
- g. an act is done or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to the Supplier or its parent company or ultimate holding company, has an analogous or similar effect to any of the events in paragraphs (a) to (e) of this definition.

Intellectual Property Rights means all and any patents, patent applications, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

Key Personnel means the Personnel of the Supplier specified in Item 6 of the Details.

Laws includes any law in force applying to the provision of the Product and Services or this Agreement, including the common law and equity, regulatory requirements and any applicable standards, codes and guidelines.

Loss means any loss, cost (including legal costs on a full indemnity basis), expense, damage or liability (including any fine or penalty) whether direct or indirect or consequential, present or future, fixed or unascertained, actual or contingent and whether arising under Agreement (including any breach of the Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution), but excluding Consequential Loss.

Materials include equipment, hardware, computer software, data, documentation, designs, plans, models, calculations, drawings, reports, notes, calculations, specifications, photographs, artwork, images, audio-visual materials, recordings, manuals, tools and anything else which is in a material form (and includes information stored in an electronic form).

Milestone Dates means the dates by which the Deliverables must be delivered to the Centre set out in Schedule 1.

Moral Rights has the same meaning and effect as given to that expression in the *Copyright Act 1968* (Cth).

New Material means all Material that is created, written, developed or otherwise brought into existence by or on behalf of the Supplier for the Centre in the course of the Supplier performing its obligations under this Agreement, and includes the Material specified as New Material. New Material does not include Existing Material, or Third Party Material.

Nominated Third Party Material means Material listed in Item 7 of the Details that a third party holds Intellectual Property Rights in.

Objectives means the objectives the Product and Services must meet set out in Item 4 of the Details.

OHS Laws means occupational health and safety laws in place at the relevant location of any work undertaken on the Product and Services, including but not limited to the Occupational Health and Safety Act 2004 (Vic) and Occupational Health and Safety Regulations 2017 (Vic) and any compliance code or other instrument enacted under those laws.

Personal Information means any health information as defined under the *Health Records Act 2001* (Vic) and any personal information as defined under the *Privacy and Data Protection Act 2014* (Vic) and *Privacy Act 1988* (Cth).

Personnel means employees, agents, contractors or subcontractors including representatives.

Privacy Laws means the *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic), the *Privacy Act 1988* (Cth) and any other Law which relates to the privacy, confidentiality or use of any information about individuals and with which the parties must comply.

Product and Services means the Product and Services described in the Details and the Schedule 2.

Requirements means the standards, Specifications and other requirements for the Deliverables and the performance of the Supplier's other obligations under the Agreement, which are set out in the Agreement.

Supplier means the party described in Item 2 of the Details.

- a. Supplier Representative means the person appointed by a Supplier in accordance with clause 5.1 and specified in Item 2 of the Details

Special Conditions means any special conditions listed in the Details.

Subcontractors means a person engaged as a subcontractor by the Supplier to perform any part of the Product and Services or perform any of the Supplier's obligations under this Agreement, who is approved by the Centre under clause 10.1.

Start Date means the start date of the Agreement specified in Item 3 of the Details.

Term has the meaning given in clause 1.

Third Party Material means Existing Material excluding Nominated Third Party Material to the extent that a third party holds Intellectual Property Rights in that Material.

Torres Strait Islander has the same meaning given in the *Aboriginal and Torres Strait Islander Act 2005* (Cth).

Traditional Owner means an Aboriginal Person or Torres Strait Islander who is a member of a local descent group having spiritual or cultural affiliations, and certain rights and responsibilities, in relation to a tract of land or area of sea.

Traditional Knowledge means knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

UN Declaration means the *United Nations (UN) Declaration of the Rights of Indigenous Peoples* adopted on 13 September 2007.

Valid Tax Invoice means an invoice containing the information specified in Item 10 of the Details issued under clause 4.2.

26.2 Interpretation

In this Agreement, except where the context requires otherwise:

- 26.2.1 the singular includes the plural and vice versa;
- 26.2.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 26.2.3 a reference to:
 - a. a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - b. a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
 - c. a person includes the legal personal representatives, successors and permitted assigns of that person;
 - d. any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
 - e. '\$' or 'dollars' is a reference to Australian dollars;
 - f. time is a reference to the time in the place where the obligation is to be performed;
 - g. a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - h. this or any other document is a reference to that document (or, if required by the context, to part of it) as amended, novated, updated or replaced at any time;
- 26.2.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 26.2.5 where the expression including or includes is used it means 'including but not limited to' or 'including without limitation'; and
- 26.2.6 a payment or other act required to be made or done on a day which is not a Business Day, must be made or done on the next following Business Day.

26.3 Priority of documents

This Agreement comprises the following, which will be read in the following order of precedence:

- 26.3.1 any Special Conditions;
- 26.3.2 clauses 1 to 27 (inclusive) of this Agreement;
- 26.3.3 the Details;
- 26.3.4 the Schedules; and
- 26.3.5 any other documents created under this Agreement or incorporated by reference.

27 General

27.1 Entire understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

27.2 Variation

This Agreement may only be varied or replaced by a document duly executed by the parties.

27.3 Notices

All notices and communications given under this Agreement must be in writing and directed to the recipient's contact person at the postal address or email stated in Items 1 and 2 of the Details.

27.4 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

27.5 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

27.6 Waiver and exercise of rights

A right relating to this Agreement may only be waived by a written notice signed by the party waiving the right. A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

27.7 Rights and remedies

The rights and remedies conferred on a party by this Agreement are in addition to all other rights and remedies of that party, whether those rights are provided for under this Agreement, any other document or by law.

27.8 Assignment

The parties must not assign, novate or otherwise transfer any of their rights or obligations under this Agreement without the prior written consent of the other party, which must not be unreasonably withheld.

27.9 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

27.10 No relationship

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

27.11 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.

27.12 Rule of construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this Agreement or any part of it.

27.13 Severance

27.13.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

27.13.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

27.14 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

27.15 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

27.16 Electronic execution

The parties:

- 27.16.1 agree that this Agreement may be executed by a party using the digital or electronic signature of an authorised representative of the party; and
- 27.16.2 consent to the requirement for execution of this Agreement to be met by the method referred to in clause 27.16.1; and
- 27.16.3 consent to the exchange of this Agreement via email to the Centre's contact person and the Supplier's Representative referred to in Item 1 and Item 2 of the Details.

28 Signing page

Executed by the parties

Executed by **Natural Hazards and Disaster Resilience Research Centre Ltd trading as Natural Hazards Research Australia ACN 163 137 979** by being signed by those persons who are authorised to sign for the Centre:

[Use this signature block for companies and firms. Change to match NHRA style for universities and government entities)

Executed by **###insert Supplier ACN ###** in accordance with section 127(1) of the *Corporations Act 2001* by being signed by authorised persons for the company:

Signature of authorised representative

Signature of director

Print name of authorised representative

Print name of director

Signature of witness

Signature of director / company secretary

Print name of witness

Print name of director / company secretary

Date

Date

Schedule 1 Deliverables and Milestone Dates

No.	Key Deliverable	Milestone Date	Payment (ex GST)
Stage 1			
Quarter 1 FY/FY			
1	Agreement execution	The date on which this Agreement is signed by both parties	##Insert
2	##Insert Deliverable, can be broken down into tasks required to complete that Deliverable	##Insert date of last day of the quarter	
Quarter 2 FY/FY			
3	Quarterly report (Month-Month)	##Insert date of 5 Business Days after the end of the quarter	##Insert
4	##Insert Deliverable, can be broken down into tasks required to complete that Deliverable	##Insert date of last day of the quarter	
5	
6	Product and Services Deliverables for the Quarter	##Insert date of last day of the quarter	
...			
7	
Quarter n FY/FY			
8	Quarterly report (Month-Month)	##Insert date of 5 Business Days after the end of the quarter	##Insert
9	##Insert Deliverable, can be broken down into tasks required to complete that Deliverable	##Insert date of last day of the quarter	
10	
11	Product and Services Deliverables for the Quarter	##Insert date of last day of the quarter	
12	Product and Services approved by the Centre	##Insert	

***Note that all Deliverables (as per the Milestone Dates) prior to the payment point must be achieved before payment is approved unless otherwise organised with the Centre.

Schedule 2 Product and Services Requirements

Schedule 3 Quarterly report template

Product and Services Title

Product and Services no.

Period covered

Prepared by

Supplier

1. **Output highlights in this reporting period**
(2-3 highlights in a couple of lines each)
2. **Key activities**
(what activities have been done during the reporting period)
3. **Emerging issues with other Product and Services (s) or whole program implications**
(include details of output or publication and date submitted)
4. **Emerging risks and mitigation approach**
(reference applicable activity from Deliverables progress report in paragraph 5 below)
5. **Deliverables progress report**
 - *Copy milestones from Agreement into the table*
 - *Maintain original Milestone Date unless fully endorsed for adjustment.*
 - *Highlight (light grey) those cells where a milestone was due in the reporting period*
 - *Apply applicable letter from Traffic Light Status to "Status" field to each Deliverable in table:*

Traffic Light Risk Status	
On track (green)	G
Some risk to Deliverable (amber)	A
Major threat to Deliverable (red)	R
No activity – leave blank	blank
Completed	C

No.	Deliverable	Baseline Milestone Date	Updated Milestone Date	Delay (days)	Cum. Delay (days)	Risk Status