

PROCURE IT FRAMEWORK

VERSION 3.1

PART 2: CUSTOMER CONTRACT

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1. Recitals

PROCURE IT FRAMEWORK

- 1.1 The New South Wales Department of Finance and Services administers the *Procure IT Framework*.
- 1.2 The NSW Procurement Board ('the Board') is established under section 164 of the Public Works and Procurement Act 1912 (NSW) ('PWP Act'). The Board may pursuant to section 174 (1) of the PWP Act, establish a scheme under which a Government Agency accredited by the Board may procure goods and services for that agency or for other government agencies, subject to any terms and conditions of its accreditation.
- 1.3 The Contract Authority is the head of a Government Agency, which may procure goods and services for that agency or for other government agencies consistent with any applicable policies and directions of the Board, the terms of its accreditation (if any) by the Board, and the principles of probity and fairness.
- 1.4 The relevant Contract Authority is responsible for the administration of the Head Agreement on behalf of Eligible Customers and has authority to act on behalf of these entities in this respect.
- 1.5 The *Procure IT Framework* is designed so that Products and Services can be acquired:
 - (a) as a result of a panel arrangement where an entity acts as the Contract Authority and establishes a master purchasing arrangement where one or more Contractors agree to offer certain Products and/or Services to Eligible Customers at pre-agreed Prices and on pre agreed core terms and conditions, for a defined Term (**Panel Arrangement**); or
 - (b) using an alternate procurement process that does not involve a Panel Arrangement (**Non-Panel Arrangement**).

PANEL ARRANGEMENT

- 1.6 Where the *Procure IT Framework* is used for a Panel Arrangement, the Contract Authority will undertake a procurement process and the successful Contractors will sign the Head Agreement and go onto the panel. The Head Agreement requires that all Eligible Customers who acquire Products and Services under the Panel Arrangement acquire the Products and Services using the form of Customer Contract that is set out in the *Procure IT Framework*.
- 1.7 The Head Agreement describes the relationship between the Contract Authority and the Contractor for the administration of the Panel Arrangement, including the Products and Services that can be acquired under the Panel Arrangement, how those Products and Services can be updated during the Term, the Pricing for the Products and Services, which entities are entitled to acquire Products and Services under the Panel Arrangement, which Approved Agents can be used by the Contractor to supply the Products and Services, the Term of the Panel Arrangement, the minimum insurance requirements and any Performance Guarantee that might apply to Customer Contracts entered into under the Head Agreement, as well as the general terms and conditions applicable to the relationship. .

NON-PANEL ARRANGEMENT

- 1.8 Where there is no Panel Arrangement, a Customer may acquire Products or Services from the Contractor under a Customer Contract, and the terms and conditions of the Head Agreement are not to be used.

CUSTOMER CONTRACT

- 1.9** The Customer Contract describes the relationship between the Customer and the Contractor for the supply of the Products and Services that are described in the Customer Contract. Where the Customer Contract is made under a Head Agreement:
- (a) the Products and Services that can be acquired, the Prices at which they can be sold, and the degree to which the terms and conditions can be varied are limited by the terms of the Head Agreement; and
 - (b) the Customer is entitled to the benefits of any arrangements that have been made by the Contract Authority under the Head Agreement in respect to insurance and any Performance Guarantee.
- 1.10** The Parties agree to perform their obligations in accordance with the terms and conditions of this Customer Contract.

DICTIONARY

- 1.11** The *Procure IT Framework* includes the Dictionary, which defines key terms and concepts.

2. Scope of Contract

PRODUCTS AND SERVICES

- 2.1** Where the Customer Contract is made under a Head Agreement, the Customer must acquire Products and/or Services, at the Prices, which must not exceed the amounts set out in Annexure 3 to the Head Agreement.
- 2.2** Where the Customer Contract is not made under a Head Agreement, the Customer must acquire the Products and/or Services stated in the Order Documents in accordance with the Customer Contract.

PRICING

- 2.3** The amounts set out in Annexure 3 to the Head Agreement are the maximum amounts payable by a Customer for the Products or Services acquired during the Term of the Head Agreement, subject to any increase made in accordance with any price variation mechanism stated in Annexure 3 to the Head Agreement. Nothing in this clause 2.3 prevents:
- (a) the Contractor from charging a Customer for any item, service, expense or other thing which is permitted to be charged for under a Customer Contract; or
 - (b) the Contractor and the Customer agreeing Prices which will apply to a Customer Contract which are lower than the amounts stated in Annexure 3 to the Head Agreement.

CONTRACT PERIOD

- 2.4** The Customer Contract commences on the Commencement Date and will expire at the end of the Contract Period stated in Item 10 of the General Order Form. The Customer may extend the Contract Period on the same terms and conditions for the period stated in Item 10 in the General Order Form, by giving the Contractor written notice at least 30 days prior to the end of the Contract Period.

NOMINEE PURCHASER

- 2.5** If an Eligible Customer requires a Nominee Purchaser to enter into a Customer Contract on its behalf, the Contractor may not refuse to enter into that Customer Contract solely on the basis that the Customer Contract will be signed by the Nominee Purchaser as agent for the Eligible Customer and will not be signed by the Eligible Customer itself, provided that the Nominee Purchaser:
- (a) provides its current registration number as given by the Contract Authority or Eligible Customer;
 - (b) provides its nominating Eligible Customer's Australian Business Number; and
 - (c) provides the Contractor with the written authorisation from the Contract Authority or Eligible Customer that confirms the Nominee Purchaser's rights to purchase Products and/or Services as agent for the Eligible Customer.

3. Formation of Customer Contract

FORMATION

- 3.1** A Customer Contract is entered into under a Head Agreement only where the Head Agreement is cross referenced in Item 7 of the General Order Form.
- 3.2** Where the Customer Contract is entered into,(and there is either a Head Agreement or the Customer is not the Contract Authority) the Contractor and the Customer:
- (a) agree that the Contract Authority may enforce the Customer Contract as agent for the Customer, even though the Contract Authority is not a party to the Customer Contract in its own right and in such circumstances, the applicable limitations and exclusions of liability in respect of the relevant claim will be those set out in clause 18 below, rather than those set out in clause 12 of the Head Agreement; and
 - (b) may seek to include any Additional Conditions that vary any of the terms and conditions of the Customer Contract including the Protected Clauses, provided that the Customer first obtains the written approval of the Director General, NSW Department of Finance and Services and the Contractor has received a copy of such written approval.
- 3.3** A Customer Contract between the Contractor and Customer is created upon:
- (a) the Parties completing and agreeing the Order Details and any Additional Conditions; and
 - (b) the Customer and the Contractor signing the General Order Form.
- 3.4** The Parties must, at a minimum, include in the Order Documents details of the Parties (stated in Item 1 and Item 4 of the General Order Form), Item 7 (if the Customer Contract is placed under a Head Agreement), the relevant Modules that are to be included in Item 8, the Contract Period in Item 10, the Products and Services (stated in Item 11 of the General Order Form or in the relevant Module Order Form), Price (or such details as are required to calculate the Price including those stated in Item 11 of the General Order Form or in the relevant Module Order Form), delivery details (including those stated in Item 12 of the General Order Form), the Contract Specifications (as stated in Item 13 of the General Order Form) and any details from the Module Order Forms that are required to describe the Products or Services.

- 3.5** The Parties may use a shortened version of the General Order Form (in hard or electronic format) which omits Items that the Parties agree are not required for the Customer Contract, provided that:
- (a) the minimum Order Details stated in clause 3.4 are included in that form, as well as any other Order Details that the Parties may agree to include;
 - (b) the structure and form of the General Order Form is consistent with Schedule 1 (even if some Items are omitted. Where Items are omitted subsequent Items that are included must retain their current Item number or heading so that the references in the Procure IT Framework remain accurate);
 - (c) the document readily identifiable as a General Order Form that comprises part of this Customer Contract and:
 - (i) uses the heading:

“General Order Form. Schedule 1 to the Customer Contract (which is Part 2 of the Procure IT Framework)”
 - (ii) and includes the phrase:

“This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.”
 - and
 - (d) the shortened document is signed by both Parties.
- 3.6** The Parties may use an electronic form of any Order Document, provided that an electronic form of the relevant Order Document is lawful.
- 3.7** To the extent that an Item in the Order Documents has not been completed or is omitted, that Item will be deemed not applicable.
- 3.8** The Customer Contract comprises:
- (a) any Modules that are stated as forming part of the Customer Contract in Item 8 of the General Order Form and the corresponding Module Order Forms;
 - (b) any Schedules that are stated as forming part of the Customer Contract in Item 9 of the General Order Form other than Schedule 1 (General Order Form), Schedule 2 (Agreement Documents), Schedule 3 (Service Level Agreement) or Schedule 12 (PIPP);
 - (c) any Additional Conditions in Schedule 1 (if applicable);
 - (d) the other provisions of Schedule 1;
 - (e) these clauses 1 to 26;
 - (f) Part 3, the Dictionary;
 - (g) any PIPP agreed by the Parties based on Schedule 12 (PIPP);
 - (h) any Service Level Agreement agreed by the Parties based on Schedule 3 (Service Level Agreement);

- (i) all other Order Documents;
- (j) Annexure 3 to the Head Agreement (if applicable); and
- (k) the Agreement Documents (if any).

3.9 To the extent that there is any conflict between any of the documents that comprise the Customer Contract, the conflict shall be resolved by giving priority to the documents in the order in which they appear in clause 3.8 (with an item higher in the list having priority over a lower item).

3.10 For clarity:

- (a) the terms and conditions of use of NSWBuy or any other electronic purchasing system used by the Customer are not part of the Customer Contract;
- (b) if the Customer uses any document that has any terms and conditions on it as the basis of a General Order Form (including a purchase order) then any terms and conditions that are on that document (whether pre-printed, automatically generated or otherwise) but are not in the form and structure of the General Order Form, are expressly excluded from the Customer Contract. Any Additional Conditions must be inserted as Item 43 (Additional Conditions) of a General Order Form.

COMPLIANCE WITH CONSUMER LAWS

3.11 To the extent that the provisions of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) apply to goods or services supplied under this Customer Contract, then the provisions of this Customer Contract are subject to the provisions of the CCA.

3.12 To the extent that there is a failure to comply with a guarantee under sections 54 to 59 in schedule 2 of the CCA in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the cost of having the goods repaired.

3.13 To the extent that there is a failure to comply with a guarantee in respect of the supply of services under sections 60 to 62 in schedule 2 of the CCA, then to the extent permitted by law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

- (a) supplying the services again; or
- (b) payment of the cost of having the services supplied again.

4. Relationship

4.1 The Contractor agrees that it will not be taken to be and must not represent that it is the employee, partner, officer and/or agent of the Customer.

5. Deliverable Specific Issues

DELIVERY

- 5.1 The Contractor must deliver any Deliverables to the Site between the hours stated in Item 12 of the General Order Form as otherwise agreed in writing.
- 5.2 The Contract Price is inclusive of any additional or separate delivery costs, unless otherwise stated in the Order Documents including Item 11 of the General Order Form.
- 5.3 The Parties must perform their obligations in accordance with any Service Level Agreement. Either Party may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to a Service Level Agreement must be implemented as a Change Request in accordance with the procedures stated in Schedule 4 – Variation Procedures.

DOCUMENTATION

- 5.4 The Contractor must provide the User Documentation and any Bespoke User Documentation to the Customer in either hard copy or electronic format. If the User Documentation is provided in hard copy format:
 - (a) the Contractor must make available, at no additional cost to the Customer, at least one copy of the User Documentation and such related material as the Contractor usually makes available free to its other customers, upon supply of the Product or Service to the Customer, or at the time(s) stated in the PIPP; and
 - (b) additional copies of the User Documentation must, if requested by the Customer, be provided by the Contractor at the Price stated in Item 15 of the General Order Form, or if the Price is not stated in the Order Documents, at the Contractor's then current commercial price.
- 5.5 The Contractor must ensure that any User Documentation and Bespoke User Documentation:
 - (a) is of a reasonable standard in terms of its presentation, accuracy and scope;
 - (b) provides an explanation of functions, capacity and operations of the relevant Product, Service or Deliverable;
 - (c) in the case of User Documentation only, is the most current and up-to-date version available; and
 - (d) is in the English language.
- 5.6 Where the Customer identifies any Defect in the User Documentation or Bespoke User Documentation within 30 days of the date of supply of the User Documentation or Bespoke User Documentation to the Customer, the Contractor must amend the defective User Documentation or Bespoke User Documentation and must promptly supply to the Customer the amended User Documentation or Bespoke User Documentation (or the relevant part) at no additional cost to the Customer.
- 5.7 The Contractor grants the Customer a right to use the User Documentation in connection with the authorised use of the Product or Service including for training purposes. Where the User Documentation is only provided in an electronic format the Customer may print ad hoc pages of the User Documentation. The Customer must not otherwise copy or adapt (including incorporating parts of the User Documentation into other Documents) without the Contractor's prior written consent (not to be unreasonably withheld).

NORMAL USE

5.8 For the purposes of the CCA, the Deliverables provided under this Customer Contract are ordinarily supplied for the use in connection with processing internal data for business applications which:

- (a) do not require very high levels of availability or completely error free use;
- (b) are not used for a Prescribed Use;
- (c) are not for resale.

If the Parties agree that the Deliverables can be used for any other purpose that other purpose must be set out on the Order Documents.

PRODUCT SAFETY

5.9 If the Contractor determines that a Deliverable requires an engineering change that is classified by the supplier or manufacturer as being mandatory in order to ensure product safety then:

- (a) the Contractor will, at its own cost, provide a 'user installable part' which the Customer must promptly install; or
- (b) the Customer will allow the Contractor to Install the engineering change, at the Contractor's own cost.

5.10 The Customer agrees that:

- (a) the Contractor may maintain such information (including Personal Information) as may be required to assist the Contractor in complying with its obligations under the CCA or other law in respect of product safety, including product recall; and
- (b) it will promptly give the Contractor Notice in Writing of any information that the Contractor may need in order for the Contractor to provide any notice relating to product safety that it may be required to provide under the CCA or other law.

6. Delivery Management

PROJECT MANAGEMENT

6.1 Where the Customer Contract is made under a Head Agreement, the Customer shall have the right to appoint a representative of the Contract Authority to act as the Customer's agent for the purpose of exercising any of the Customer's rights arising out of, or in connection with, the Customer Contract.

6.2 The following clauses 6.3 to 6.9 apply if and to the extent stated in the Order Documents.

MANAGEMENT COMMITTEE

6.3 If it is stated on the General Order Form that a management committee is to be established, the Parties must agree and establish a management committee and a process for the conduct of the management committee's business by the date stated in the Order Documents.

6.4 The management committee must consist of the Party's project managers or officers, or such other persons as stated in the Order Documents including Item 16 of the General Order Form.

- 6.5** All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Customer Contract.
- 6.6** The management committee must:
- (a) review and monitor progress under the Customer Contract; and
 - (b) carry out any other functions stated in Item 16 of the General Order Form.
- 6.7** Unless agreed otherwise, the members of the management committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time.
- 6.8** At least 1 Business Day prior to a management committee meeting, the Contractor's project manager must submit to the Customer's project manager a report of progress under the Customer Contract including:
- (a) details (including dates) of Deliverables and Milestones commenced, completed or Accepted;
 - (b) details of any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
 - (c) a review of any:
 - (i) minutes and actions from the last meeting;
 - (ii) issues log;
 - (iii) risk management plan, which must be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed otherwise in writing;
 - (iv) details of any outstanding invoices and any payments that are about to become due;
 - (d) draft updates of relevant parts of the Contract Specifications;
 - (e) any new Change Requests or Contract Variations (if applicable); and
 - (f) details of the progress of any draft Change Requests or Contract Variations (if applicable).
- 6.9** If the Customer disagrees with the details recorded in the report, then the Customer must, within 2 Business Days of receipt of the report, make a written endorsement on the report recording its version of the details. The amended report must be provided to the Contractor within 1 Business Day of the Customer updating the report.

PERFORMANCE REVIEWS

- 6.10** If it is stated in Item 17 of the General Order Form that the Parties must conduct a service and performance review of the Contractor's performance of the Customer Contract, then the Parties must conduct such reviews at the intervals and in accordance with the other requirements, including any obligations under any Service Level Agreement, stated in the Order Documents.

- 6.11** All reviews must be undertaken by representatives of both Parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review. Where the Customer Contract is made under a Head Agreement, either Party may request the involvement of the Contract Authority in any review.

SITE SPECIFICATIONS

- 6.12** Where it is stated in Item 18 of the General Order Form that a Site Specification is required, the Contractor must inspect the Site and provide the Customer with a Site Specification for the Customer's approval.
- 6.13** The Contractor must make any amendment to the Site Specification that is reasonably required by the Customer, providing such amendments are requested prior to the delivery of the Deliverables. Where the Contractor reasonably believes that the required amendment will materially affect the Contractor's ability to perform its obligations under the Customer Contract, it will notify the Customer and the Parties will discuss in good faith whether any Change Request is required to deal with such required amendment.

IMPLEMENTATION PLANNING STUDY

- 6.14** Where it is stated in Item 19 of the General Order Form that the Contractor must provide an implementation planning study, the Contractor must complete the implementation planning study in accordance with the requirements in Item 19 of the General Order Form.
- 6.15** Any implementation planning study must meet the objectives stated in Item 19 of the General Order Form which may include:
- (a) the Contractor's assessment of the scope and complexity of the project;
 - (b) the required Deliverables;
 - (c) the resources required (including any resources to be made available by the Customer); and
 - (d) the development of a PIPP or a Service Level Agreement.
- 6.16** The Contractor must deliver the implementation planning study to the Customer by the date stated in Item 19 of the General Order Form, and unless it is stated in the Order Documents that it is to undergo Acceptance Tests in accordance with clause 10.1(b), the AAD for the implementation planning study is determined in accordance with clause 10.1(a).

PROJECT SCHEDULE

- 6.17** The Parties must perform their obligations at the times and in the manner stated in the PIPP as stated in Item 20 of the General Order Form.

CHANGE CONTROL

- 6.18** Either Party may recommend or request a change to the PIPP or any other part of the Customer Contract. Any change to the PIPP or any other part of the Customer Contract must be implemented as a Change Request in accordance with the variation procedures stated in Schedule 4 – Variation Procedures, subject to clauses 26.1 to 26.2.

STAGED IMPLEMENTATION

- 6.19** The Parties agree to perform the Customer Contract in accordance with the Stages stated in the PIPP.

- 6.20** The Customer must give written notice to the Contractor within 10 Business Days (or such longer period stated in Item 20 of the General Order Form) of the end of each Stage as to whether it wishes the Contractor to commence the following Stage.
- 6.21** The Contractor must not commence any work on Stage two or any subsequent Stage until it receives written notice from the Customer to proceed with the work in that Stage. The signing of the Customer Contract is deemed to be sufficient notification to proceed with work in Stage one.
- 6.22** Nothing in the Customer Contract shall be construed as obliging the Customer to give the written notice referred to in clause 6.21 in respect of Stage two or any other subsequent Stage.
- 6.23** The Customer's liability to the Contractor for not proceeding to a subsequent Stage shall be limited to those costs that have been stated in the Order Documents.

EXTENSION OF TIME

- 6.24** Each Party must do all it reasonably can to promptly inform the other of anything that it becomes aware of which is likely to affect the cost, quality or timing of delivery of the Deliverables, and the Parties must then investigate how to avoid or minimise any adverse effect on the Customer Contract.
- 6.25** The Customer may consent to a request for extension of time provided that the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of any delay.
- 6.26** The Contractor may be entitled to a reasonable extension in time and any damages, costs or expenses (calculated using the rates set out in the Customer Contract, or if none, are stated at the Contractor's then current commercial rates) that arise out, of or in connection with a delay or increase in costs which has occurred because of:
- (a) the Customer's failure to perform its obligations in accordance with the Customer Contract;
 - (b) the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer;
 - (c) any change to access to the Customer's Site (including denial or suspension of access under clause 7.3) unless the change to access is due to an adverse finding arising out of an investigation into the conduct of the Contractor or its Personnel or a breach of clause 7.2; or
 - (d) any change to any of the Customer's secrecy or security requirements provided that the Contractor will mitigate any expenses incurred or delay caused as a result of complying with such changed requirements.
- 6.27** The Contractor must submit a Change Request to the Customer in respect of the relevant extension of time or change to any amount payable by the Customer in accordance with Schedule 4 – Variation Procedures within 5 Business Days of becoming aware of the relevant delay under clause 6.26.

LIQUIDATED DAMAGES

- 6.28** Where the Parties have agreed in Item 21 of the General Order Form that liquidated damages will be payable for the late completion of an LD Obligation, clauses 6.29 to 6.34 apply.
- 6.29** Where the Contractor has not completed an LD Obligation by the Due Date, or if the Due Date has been varied by a Change Request or otherwise in accordance with the Customer

Contract, such varied Due Date, the Contractor must pay liquidated damages stated in Item 21 of the General Order Form to the Customer unless the late completion of the LD Obligation is:

- (a) caused by an Event;
- (b) caused by the Customer or its Personnel;
- (c) caused by the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
- (d) permitted because an extension of time for completion of the LD Obligation has been granted by the Customer in accordance with the Customer Contract.

6.30 The Customer must promptly give the Contractor Notice in Writing setting out the grounds on which the Customer claims that liquidated damages are payable.

6.31 Each Party acknowledges that the liquidated damages stated in Item 21 of the General Order Form are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 6.32 as a result of the Contractor not completing the LD Obligation by the Due Date.

6.32 The Contractor must pay any liquidated damages that are due from the Due Date until the earlier of:

- (a) the date that the Contractor successfully completes the LD Obligation in relation to which the liquidated damages have been applied; or
- (b) the date on which the maximum number of days for which liquidated damages are payable as stated in Item 21 of the General Order Form have elapsed (the **Longstop Date**).

6.33 Liquidated damages paid under clause 6.32:

- (a) are the Customer's sole and exclusive financial remedy for the Customer's loss, damage and expense that the Customer suffers during the period in which liquidated damages are payable under clause 6.32 out of or in connection with the Contractor not completing the LD Obligation by the Due Date, subject only to the Customer's rights under clause 6.34; but
- (b) do not relieve the Contractor from any other liability or from meeting any other obligation under the Customer Contract.

6.34 The Customer may, at any time during the period in which liquidated damages are payable under clause 6.32, issue a Notice in Writing of a Substantial Breach in respect of the Contractor not completing the LD Obligation by the Due Date specifying a period during which the Contractor is required to remedy that Substantial Breach, such period to be the greater of:

- (a) 10 Business Days;
- (b) the period during which liquidated damages are payable for that Substantial Breach; or
- (c) such longer period stated in the Notice in Writing,
- (d) and if the Contractor has not remedied that Substantial Breach (by completing the LD Obligation) by the end of such period, the Customer may terminate the Customer Contract immediately by Notice in Writing to the Contractor.

- 6.35** The Parties agree that where the Contractor has not successfully completed the LD Obligation in relation to which the liquidated damages have been applied by the Longstop Date, the payment of liquidated damages by the Contractor under clause 6.32 is without prejudice to the Customer's right to claim damages at large in respect of loss, damage and expense that arises after the Longstop Date out of or in connection with the Contractor not completing the LD Obligation by the Longstop Date.

CUSTOMER SUPPLIED ITEMS (CSI)

- 6.36** The Customer must provide and maintain the CSI at the times and in accordance with the requirements stated in the Order Documents including Item 22 of the General Order Form.
- 6.37** The Customer must enforce any agreement with a third party under which products or services of that third party are being provided to the Contractor as CSI (**Third Party CSI**), including support and maintenance contracts, to the extent that the relevant third party's failure to provide or resolve any issues with the Third Party CSI materially impacts the Contractor's ability to perform its obligations under the relevant Customer Contract.
- 6.38** The Contractor must:
- (a) not use any CSI other than for the purposes of the Customer Contract without the prior written consent of the Customer;
 - (b) not part with possession of any CSI unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any CSI;
 - (c) take all reasonable care of all CSI including accounting for, preserving, installing or handling the CSI in accordance with the Order Documents;
 - (d) not modify any CSI without the prior written consent of the Customer;
 - (e) promptly inform the Customer of any loss, destruction or damage to any CSI; and
 - (f) comply with any reasonable instruction of the Customer for preserving, forwarding or disposal of any damaged CSI; and
 - (g) pay the costs, if any, stated in Item 22 of the General Order Form, for CSI.
- 6.39** If the CSI is no longer required for the purposes of the Customer Contract, it must be returned to the Customer or destroyed at the Customer's request as soon as practicable, unless other arrangements are agreed.
- 6.40** Provided the Contractor complies with its obligations under clauses 6.38(c) to 6.38(f), the Customer must repair or replace CSI within a reasonable time of becoming aware that the CSI does not comply with the requirements stated in the Order Documents.

CUSTOMER ASSISTANCE

- 6.41** During the Contract Period, the Customer must:
- (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings and other materials as specified in Item 22 of the General Order Form or as otherwise agreed in writing with the Contractor; and
 - (b) answer reasonable queries made by the Contractor relating to the Customer's requirements in connection with the Customer Contract.

ESCROW

- 6.42** If stated in Item 23 of the General Order Form, the Contractor must arrange:
- (a) for itself, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement in relation to the Escrow Materials; or
 - (b) for the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.
- 6.43** Any escrow arrangements to which the Customer becomes a Party under clause 6.42 must endure for at least the period stated in Item 23 of the General Order Form unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in the Escrow Agreement.
- 6.44** The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under clauses 6.42.

BUSINESS CONTINGENCY

- 6.45** If stated in Item 24 of the General Order Form that a Business Contingency Plan is required, the Contractor must, within the time stated in Item 24 of the General Order Form or as otherwise agreed in writing, prepare a Business Contingency Plan for the approval of the Customer.
- 6.46** The Business Contingency Plan must include the details stated in Item 24 of the General Order Form or as otherwise agreed in writing. The Contractor must provide the Customer with a copy of the approved Business Contingency Plan.
- 6.47** The Business Contingency Plan must be reviewed, updated and tested by the Contractor at the intervals stated in Item 24 of the General Order Form.
- 6.48** If there is an interruption to the Customer's business that is contemplated by the Business Contingency Plan the Contractor must perform the obligations in the Business Contingency Plan. The Customer must provide the Contractor with any assistance reasonably required by the Contractor to create and perform the Business Contingency Plan.

7. Access

ACCESS TO CUSTOMER'S SITE

- 7.1** Without prejudice to the Contractor's obligations under clauses 6.12 and 6.13, the Customer must prepare and maintain the Site:
- (a) to enable the supply of the Deliverables; and
 - (b) in accordance with the Site Specification that is approved under clauses 6.12 to 6.13, or as otherwise stated in Item 18 of the General Order Form.
- 7.2** Where the Customer provides the Contractor with access to the Customer's Site, the Contractor:
- (a) must ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security; and
 - (b) is liable for any damage to the extent that such damage is caused by the negligent act or omission of its Personnel on the Customer's Site.

- 7.3** The Customer may temporarily deny or suspend access to the Customer's Site in its discretion.
- 7.4** The Contractor must comply, and must ensure that its Personnel comply, with the secrecy and security requirements of the Customer as stated in Item 25 of the General Order Form, or of which the Customer subsequently provides the Contractor by written notice.

8. Personnel

PERSONNEL - GENERAL

- 8.1** Neither Party may, without the prior written consent of the other Party, engage, employ or induce or cause a third party to induce the other Party's Personnel engaged in the performance of the Customer Contract to enter into a contract for service or a contract of employment with it.
- 8.2** The restriction in clause 8.1 shall apply during the Contract Period and for a period of six months after the end of the Contract Period.
- 8.3** A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 8.1.
- 8.4** The Parties agree that the restrictions in clauses 8.1 to 8.3 are necessary to protect the legitimate interests of each Party.
- 8.5** The Customer must make available its Personnel to work with the Contractor as stated in the Order Documents including Item 26 of the General Order Form. The Parties will identify such Personnel and their roles in the Order Documents.
- 8.6** The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Contractor have the requisite authority, qualifications, competencies, skills and experience to perform their tasks.
- 8.7** The Contractor must ensure a safe system of work for any of the Customer's Personnel who the Customer makes available to perform work under the control and direction of the Contractor at the Contractor's premises.

SPECIFIED PERSONNEL

- 8.8** The identity and roles of any Specified Personnel must be stated in Item 27 of the General Order Form.
- 8.9** If Specified Personnel are unable or not suitable in the reasonable opinion of the Customer to undertake the work assigned to them the Contractor must provide replacement personnel acceptable (on reasonable grounds) to the Customer at no additional charge as soon as is practicable.

APPROVED AGENTS AND SUBCONTRACTORS

- 8.10** The Contractor may supply Deliverables to the Customer through Approved Agents.
- 8.11** If a Customer Contract is entered into between the Customer and an Approved Agent, the Contractor is deemed to have entered into a Customer Contract with the Customer.
- 8.12** The Contractor must ensure that its Approved Agents supply the Deliverables only in accordance with the terms of the Customer Contract under which the Approved Agent is to supply the Deliverables.

- 8.13** If requested in writing by the Customer, the Contractor must arrange for its Approved Agents to execute a Deed Poll substantially in the form of Schedule 6 – Deed Poll.
- 8.14** The Contractor must not subcontract the performance or supply of any Services under the Customer Contract without obtaining the prior written consent of the Customer which will not be unreasonably withheld or delayed and which may be given on such conditions as the Customer thinks fit.
- 8.15** Where the Customer believes that any Subcontractor is in material breach of its obligations to the Contractor, or its performance of obligations or services is unsatisfactory, so that the Contractor is likely to be in material breach of the Customer Contract as a result, the Customer may:
- (a) provide Notice in Writing to the Contractor setting out the details of its concerns;
 - (b) meet with the Contractor within 3 Business Days of the Contractor's receipt of the Notice in Writing to discuss the concerns; and
 - (c) if, following the discussions with the Contractor, the Customer is satisfied that the Contractor will be in material breach of the Customer Contract as a result of the performance of the Subcontractor, the Customer may give Notice in Writing that it is withdrawing its consent to allow the Subcontractor to continue to work in connection with the Customer Contract and require the Contractor to procure that the Subcontractor promptly ceases performing any work in connection with the Customer Contract subject to any contrary requirements of the Customer in respect of effecting an orderly transition notified to the Contractor, and in such circumstances, the Contractor agrees that the Customer will have no liability whatsoever to the Contractor for any loss suffered by the Contractor arising out of any termination of, or the continuation of, the relevant subcontract.
- 8.16** The Contractor:
- (a) must ensure that each Subcontractor is aware of all the terms and conditions of the Customer Contract that are relevant to the Subcontractor's performance of its work;
 - (b) is not relieved of its liabilities and obligations arising out of, or in connection with, a Customer Contract by subcontracting any work; and
 - (c) must ensure that the Subcontractor ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 8.15(c).
- 8.17** If stated in Item 28 of the General Order Form, the Contractor must obtain from the Subcontractor a signed statutory declaration substantially in the form of Schedule 7 – Statutory Declaration by Subcontractor.

9. General Warranties

CONTRACTOR WARRANTIES

- 9.1** The Contractor warrants to the Customer that:
- (a) as at the Commencement Date, the Contractor is properly constituted and has the right and authority to enter into the Customer Contract;
 - (b) to the best of its knowledge and belief there is no Conflict of Interest of the Contractor or its Personnel as at the Commencement Date, and during the Contract Period the

Contractor will use its reasonable efforts not to permit a Conflict of Interest of the Contractor or its Personnel to arise in the performance of its obligations;

- (c) the information provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel, was to the best of the Contractor's knowledge and belief correct when it was provided to the Customer;
- (d) as at the Commencement Date, to the best of its knowledge and belief the Contractor has all the necessary licences, approvals and consents necessary to perform its obligations under the Customer Contract;
- (e) it will not maliciously or negligently introduce any Virus into the Customer's systems during the Contract Period;
- (f) that to the best of its knowledge and belief, the Contractor has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Customer the rights to use and/or own (if applicable) the Deliverables (other than any open source software) in accordance with the Customer Contract;
- (g) it will perform its obligations in accordance with:
 - (i) the Statutory Requirements,
 - (ii) any other laws that are stated in Item 30 of the General Order Form;
 - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iv) the codes, policies, guidelines and standards listed in Item 9 of the Head Agreement Details and Item 30 of the General Order Form;
- (h) it will maintain the quality standard accreditation stated in Item 29 of the General Order Form during the Contract Period; and
- (i) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions.

9.2 All licences, approvals and consents obtained by the Contractor in relation to the Customer Contract must be obtained at the Contractor's cost.

CUSTOMER WARRANTIES

9.3 The Customer warrants to the Contractor that:

- (a) it has complied with all laws and policies, including procurement policies in awarding the Customer Contract to the Contractor;
- (b) it will provide the Contractor and its Personnel with a safe place to work;
- (c) it will supply any CSI in accordance with the requirements stated in the Order Documents;
- (d) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions;

- (e) it will not maliciously or negligently introduce any Virus into the Contractor's systems during the Contract Period;
- (f) that to the best of its knowledge and belief, the Customer has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Contractor and its Personnel the rights to use any CSI for the purpose of performing its obligations under the Customer Contract;
- (g) where there is more than one Eligible Customer being represented by the Customer, the Customer acts with full authority and as the sole representative of all the Eligible Customers; and
- (h) it will perform its obligations in accordance with:
 - (i) the Statutory Requirements,
 - (ii) any other laws that are stated in the Order Documents including Item 31 of the General Order Form;
 - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iv) the codes, policies, guidelines and standards listed in the Order Documents including Item 31 of the General Order Form.

MUTUAL WARRANTIES

9.4 Each Party warrants to the other Party that during the Contract Period it will:

- (a) co-operate with the other Party and its respective Personnel to ensure timely progress and fulfilment of the Customer Contract, provided that nothing in this clause 9.4 requires the disclosure of a Party's Confidential Information or granting of any Intellectual Property Rights;
- (b) act reasonably and in good faith with respect to matters that arise out of, or in connection with, the Customer Contract;
- (c) work together in a collaborative manner;
- (d) to the extent that is reasonably possible, perform its obligations so as to avoid hindering the performance of the other Party;
- (e) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other Party on a regular basis to ensure the other Party is fully informed of the progress of work required under the Customer Contract; and
- (f) perform its obligations and responsibilities by the dates stated in the Customer Contract.

10. Acceptance

ACCEPTANCE

10.1 The Actual Acceptance Date (**AAD**) for a Deliverable occurs:

- (a) unless it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Testing, 2 Business Days or such other period that is stated in Item 32 of the General Order Form following the delivery of the Deliverable as required in the Order Documents; or
- (b) where it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, on the sooner of:
 - (i) the date the Customer issues a certificate of acceptance; or
 - (ii) on the date the Customer issues a notice that it conditionally accepts the Deliverable in accordance with clauses 10.10(b) or 10.12(c); or
 - (iii) on the last day of the Acceptance Test Notification Period where acceptance is deemed to have occurred in accordance with clause 10.13.

ACCEPTANCE TESTING

10.2 Where it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, Acceptance Tests must be conducted in relation to the Deliverable and the following provisions in clauses 10.2 to 10.16 will apply.

CONDUCTING ACCEPTANCE TESTS

- 10.3** Acceptance Testing must be completed in accordance with the requirements of the Order Documents including Item 32 of the General Order Form, or if the details of the Acceptance Tests are not stated in the Order Documents, then at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree) the Parties must agree:
- (a) the identification of the Deliverables or part of the Deliverable to be tested;
 - (b) the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests;
 - (c) which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use;
 - (d) the methodology and process for conducting the Acceptance Tests;
 - (e) the scheduling of Acceptance Tests, including the Acceptance Test Period and the Acceptance Test Notification Period;
 - (f) the Acceptance Criteria. The Acceptance Criteria should only test whether the Deliverable meets the Contract Specifications and other requirements of the Customer Contract and should not include any other criteria unless the Parties otherwise agree in writing; and
 - (g) the Acceptance Test Data. The Customer is responsible for ensuring that the Acceptance Test Data is representative of the data that will be used by the Deliverable in the Customer's business or production environment.

- (h) Where the details of the Acceptance Tests are not stated in the Order Documents, the Contractor shall, not less than 60 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree), notify the Customer that details of the Acceptance Tests (including those in (a) to (g) above have not yet been agreed and must be agreed at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree). Any failure of the Parties to agree any matter relating to the Acceptance Tests will be dealt with in accordance with clause 24 below, and the 20 Business Days requirement referred to above will not apply.
- 10.4** The Customer must provide the Contractor with the Acceptance Test Data at least 14 Business Days prior to the start of the Acceptance Test Period.
- 10.5** Where the Contractor is conducting the Acceptance Tests, the Customer's representative must be available during Business Hours on each day during the Acceptance Test Period to give any assistance and/or information reasonably requested by the Contractor.
- 10.6** Each Party must provide all reasonable cooperation and assistance to enable the performance of any Acceptance Test.
- 10.7** The Parties are entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Test.
- 10.8** The Party conducting the Acceptance Test must provide the other Party within the Acceptance Test Notification Period a written test notification specifying:
- (a) a written summary of the Acceptance Test;
 - (b) the results achieved from that Acceptance Test; and
 - (c) a Defects List (if there are any Defects).

ACCEPTANCE TEST OUTCOMES

- 10.9** Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable meets the Contract Specifications and other requirements under the Customer Contract, the Customer must issue a certificate of acceptance to the Contractor within the Acceptance Test Notification Period.
- 10.10** Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable does not meet the Contract Specifications and other requirements under the Customer Contract then, if the Defects are only Minor the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:
- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
 - (b) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer; or
 - (c) accepts the Deliverable subject to an agreed reduction in the Contract Price.
- 10.11** Where the Customer conditionally accepts the Deliverable in accordance with clause 10.10(b) then:
- (a) the AAD occurs on the date that the Customer gives written notice that it conditionally accepts the Deliverable; and

- (b) the Customer may use the Deliverable in a business or production environment from the AAD.

10.12 Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable fails to meet the Contract Specifications and other requirements under the Customer Contract because the Defects are more than Minor Defects, then the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:

- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
- (b) requires that the Contractor remedy the Defects on the Defects List, in which case the Contractor must remedy the Defects on the Defects List at its own expense within a reasonable period of time, and re-submit the Deliverable to further Acceptance Testing using the process in clauses 10.2 to 10.16 (except that the Acceptance Testing is restricted to testing the items that were on the Defects List and any necessary regression testing), at the Contractor's expense;
- (c) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer;
- (d) accepts the Deliverable subject to an agreed reduction in the Contract Price; or
- (e) subject to the Customer having provided the Contractor with one opportunity to re-submit the Deliverable for further Acceptance Testing, the Customer may, without limiting any other remedy, reject the Deliverable and require the removal of the Deliverable and any materials associated with the rejected Deliverable and require the restoration of anything affected by the Deliverable to its pre Customer Contract state, at the Contractor's expense.

10.13 The Deliverables are deemed accepted if:

- (a) the Customer does not notify the Contractor within the Acceptance Test Notification Period that the Deliverable is rejected or conditionally accepted;
- (b) where the Customer is to perform the Acceptance Tests, the Customer fails to perform any Acceptance Test within the Acceptance Test Period for any reason, except for any delay resulting from any action of the Contractor unless otherwise agreed;
- (c) the Customer gives written notice that it waives the requirement for the Deliverable to pass the Acceptance Tests;
- (d) the Parties agree that the Deliverable is accepted based on an agreement to a reduction in the Contract Price; or
- (e) the Customer uses the Deliverable for its business purposes and/or in a production environment without the prior written consent of the Contractor.

10.14 Where the Acceptance Test relates to a Deliverable that is a Document, it is not a failure to provide the Document in accordance with the Contract Specifications and the other requirements of the Customer Contract where the Customer requests a change to:

- (a) any opinion expressed in the Document, provided that the opinion expressed in the Document is the professional opinion held by the Contractor;
- (b) the style, formatting or layout of the Document, unless the style, formatting or layout is part of the Contract Specifications; or

- (c) semantics.

10.15 The Warranty Period (if any) of a Deliverable commences on the AAD of that Deliverable.

10.16 In the event of power failure, air-conditioning failure or other cause outside the control of the Contractor:

- (a) the Customer must approve an extension of the Acceptance Test Period to accommodate any delays caused directly as a result of those circumstances; and
- (b) the Contractor must ensure that the Deliverable is ready to resume or recommence Acceptance Tests when conditions are again satisfactory and stable.

11. Payment and Invoicing

PAYMENT

11.1 In consideration for the Contractor providing a Deliverable in accordance with the Customer Contract, the Customer must pay the Contractor the Contract Price in the amounts and at the times stated in the Order Documents (including the PIPP) and/or Item 14 of the General Order Form. If the time for payment is not stated in the Order Documents and/or Item 14 of the General Order Form, then the Contract Price is due:

- (a) on AAD for Products;
- (b) monthly in arrears for Recurring Services, other than Services provided under Modules 2 and 5;
- (c) annually in advance for Services provided under Modules 2 and/or 5.

11.2 The Prices are fixed for the Contract Period, unless otherwise stated in the Order Documents including Item 14 of the General Order Form.

11.3 A Customer may pay any amount due under the Customer Contract by credit/debit card or electronic facility stated in Item 33 of the General Order Form. The Contractor may only charge a fee for payment by credit/debit card where the fee is stated in Item 33 of the General Order Form.

11.4 If the Contractor refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Customer Contract, the Customer may withhold the payment associated with that failure until the Contractor performs the relevant obligation in accordance with the Customer Contract unless the Customer Contract entitles the Customer to some alternative specific financial remedy for such refusal, neglect or failure, for example liquidated damages or services credits, but not a general right to damages.

11.5 The Customer may retain a proportion of the payment for any Milestones in the amount and for the period stated in a PIPP for the due and proper performance and completion of the Contractor's delivery obligations under the Customer Contract incurred prior to the end of the Warranty Period or a period otherwise stated in the PIPP.

11.6 The Customer must upon the completion of the Contractor's delivery obligations in accordance with the Customer Contract (incurred prior to the end of the Warranty Period or a period otherwise nominated in the PIPP) pay to the Contractor any amount retained under clause 11.5.

INVOICING

- 11.7** The Parties agree that, subject to clauses 11.8 to 11.11, the Customer must pay the Contractor for the Deliverables within 30 days (or such other period agreed in the Order Documents including Item 14 and Item 20 of the General Order Form) of receipt of a Correctly Rendered Invoice. For the avoidance of doubt, no amount is payable by the Customer under a Customer Contract until a Correctly Rendered Invoice is received.
- 11.8** The Contractor must provide any further details in regard to an invoice that are reasonably requested by the Customer.
- 11.9** The Contractor must send any invoices for any amount due to the person at the address stated in Item 14 of the General Order Form.
- 11.10** The making of a payment is not an acknowledgment that the Deliverables have been supplied or accepted in accordance with the Customer Contract.
- 11.11** If the Customer disputes an invoiced amount the Customer must:
- (a) provide the Contractor with written notice stating the amount it believes is due for payment and setting out the reasons for not paying the balance, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and
 - (b) pay the amount it believes is due for payment by the date that payment must be made under the Customer Contract.

12. Taxes

- 12.1** Subject to clauses 12.2 and 12.3, the Contractor is liable for all Taxes imposed or levied in connection with the Contractor's performance of its obligations under the Customer Contract.
- 12.2** The Customer must pay any GST that is payable in respect of any Taxable Supply made under the Customer Contract in addition to the amount payable (exclusive of GST) for the Taxable Supply. GST is payable at the same time as the amount payable for the Taxable Supply to which it relates.
- 12.3** If there is any abolition or reduction, increase or introduction of any Tax, the Price that is payable for the Deliverable, or any other cost or expense that is payable under the Customer Contract must be varied so that the Contractor's net dollar margin for the Deliverable, cost or expense remains the same.
- 12.4** Any reference in the Customer Contract to a cost or expense to be reimbursed by one Party to another Party includes any GST payable in connection with a Taxable Supply to which that cost or expense relates, less the amount of any input tax credit that the Party requiring the reimbursement is entitled to claim.

13. Intellectual Property Rights

OWNERSHIP

- 13.1** All Intellectual Property Rights in:
- (a) any Existing Material remain vested in the person that owns the Intellectual Property Rights at the Commencement Date (**Owner**); and

- (b) any adaptation, translation or derivative of that Existing Material, vests in, or, is hereby transferred or assigned to the Owner, immediately upon creation.

CONTRACTOR OWNED NEW MATERIAL

13.2 The provisions of clauses 13.3 to 13.5 apply to New Material, unless clause 13.10 applies.

13.3 All Intellectual Property Rights in any New Material vests in, or, is hereby transferred or assigned to, the Contractor, immediately upon creation.

13.4 On the AAD of a Deliverable that incorporates the relevant New Material, the Contractor grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable licence to use, copy, adapt, translate, reproduce and in any way exploit that New Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated, subject to the restrictions set out in clause 13.5.

13.5 The licence to New Material in clause 13.4:

- (a) does not permit the Customer to disclose the New Material to any other person, except as stated in clauses 13.5(c) to (e);
- (b) does not permit the Customer to manufacture, sell, license, transfer, commercialise or otherwise exploit any of the New Material or any Existing Material except as stated in clauses 13.5(c) to (e);
- (c) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge to any Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Government Agency (as defined in the *Interpretation Act 1987 (NSW)*, and any Public Health Organisation as defined under the *Health Services Act 1997 (NSW)*, where the Customer is a Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Government Agency (as defined in the *Interpretation Act 1987 (NSW)*, or a Public Health Organisation as defined under the *Health Services Act 1997 (NSW)*;
- (d) permits the Customer's subcontractors to access the New Material, without additional charge, for the internal purposes of the Customer provided that, unless otherwise required by the Contractor, the Customer's subcontractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract; and
- (e) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge, (on one or more occasions) on a limited time basis to a contractor that is providing outsource services to the Customer that includes the operation of the New Material, provided that:
 - (i) the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; and
 - (ii) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract.

EXISTING MATERIAL

- 13.6** On the AAD of a Deliverable that incorporates the Contractor's Existing Material, the Contractor grants the Customer a non-exclusive licence:
- (a) if that Existing Material is Licensed Software; to that Existing Material on the terms and conditions of the license of that Licensed Software under the relevant Module;
 - (b) if that Existing Material is an adaptation, translation or derivative of Licensed Software; to that Existing Material on the same terms and conditions as the licence for the Licensed Software stated in clause 13.7(a);
 - (c) if that Existing Material is a tool, object library or similar routine that is not included in the Existing Materials stated in clauses 13.7(a) or 13.7(b); to use, reproduce and adapt that Existing Material for the Customer's own internal use in connection with, or for the operation, modification, support and/or use of, that Deliverable; and
 - (d) if that Existing Material is a Document Deliverable and any adaptation, translation or derivative of that Existing Material; to use that Existing Material for the Customer's internal use.
- 13.7** On the AAD of a Deliverable that incorporates Existing Material that is owned by a third party, including third party software, the Customer is granted a non-exclusive licence to that third party Existing Material to:
- (a) use, reproduce and adapt that third party Existing Material on the terms and conditions, and for the fees, stated in Item 34 of the General Order Form; or
 - (b) if no terms and conditions or fees are stated in Item 34 of the General Order Form; to use, reproduce and adapt that third party Existing Material for the Customer's own internal use in connection with, or for the operation, modification, support and/or use of, that Deliverable.
- 13.8** Where the Contractor uses a methodology in providing any Deliverable, the Contractor grants the Customer a non-exclusive licence to use that methodology during the Contract Period solely for the purposes of receiving the benefit of the Services under the Customer Contract or assisting the Contractor perform its obligations under the Customer Contract.
- 13.9** The Contractor may charge for any license to use any of its Existing Material, such fees to be stated in Item 34 of the General Order Form.

CUSTOMER OWNED NEW MATERIAL

- 13.10** If it is stated on the General Order Form that this clause applies to some or all of the New Materials and subject to clauses 13.12 and 13.13, upon the AAD of the relevant Deliverable that incorporates the New Material:
- (a) any Intellectual Property Rights in the New Material vests in, or is hereby transferred or assigned by the Contractor to, the Customer; and
 - (b) the Customer grants the Contractor a non-exclusive, perpetual, irrevocable, royalty free, transferrable licence to the New Material to use, copy, adapt, translate, manufacture and in any other way exploit the Intellectual Property Rights in that New Material.

CUSTOMER MATERIAL

- 13.11** The Customer grants the Contractor a non-exclusive, non-transferable licence for the Contract Period for the Contractor and its Personnel to use the Customer's Materials to the extent necessary for the Contractor to perform its obligations under the Customer Contract.

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- 13.12** Subject to the restrictions on the disclosure of confidential information:
- (a) the Contractor will retain all right, title and interest in and to all know-how, Intellectual Property Rights, methodologies, processes, technologies, algorithms, software, development tools or forms, templates or output used in performing its obligations under the Customer Contract which are based on trade secrets or proprietary information of the Contractor; and
 - (b) the Contractor will be free to use the ideas, concepts, methodologies, processes and know-how that are used, developed or created in the course of performing the obligations under the Customer Contract and may be retained by the Contractor's Personnel in intangible form.

OPEN SOURCE LICENCE

- 13.13** Nothing in this clause 13 affects the Intellectual Property Rights in any open source software. Any Intellectual Property Rights in any open source licence are subject to the terms of the open source licence under which it is provided.

14. Confidentiality

- 14.1** Except to the extent necessary to comply with any Statutory Requirement or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with the Customer Contract, unless the other Party gives its prior written consent.
- 14.2** Each Party may disclose the Confidential Information of the other Party:
- (a) to the Contract Authority;
 - (b) the Director General, NSW Department of Finance and Services and to its Personnel;
 - (c) to its Personnel where the disclosure is essential to enable them to carry out their duties in connection with the Customer Contract or any Head Agreement; or
 - (d) to its Personnel, Related Companies and their directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the Party's performance under, the Customer Contract or any Head Agreement; or
 - (e) if the receiving Party is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 14.3** Each Party must ensure that any Confidential Information of the other Party is used solely for the purposes permitted under clause 14.2.
- 14.4** The Customer may at any time require the Contractor to arrange for its Subcontractors to execute without delay a Deed of Confidentiality between the Customer and the Subcontractor substantially in the form of Schedule 8 – Deed of Confidentiality.

15. Privacy

15.1 The Contractor must:

- (a) use, access, retain or disclose Personal Information obtained in connection with the Customer Contract only for the purpose for which the Personal Information was acquired;
- (b) not do any act or engage in any practice that would breach an IPP, or which if done or engaged in by the Customer, would be a breach of that IPP;
- (c) comply with, carry out and discharge the obligations contained in the IPPs as if it were the Customer carrying out and discharging those obligations;
- (d) notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 15.1, whether by the Contractor, its Approved Agents or their Personnel;
- (e) notify any individual that makes a complaint to the Contractor regarding the Contractor's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (f) 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 other misuse;
- (g) ensure that any of the Contractor's Personnel who are required to deal with the Personal Information for the purposes of the Customer Contract are made aware of the obligations of the Contractor under this clause 15.1; and
- (h) ensure that any agreement with any Approved Agent or Subcontractor who may be fulfilling a requirement in relation to the Customer Contract which includes the handling of Personal Information, contains the same or equivalent obligations to this clause 15.1 which are enforceable by the Contractor against the Approved Agent or the Subcontractor, as applicable.

16. Insurance

16.1 The Contractor must hold and maintain, or be an insured under, one or more insurance policies, that provide the following cover:

- (a) public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover;
- (b) product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover; and
- (c) workers' compensation insurance in accordance with applicable legislation.

The Contractor must maintain the coverage required under this clause 16.1 during the Contract Period.

16.2 Where the Customer Contract is entered into under a Head Agreement, the Contractor must also hold and maintain, or be an insured under, one or more insurance policies that have been agreed by the Contractor and the Contract Authority under the Head Agreement. Details of these insurances are stated in Item 7 of the General Order Form.

- 16.3** If the Customer Contract is for the provision of Services, the Contractor must hold and maintain, or be an insured under, one or more insurance policies that include professional indemnity or errors and omissions insurance that provide indemnity cover of at least the amount of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. The Contractor must maintain the coverage required under this clause 16.3 during the Contract Period and until the date that is 4 years from the last day of the Contract Period.
- 16.4** The insurance policies in clauses 16.1(a), 16.1(b) and 16.3 must include cover for the Contractor's liability for the acts and omissions of the Contractor's subcontractors to the same extent as if they were the acts and omissions of the Contractor.
- 16.5** All policies of insurance must be entered into with an insurer which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced, or for workers' compensation insurance the insurer (including any self-insurance) must be authorised by law.
- 16.6** The Contractor must within 30 days of the start of the Contract Period or of a request in writing from the Customer provide the Customer with a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all the insurance policies required by the Customer Contract are current and that the insurance has the required limits of cover. Where the Contractor is insured under a Related Company's insurance policy, the certificate of currency must also show that the insurance policy includes the Contractor as an insured.
- 16.7** The Contractor agrees to hold, maintain or be an insured under, any additional insurance stated in Item 36 of the General Order Form.
- 16.8** Where the Contractor does not wish to hold and maintain, or be an insured under, insurance required by clauses 16.1 to 16.5, or does not wish to enter into one or more of those insurance policies with an insurer of the type required by clause 16.5, the Contractor may make application to the Customer to be exempted from the provisions of clauses 16.1 to 16.6. Such application must be supported by such documentation as may be required by the Customer, (including the Contractor's financial records (limited to publicly available financial records where a Contractor or any of its Related Companies is publicly traded)). The Customer may accept, conditionally accept or reject the Contractor's application. The Customer must provide the Contractor with written notice within 30 days of receipt of the Contractor's application of the Customer determination under this clause 16.8, and in absence of receipt of such written notice, the Contractor's application is deemed accepted by the Customer.
- 16.9** Where the Customer Contract is entered into under a Head Agreement:
- (a) the Customer cannot grant the Contractor consent to be exempt from any insurance requirements required under the Head Agreement;
 - (b) if the Contractor has obtained the Contract Authority's and the Director General's, NSW Department of Finance and Services consent to be exempt from the any insurance requirements under any Head Agreement, then the Customer must accept the Contractor's application for an application for any similar exemption under the Customer Contract.
- 16.10** The effecting of insurance does not limit or expand the liabilities or obligations of the Contractor under the other provisions of the Customer Contract.

17. Guarantees

PERFORMANCE GUARANTEES

- 17.1** Where the Customer Contract is entered into under a Head Agreement and the Contractor has provided a Performance Guarantee under that Head Agreement:
- (a) the Contractor agrees that the Customer has the benefit of that Performance Guarantee provided that the Customer is a Government Agency;
 - (b) where the Customer is an Eligible non-Government Body, the Eligible non-Government Body cannot take the benefit of the Performance Guarantee provided to the Contract Authority under that Head Agreement, but the Eligible non-Government Body may separately agree with the Contractor that the Contractor is to provide a Performance Guarantee for the benefit of the Eligible non-Government Body under the Customer Contract in accordance with clause 17.2.
- 17.2** Where:
- (a) the Customer Contract is not entered into under a Head Agreement; or
 - (b) the Customer Contract is entered into under a Head Agreement but the Contractor has not provided a Performance Guarantee under that Head Agreement,

and it is agreed in Item 37 of the General Order Form (provided that in the case of (b) above, the Contractor will notify the Contract Authority that the relevant Customer has requested a Performance Guarantee and the Contract Authority has given its written approval that a Performance Guarantee be provided for that Customer), the Contractor must arrange for a guarantor approved in writing by the Customer to enter into an agreement with the Customer substantially in the form of the agreement stated in Schedule 9 – Performance Guarantee, or such other document reasonably acceptable to the Customer. Where the guarantor is not domiciled in Australia the Customer may not refuse to accept an alternative form of guarantee solely on the basis that the jurisdiction and law of the guarantee is the jurisdiction and law of the country of the guarantor. This Performance Guarantee must be provided to the Customer within 30 days of the Commencement Date, or such other period stated in Item 37 of the General Order Form.

- 17.3** Any Performance Guarantee that is issued in favour of a Customer that is a Government Agency and clause 17.2(b) applies, can only be enforced by the Contract Authority acting on behalf of the Customer.

FINANCIAL SECURITY

- 17.4** If reasonably required by the Customer and agreed in Item 38 of the General Order Form, the Contractor must provide a Financial Security in the amount stated in Item 38 of the General Order Form substantially in the form of the agreement stated in Schedule 10 – Financial Security, or in the standard form that is usually provided by the issuing entity. The Contractor must, following such a request, ensure that the Financial Security is provided within 14 days of the Commencement Date, or such other period as agreed in Item 38 of the General Order Form.
- 17.5** The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under the Customer Contract.
- 17.6** The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Customer.
- 17.7** If the Contractor fails to properly perform and complete its obligations under the Customer Contract, and the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Customer may deduct its loss or damage (in so far as those losses and damages may be payable by the Contractor taking into account the terms and

conditions of the Customer Contract, including the provisions of clause 18) from the Financial Security.

- 17.8** The Contractor agrees that the Customer will have no liability for any loss or damage suffered or incurred by the Contractor where the Customer exercises its rights in accordance with clause 17.7 in good faith.
- 17.9** Upon performance of part of the Customer Contract in accordance with its terms, the Contractor may request the Customer to consent to the discharge of the Financial Security provided under the Customer Contract and the substitution of another Financial Security in substantially the same form but for a lesser maximum aggregate sum. The Customer must not unreasonably withhold its consent to the substitution where the part performance of the Customer Contract has proportionately reduced the risk for which the Financial Security was originally provided.
- 17.10** The Financial Security will end on the sooner of:
- (a) the date when payment is made by the Issuer up to the maximum amount required under the Financial Security;
 - (b) one year from the date that the last Deliverable under the Customer Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Customer Contract;
 - (c) the date the Customer and Contractor agree in writing to release the Issuer;
 - (d) the date the Customer notifies the Issuer that the Financial Security is no longer required.
- 17.11** The Customer must reimburse the Contractor for any reasonable costs it incurs, including the fees payable to the Issuer, in connection with providing the Financial Security. These costs and fees must be reimbursed to the Contractor within 30 days of the Contractor providing a Correctly Rendered Invoice for the costs and fees.

18. Liability

- 18.1** To the extent permitted by law, and subject to clauses 18.2 to 18.7, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out, of or in connection with, the Customer Contract shall not exceed in aggregate for all claims that arise out, of or in connection with, the Customer Contract, the greater of:
- (a) \$100,000; or
 - (b) in respect of claims that arise from:
 - (i) a Non-Recurring Service or Product; two times the Contract Value for the Non-Recurring Service or Product;
 - (ii) a Short Term Recurring Service; the Contract Value for the Short Term Recurring Service; or
 - (iii) a Recurring Service other than a Short Term Recurring Service;
- (A) if the claim arose after the Recurring Services had been provided for 12 months; the amount paid or unpaid but due and outstanding, for

the Recurring Service for the 12 months prior to the date that the claim first arose; or

- (B) if the claim arose prior to the Contractor providing 12 months of Recurring Services; the amount that is 12 times the average monthly amount that was paid or unpaid but due and outstanding for the Recurring Service prior to the date on which the claim first arose.

18.2 In all cases, any refund of monies, payment of liquidated damages, or payment of any fees, rebates, credits, damages, losses, expenses, (including third party costs incurred and paid by the Contractor if a third party is engaged by the Customer to remedy a breach by the Contractor in accordance with the Customer Contract), liabilities or any other amounts that are stated as being payable by the Contractor in respect of any breach of the Customer Contract or under an indemnity, are included in determining whether the limitation of liability has been reached.

18.3 If the Customer Contract is for the supply of any Deliverables:

- (a) where the Contract Price under the Customer Contract is greater than \$20,000,000; or
- (b) where the Customer Contract is for Deliverables that are to be used for a Prescribed Use,

the Parties must discuss and agree an alternative cap of liability in Item 39 of the General Order Form.

18.4 Notwithstanding any other clause in the Customer Contract, neither Party is liable to the other Party for any Consequential Loss (including under an indemnity).

18.5 Notwithstanding any other clause in the Customer Contract, the Contractor has no financial cap on its legal liability where that liability arises from:

- (a) bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
- (b) loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
- (c) breach of the Contractor's obligation of confidence under or pursuant to clause 14;
- (d) the Contractor's indemnity in respect of breach of privacy obligations as stated in clause 19.1(a); or
- (e) the Contractor's indemnity for IP Claims as stated in clause 19.1(c).

18.6 The liability of a Party (**Party A**) for any damage incurred by another Party (**Party B**) will be reduced proportionately to the extent that:

- (a) any negligent or malicious act or omission of Party B or its Personnel; or
- (b) any failure by Party B or its Personnel to comply with its obligations and responsibilities under the Customer Contract,

contributed to the damage, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

18.7 The Parties must use their reasonable efforts to mitigate any loss arising out of or in connection with the Customer Contract.

19. Indemnities

CONTRACTOR INDEMNITY

- 19.1** The Contractor must indemnify and hold harmless the Customer, its officers and employees against any loss or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) to the extent it:
- (a) arises out of or in connection with the Contractor's breach of any privacy obligations under or pursuant to clause 15.1;
 - (b) is the result of a claim against the Customer, its officers or employees made by a third party arising out of or in connection with a malicious or negligent act or omission of the Contractor, its directors, officers, employees, agents and subcontractors in the performance of the Contractor's obligations to the Customer under the Customer Contract; or
 - (c) is the result of a claim against the Customer, its officers or employees made by a third party that the use of the Deliverable in accordance with the Customer Contract infringes any Intellectual Property Rights, including the Moral Rights, of the third party claimant, that are enforceable in Australia (**IP Claim**).
- 19.2** The Customer must promptly, and in any event within 5 Business Days of being notified of a claim for which it is seeking an indemnity under clause 19.1(b) or 19.1(c), provide the Contractor with Notice in Writing of the details of the claim. The Customer must (unless there is any government policy that prohibits the Contractor from handling the process for the settlement of the claim) permit the Contractor, at the Contractor's expense, to handle the process for the settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c) (including selecting solicitors and counsel), subject to the Contractor agreeing to comply at all times with the government policy relevant to the conduct of the litigation.
- 19.3** If the Customer does not permit the Contractor to handle the process for the settlement of such claim under clause 19.2 and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c), then the Customer must promptly and fully defend the claim (whilst complying with government policy), and not settle the claim without the Contractor's prior written consent, such consent not to be unreasonably withheld. The Customer must keep the Contractor fully informed throughout the period of the claim, including providing copies of all relevant documents.
- 19.4** The Customer must, upon the Contractor confirming its obligations under the indemnity in clause 19.1, provide the Contractor with reasonable assistance in defending, settling or otherwise conducting the negotiations or litigation, at the Contractor's expense, including providing all relevant documents, permitting its Personnel to testify for the Contractor if requested by the Contractor and using any defence that might be available to the person being indemnified.
- 19.5** Notwithstanding clause 19.1(c), the Contractor is not required to indemnify the Customer, its officers and employees to the extent that the IP Claim is caused by:
- (a) any open source software that forms part of the Deliverable;
 - (b) the combination, operation or use of the Deliverable with any other product, equipment business method, software or data;
 - (c) any Intellectual Property Rights including Moral Rights, material or thing provided by any person other than the Contractor or its Personnel, including any Customer Supplied Items;

- (d) any modification of the Deliverable by any person other than the Contractor or its agents;
 - (e) the Contractor following the designs, specifications or instructions provided by the Customer or other person on the Customer's behalf; or
 - (f) the continued use of the Deliverable after the Contractor has provided the Customer a new software version, patch or correction, or a replacement part or other correction that would have overcome the infringement.
- 19.6** Without prejudice to the Customer's rights under clause 19.1(c), if there is an IP Claim then the Contractor may, with the consent of the Customer, at the Contractor's expense, either:
- (a) obtain for the Customer the right to the continued use of the Deliverable in accordance with the Customer Contract;
 - (b) replace or modify the Deliverable so that the alleged infringement ceases and the replaced or modified Deliverable provides the Customer with substantially similar functionality and performance as required in the Contract Specifications; or
 - (c) if, in the opinion of the Contractor, neither 19.6(a) nor 19.6(b) is reasonably commercially available and the Customer is not subject to the benefits of the legislation in clause 19.10, the Contractor may terminate the Customer Contract, and will be liable for damages to the Customer for such termination.
- 19.7** Notwithstanding clause 19.1, the Contractor is not required to indemnify the Customer under clause 19.1(b) or 19.1(c) (as applicable), its officers and employees:
- (a) if the third party making a claim under clause 19.1(b) or the IP Claim (as applicable) is the Contract Authority or any other Eligible Customer who is obtaining the benefit of, or being provided with, the Product, Service or Deliverable under the Customer Contract; or
 - (b) where the third party claim under clause 19.1(b) or the IP Claim arises from, or in connection with, the supply of any Product, Service or Deliverable (or the supply of any item based on any Product, Service or Deliverable) to the third party, whether the supply was made by the Customer or any person who has, directly or indirectly, acquired the Product, Service or Deliverable or item based on the Product, Service or Deliverable from the Customer.
- 19.8** The Contractor's liability in respect of the indemnity provided under:
- (a) clauses 19.1(a), is subject to clauses 18.4, 18.6 and 18.7;
 - (b) clause 19.1(b), is subject to clauses 18.1 to 18.7;
 - (c) clause 19.1(c), is subject to clauses 18.4, 18.6 and 18.7.
- 19.9** The Customer must give the Contractor 10 Business Days' Notice in Writing of an intention to claim a liability, loss or expense in accordance with clause 19.1(a) including in that notice an explanation of how that liability or expense was assessed and the Contractor's proposed share of that liability.
- 19.10** For the purposes of clause 19.1(c) an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the Patents Act (Cth) 1990 s.163, the Designs Act (Cth) 2003 ss 96, 100, the Copyright Act (Cth) 1968 s.183 and the Circuits Layout Act 1989 (Cth) s.25, constitute an infringement.

20. Conflict of Interest

20.1 The Contractor must:

- (a) provide the Customer with Notice in Writing upon becoming aware of the existence or possibility of a Conflict of Interest that arises in the performance of its obligations under the Customer Contract; and
- (b) comply with any direction given by Customer in relation to managing that Conflict of Interest.

21. Performance Management

REPORTING

21.1 The Contractor must provide to the Customer the reports stated in the Order Documents including Item 40 of the General Order Form in the time frame and format agreed in the Order Documents or as reasonably required by the Customer.

22. Government Policy

POLICY

- 22.1 If there is a Head Agreement and the Contractor was required to provide a competitive quote prior to entering into this Customer Contract, the Contractor must comply with the NSW Government policy known as the "Small and Medium Enterprises ('SME') Policy Framework". The Contractor acknowledges that it has read clause 16 of the Head Agreement which sets out the requirements of the Contractor imposed by the "Small and Medium Enterprises ('SME') Policy Framework " and agrees to comply with those requirements in respect of the competitive quote.
- 22.2 If there is no Head Agreement and the Customer Contract is a standalone Customer Contract then if the Contractor was required to provide a competitive quote prior to entering into this Customer Contract the Contractor must, during the Contract Period, comply with the NSW Government policy known as "Small and Medium Enterprises ('SME') Policy Framework " in respect of the competitive quote. The Contractor acknowledges that it has read the "Small and Medium Enterprises ('SME') Policy Framework at <http://www.procurepoint.nsw.gov.au/procurement-reform/about-nsw-procurement-reform/small-and-medium-enterprises-policy-framework> which sets out the requirements of the Contractor imposed by the Small and Medium Enterprises ('SME') Policy Framework.
- 22.3 The Contractor must comply with the NSW Department of Finance and Services (DFS) Business Ethics Statement (<http://www.services.nsw.gov.au/about-us/business-ethics>)

23. Contract Administration

REPRESENTATIVES

- 23.1 Each Party may nominate an employee who is its Authorised Representative in Item 3 or Item 6 of the General Order Form.
- 23.2 Each Party warrants to the other Party that its Authorised Representative has the authority to provide such consents and approvals as are required for the purposes of this Customer Contract and to issue instructions and directions as necessary for the purposes of this Customer Contract, on behalf of that Party.

NOTICE OF CHANGE OF CONTROL

- 23.3** The Contractor must promptly provide the Customer with Notice in Writing of any Change in Control, other than a Change of Control that is a solvent re-organisation with shares being transferred between Related Companies.

RECORD KEEPING

- 23.4** The Contractor must keep financial records and other information relevant to the performance of the Customer Contract including as are required to comply with any applicable Statutory Requirement. The Contractor must give the Customer access to and copies of such records and information (excluding information relating to profit margins) within a reasonable time of a written request from the Customer.

NOTICES

- 23.5** Any Notice in Writing must be sent to the receiving Party's Service Address addressed to the Party's nominee for receipt of notices, or if no such position is nominated, it must be addressed to the Authorised Representative. A Notice in Writing must not be sent by email.
- 23.6** Any Notice in Writing is regarded as given and received:
- (a) if sent by mail; 3 Business Days after it is posted; and
 - (b) if sent by fax; at 9.00 am on the Business Day following the day when the addressee actually receives it in full and in legible form.

24. Dispute Resolution

- 24.1** The Parties agree to resolve any conflicts or issues between them that arise during the Contract Period out of, or in connection with, the Customer Contract in accordance with clause 24.
- 24.2** If a dispute arises out of, or in connection with the Customer Contract during the Contract Period, then, subject to clause 24.13, the aggrieved Party must submit a Notice in Writing to the other Party of the issue, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Issue Notice**). The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue. If the Party submitting the Issue Notice is the Contractor, then where the Customer Contract is made under a Head Agreement, the Contractor must send a copy of the Issue Notice to the Contract Authority.
- 24.3** If a Party submits an Issue Notice under clause 24.2, each Party must nominate in writing, within 7 days, a senior executive who will attempt to resolve the dispute. The nominated senior executives will promptly meet at a time and place that is mutually convenient with the objective of resolving the issue. The nominated senior executives may invite other personnel to attend the mutually convenient conference subject to a list of additional invited personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.
- 24.4** If the Parties are able to agree upon a resolution to the dispute, the terms of the agreement are to be documented and signed by both nominated senior executives. Such an agreement will be binding on both Parties.
- 24.5** Each Party will bear its own costs under clauses 24.2 to 24.4.

- 24.6** If the dispute is not resolved within 21 days of the date that the Issue Notice was received by the other Party, either Party may then refer the dispute to expert determination in accordance with clauses 24.7 to 24.8.
- 24.7** The Party that requires that the dispute is resolved by expert determination must submit a Notice in Writing to the other Party specifying the issue to be decided by expert determination, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Referral Notice**).
- 24.8** If the dispute is to be resolved by expert determination the Parties will be bound by the provisions and procedures contained in Schedule 11 – Dispute Resolution Procedures, unless agreed otherwise in writing.
- 24.9** If a Referral Notice has not been submitted within 20 Business Days of becoming entitled under clause 24.6 then the issue is barred from expert determination or any other action or proceedings, subject to clause 24.13. The Customer and the Contractor may, in writing, agree to extend this 20 Business Days period for the purposes of continuing to negotiate a resolution of a particular dispute for up to another 20 Business Days.
- 24.10** Notwithstanding the existence of a dispute each Party must continue to perform its obligations under the Customer Contract during the period of the attempt to resolve this issue under clauses 24.2 to 24.8.
- 24.11** Unless the Parties otherwise agree in writing, clauses 24.7 to 24.8 do not apply to disputes for which:
- (a) either Party's claim exceeds \$250,000 or the amount stated in Item 41 of the General Order Form;
 - (b) includes any dispute that involves a party claiming that a statutory guarantee under the CCA is involved in the dispute; or
 - (c) relates to an issue of the type stated in Item 41 of the General Order Form.
- In this case if the dispute is not resolved within 15 Business Days of the date that the Issue Notice was received by the other Party, either Party may commence any other form of resolution, including court proceedings.
- 24.12** The amount specified in Item 41 of the General Order Form shall include the total amount being claimed by both Parties including the amount of any cross claim but excludes any set offs, interest and legal costs. If the Parties are unable to agree on the total amount being claimed each Party shall submit a claim to the other Party detailing the nature of the claim, the relevant term of the Customer Contract which has been breached and how it calculated the amount of its claim. Where only one Party is submitting a claim the other Party shall be entitled to submit its estimate of the amount of the claim to the other Party. If the calculations of each Party differ from one another the amount in dispute for the purposes of Item 41 of the General Order Form shall be calculated by totaling the value of all the claims or estimated amount of the claims together and dividing that amount by the total number of claims and estimated claims.
- 24.13** The provisions of clauses 24.2 to 24.12 do not apply where a party seeks urgent interlocutory relief or where a Party has terminated the Customer Contract for a Substantial Breach or Fundamental Breach of the Agreement.

25. Termination

- 25.1** If the Customer Contract is made under a Head Agreement then termination or expiry of the Head Agreement does not affect the Customer Contract, unless the context necessarily requires it.

TERMINATION FOR CAUSE BY THE CUSTOMER

- 25.2** The Customer may terminate the Customer Contract immediately by providing the Contractor Notice in Writing if:
- (a) the Contractor suffers an Insolvency Event; or
 - (b) the Contractor has committed a Substantial Breach and the Contractor has not either:
 - (i) rectified that Substantial Breach within 14 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing specifying the details of the breach; or
 - (ii) proposed steps that are reasonably acceptable to the Customer that it will take to remedy the Substantial Breach and a timeframe within which the Contractor will take them which are reasonably acceptable to the Customer.
 - (c) the Contractor fails to comply with the NSW Department of Finance and Services (DFS) Business Ethics Statement (<http://www.services.nsw.gov.au/about-us/business-ethics>) including failure to:
 - (i) comply with applicable NSW Government Code of Practice and DFS's procurement policies and procedures,
 - (ii) provide accurate and reliable advice and information when required,
 - (iii) declare actual or perceived conflicts of interest as soon as the Contractor become aware of the conflict,
 - (iv) act ethically, fairly and honestly in all dealings with DFS, the Contract Authority or the Customer,
 - (v) take all reasonable measures to prevent the disclosure of Confidential Information of DFS, the Contract Authority and the Customer,
 - (vi) assist DFS, the Contract Authority or the Customer to prevent unethical practices in the business relationship,

or engaging in any form of collusive or unethical practices, including offering staff of DFS, the Contract Authority or the Customer inducements or incentives designed to improperly influence the conduct of their duties.

TERMINATION FOR CONVENIENCE BY THE CUSTOMER

- 25.3** The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice In Writing. The Contractor must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Customer Contract under this clause 25.3.
- 25.4** If the Customer exercises its right under clause 25.3, the Customer must:
- (a) indemnify the Contractor against any liabilities or expenses, which are reasonably and properly incurred by the Contractor to the extent that those liabilities or expenses were

incurred as a result of termination of the Customer Contract in accordance with clause 25.3; and

- (b) pay any amount that is stated in the Order Documents including Item 42 of the General Order Form.

25.5 Once the Customer has paid the amounts in clause 25.4 no further compensation is payable for any termination under clause 25.3.

TERMINATION FOR CAUSE BY THE CONTRACTOR

25.6 The Contractor may terminate the Customer Contract immediately by providing the Customer Notice in Writing if the Customer has:

- (a) not paid any amount that has not been disputed by the Customer in accordance with clause 11.11 by the date that payment was due to be made; and
 - (i) the Contractor has provided written notice of this failure; and
 - (ii) the Customer has failed to pay that undisputed amount within 28 days of receipt of the written notice of failure;
- (b) committed a Fundamental Breach of the Customer Contract and the Customer has not rectified that Fundamental Breach within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Contractor specifying the details of the breach;
- (c) committed, in respect of its:
 - (i) privacy obligations under the Customer Contract:
 - (A) more than one Unremedied Breach; or
 - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;
 - (ii) obligations of confidentiality under the Customer Contract
 - (A) more than one Unremedied Breach; or
 - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach; or
 - (iii) obligations as to the Contractor's Intellectual Property Rights under the Customer Contract:
 - (A) more than one Unremedied Breach; or
 - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;

where, for the purposes of this clause 25.6(c), "**Unremedied Breach**" means a breach which is capable of remedy and which has not been rectified within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Contractor specifying the details of the breach; or

- (d) suffered an Insolvency Event.

CONSEQUENCES OF TERMINATION

- 25.7** In the event of termination under clause 25.2, the Customer may obtain from any other source a reasonably similar alternative to the Deliverable in which case the Contractor shall, subject to clause 18, be liable to the Customer for any reasonable expenses incurred and any losses sustained (including any price difference between the Deliverable and the similar alternative) by the Customer.
- 25.8** If the Customer Contract:
- (a) is terminated by the Customer for cause or it expires, then the Customer may provide the Contractor with written notice requiring the Contractor at its expense to remove Deliverables or to dismantle or remove work from the Customer's premises by a date stated in that notice;
 - (b) is terminated by the Contractor for cause, then the Contractor may provide the Customer with written notice requiring the Customer to return any Deliverables that have not been paid for in full, and the Customer must return those Deliverables at its expense by the date stated in that notice; and
 - (c) such termination or expiry is without prejudice to any right of action or remedy that has accrued or may accrue to either Party.

26. General

VARIATION

- 26.1** Subject to any other rights given under this Customer Contract to vary its terms and the following provisions of clause 26.2, neither a Change Request nor a Contract Variation shall be valid unless agreed in writing and signed by both the Customer and the Contractor.
- 26.2** Where the Customer Contract is entered into, the Customer must obtain the written approval of the Director General, NSW Department of Finance and Services prior to agreeing to a variation of any term or condition including a variation to any of the Protected Clauses. In such circumstances, the Contractor must obtain a copy of such written approval from the Customer before entering into the relevant Change Request that varies a term or condition including a Protected Clause.

ASSIGNMENT AND NOVATION

- 26.3** The Contractor must not assign in whole or in part or novate the Customer Contract without obtaining the prior written consent of the Customer, which consent may be withheld in its discretion.
- 26.4** The Contractor acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take over the Customer Contract before determining whether or not to give consent to the assignment or novation.
- 26.5** The Customer at its own cost, may assign or novate, the Customer Contract, where by operation of statute the Customer is reconstituted into a new legal entity, to that new legal entity. If the assignment or novation changes the scope of the obligations or Deliverables to be provided by a Contractor under a Customer Contract, a Change Request (or Contract Variation, if applicable) must be effected, which will include a variation to the Price to reflect any increased costs that are incurred by the Contractor, or increased benefits that are gained by the Customer (as newly defined), as a result.

- 26.6** The Customer may, at its own cost, assign or novate the Customer Contract to any other Eligible Customer with the prior written consent of the Contractor, such consent not to be unreasonably delayed or withheld.

WAIVER

- 26.7** A waiver in respect of a breach of a provision of the Customer Contract by a Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce any provision of the Customer Contract will not be interpreted as a waiver of that provision.

MATERIAL ADVERSE EVENTS

- 26.8** The Contractor must provide the Customer with Notice in Writing immediately upon becoming aware of the existence or possibility of a Material Adverse Event.

UNFORESEEN EVENTS

- 26.9** A Party is excused from performing its obligations to the extent it is prevented by an Event, except an Event that is the subject of a Business Contingency Plan. The Contractor must immediately notify the Customer of the occurrence of the Event when the Contractor becomes aware of it or when the Contractor ought reasonably to be aware of it.
- 26.10** Each Party must make all reasonable efforts to minimise the effects of the Event. If the affected Party is prevented from performing its obligations under the Customer Contract by the Event for 60 days or such other period agreed in writing, then the other Party may in its discretion immediately terminate the Customer Contract by giving Notice in Writing of termination to the other Party.
- 26.11** Where the Customer Contract is terminated by the Customer in accordance with clause 26.10:
- (a) the Contractor is entitled to payment for work performed in accordance with the Customer Contract up to the date of termination; and
 - (b) the Parties must otherwise bear their own costs and will be under no further liability to perform the Customer Contract.

SEVERABILITY

- 26.12** If any part of the Customer Contract is void or voidable, then that part is severed from the Customer Contract without affecting the continued operation of the remainder of the Customer Contract.

ENTIRE AGREEMENT

- 26.13** To the extent permitted by law:
- (a) the Customer Contract constitutes the entire understanding and agreement between the Contractor and the Customer in relation to its subject matter. Any prior representation, arrangement, agreement or undertaking given or received by either Party is superseded and shall have no effect;
 - (b) the warranties stated in the Customer Contract are the sole warranties provided by the Parties; and
 - (c) neither Party makes any other warranty, including any implied warranties of merchantability and of fitness for a particular purpose.

RIGHTS ARE CUMULATIVE

- 26.14** Subject to clause 6.33, the rights and remedies provided under the Customer Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

SURVIVAL

- 26.15** The provisions of clauses 3.11 to 3.13, 6.42 to 6.44, 8.1 to 8.4, 13.4 to 13.8, 13.12, 13.13, 14.1 to 14.3, 15, 16.3, 18, 19, 25.7, 25.8, 26.15 and 26.17 and any other clause which naturally should survive termination or expiry of the Customer Contract shall survive termination or expiry of the Customer Contract.

COUNTERPARTS

- 26.16** If there are a number of counterparts of the Customer Contract, the counterparts taken together constitute one and the same instrument.

APPLICABLE LAW

- 26.17** The laws of the New South Wales govern the Customer Contract and the Parties submit to the exclusive jurisdiction of the courts of New South Wales.

SIGNED AS AN AGREEMENT

Signed for and on behalf of [insert name of Customer]

[Redacted signature area]

By [insert name of Customer's Representative] but not so as to incur personal liability

[Redacted signature area]

[Redacted signature area]

Signature of Customer Representative

[Redacted signature area]

Print name

[Redacted signature area]

Date

Signed for and on behalf of [insert Contractor's name and ACN/ABN]

[Redacted signature area]

[Redacted signature area]

Signature of Authorised Signatory

[Redacted signature area]

Print name

[Redacted signature area]

Date

Schedule 1: General Order Form

[Use instruction: *If the order is a straight forward and/or low value order for hardware, software or services where the maximum value of the order can be calculated with certainty (i.e. the maximum amount payable is set out in the “Total Amount Payable” box in Item 11, then the Parties may use a shortened version of the General Order Form and any Module Order Form.*

The shortened version of the General Order Form **must**:

- *Include all the Items that are set out in clause 3.4 of the Customer Contract. (i.e. Items 1, 4, 7 (if there is a Head Agreement), 8, 10, 11, 12 and 13);*
 - *Include any other Items (if any) that the Parties agree;*
 - *Be in the same form and structure (even if some Items are omitted);*
 - *Ensure that the Items that remain are have the same number or heading as the number of heading in this pro forma General Order Form*
 - *Include the following as a title:*

“General Order Form. Schedule 1 to the Customer Contract (which is Part 2 of the Procure IT Framework)”
 - *Include the following text above the signature box;*

“This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.”
 - *Be signed by both parties.*
 - *Cross reference and include the relevant Order Details from any Module Order Form and any details from the Module Order Forms that are required to describe the Products or Services.*
-

CUSTOMER

Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's full legal name:	

Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's service/delivery address:	

Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Customer's Authorised Representative:	

CONTRACTOR

Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's full legal name:	

Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's service/delivery address:	

Item 6 Contractor's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Contractor's Authorised Representative:	

Item 7 Head Agreement

This Item 7 must be completed when the Customer Contract is entered into under a Head Agreement.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.1)	
Specify the Head Agreement number:	
Specify the Head Agreement title:	
Specify the Term of the Head Agreement: Start Date: End Date: If the Term of the Head Agreement has expired the Customer must obtain the Contract Authority's approval to enter into a further Customer Contract, and this approval should be attached to this General Order Form.	
Insurance (clause 16.2)	
Specify the insurances required under the Head Agreement:	
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	
The default insurance requirement under the Head Agreement is product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement. If so, the default insurance requirement is for a limit of cover of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	
Workers' compensation insurance in accordance with applicable legislation:	
Specify any other type of insurance required under the Head Agreement and the specified amount:	
Performance Guarantee (clause 17.1)	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	

Item 8 Modules that form part of the Customer Contract

Formation (clause 3.8(a))

Indicate, by marking with an X, the Modules that apply

Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>	Module 11 – Telecommunications Services	<input type="checkbox"/>
Module 2 – Hardware Maintenance and Support Services	<input type="checkbox"/>	Module 12 – Managed Services	<input type="checkbox"/>
Module 3 – Licensed Software	<input type="checkbox"/>	Module 13 – Systems Integration	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 14 – Hosting Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input type="checkbox"/>	Module 15 – Satellite Services	<input type="checkbox"/>
Module 6 – Contractor Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 7 – Professional Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 8 – Training Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 9 – Data Migration	<input type="checkbox"/>		<input type="checkbox"/>
Module 10 – X as a Service	<input type="checkbox"/>		

Item 9 Schedules that form part of the Customer Contract in addition to the General Order Form

Formation (clause 3.8(b))

Indicate, by marking with an X, the Schedules that apply

Schedule 1 – General Order Form	Applies	Schedule 7 – Statutory Declaration - Subcontractor	<input type="checkbox"/>
Schedule 2 – Agreement Documents	<input type="checkbox"/>	Schedule 8 – Deed of Confidentiality	<input type="checkbox"/>
Schedule 3 – Service Level Agreement	<input type="checkbox"/>	Schedule 9 – Performance Guarantee	<input type="checkbox"/>
Schedule 4 – Variation Procedures	<input type="checkbox"/>	Schedule 10 – Financial Security	<input type="checkbox"/>
Schedule 5 – Escrow Agreement	<input type="checkbox"/>	Schedule 11 – Dispute Resolution Procedures	<input type="checkbox"/>
Schedule 6 – Deed Poll – Approved Agents	<input type="checkbox"/>	Schedule 12 – Project Implementation and Payment Plan	<input type="checkbox"/>

Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contract Period (Clause 2.4)	
Specify the Commencement Date if it is not the date when the Customer and the Contractor sign the Customer Contract:	
Specify the end of the Contract Period:	
Specify any period of extension of the Contract Period in days/weeks/years:	

Item 11 Common Details

Formation (clause 3.4)			
Product and/or Service	Price per Unit	Quantity	Extended Price
		Sub-Total:	
		Delivery Charges:	
		Any Other Charges:	
		GST:	
This is the Contract Price (plus GST)		Total Amount:	

Item 12 Delivery Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Delivery (clause 5.1)	
Specify the address of the Site where delivery is to be made:	
Specify any delivery instructions:	
Specify the hours during which delivery may be made to the Site:	

Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
<p>If the Contract Specifications are the User Documentation leave this Item blank.</p> <p>If the Contract Specifications comprise other documents, list those documents in order of priority:</p>	

Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clauses 11.1 and 11.2)	
Invoicing (clause 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	
Specify address to which invoices should be sent:	
Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment. If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.	
Specify when the Contract Price must be paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one occasion then consider using a PIPP under Item 20.	
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	

Item 15 User Documentation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
User Documentation (clause 5.4(b))	
Specify the Price of any additional copies of the User Documentation:	

[User instruction: Items 16 to 43 are likely to be needed for large value orders and/or complex purchases such as software development, systems integration, web services, managed services, telecommunications services etc.

If the Parties require one or more of the Items 16 to 43 for any other type of purchase, then these can be added to the General Order Form].

Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Management Committee (clause 6.4)	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	
Management Committee (clause 6.6)	
Specify the function to be performed by the management committee:	
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	
Management Committee (clause 6.8)	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	
Specify any other details:	

Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Reviews (clause 6.10)	
Specify if a service and performance review/s of the Contractor's performance of the Customer Contract is to apply:	
Specify any specific time intervals for service and performance reviews:	

Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Site Specifications (clause 6.12)	
Specify if a Site Specification is required:	
Access to Customer's Site (clause 7.1(b))	
Specify any other requirements in relation to the Site access:	
Specify any requirements for the preparation and maintenance of the Site:	

Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Implementation Planning Study (clause 6.14)	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify if the Contractor must provide an implementation planning study:	
Specify the implementation planning study objectives and time for provision of study:	
Date for delivery of the implementation planning study to the Customer:	
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	

Item 20 Project Implementation and Payment Plan (PIPP) and Staged Implementation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Project Schedule (clause 6.17)	
Invoicing (clause 11.7)	
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	
Staged Implementation (clause 6.20)	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the PIPP together with the period during which the Customer must give written notice to move to the next Stage (if greater than 10 Business Days):	

Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Liquidated Damages (clause 6.28 to 6.34)	
Specify if Liquidated Damages (LDs) will apply:	
Specify the Milestones which are LD Obligations:	
Specify the Due Date for completion of each LD Obligation:	
Specify the calculation and amount of LDs for each LD obligation:	
Specify the maximum number of days LDs	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
are to be paid for each LD obligation:	

Item 22 Customer Supplied Items (CSI) and Customer Assistance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Supplied Items (CSI) (clause 6.36)	
<p>Specify each CSI to be provided by the Customer:</p> <p>CSI may be:</p> <ul style="list-style-type: none"> office access, desks etc (specify location, standards, times of access); Hardware or software (specify equipment, capacity, versions of software and dates of availability); VPN access or other remote access (specify capacity and hours available). <p>[Note: details of any Customer Personnel should be specified in Item 26].</p>	
Specify if any CSI must be covered by support and maintenance contracts including the period of cover, the Contractor's rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor:	
Specify the times when each CSI is to be provided:	
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	
<p>If so, specify the verification check process for each CSI:</p> <p>Include:</p> <ul style="list-style-type: none"> a process to manage satisfactory and unsatisfactory verification checks; a process to manage 'reissued' CSI's; a process to manage repeat CSI verification checks; a process to manage 'draft' or 'incomplete' and 'updated' CSI's; a process to manage rejected CSI's; a process to manage previously 	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
satisfactory CSI which becomes defective: a list of required verification check forms and/or registers and a corresponding data entry process: a list of Customer and Contractor nominee/s for responsibility to undertake verification checks:	
Specify any amount payable by the Contractor to the Customer for any item of CSI:	
Customer Assistance (clause 6.41)	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	

Item 23 Escrow

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Escrow (clause 6.42)	
Specify if an escrow arrangement is required:	
Specify the parties to the escrow arrangement:	
Specify the time for the escrow arrangement to endure:	

Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Contingency (clause 6.45)	
Specify if a Business Contingency Plan is required:	
Specify when the Business Contingency Plan is required:	
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	

Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Access to Customer's Site (clause 7.4)	
Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.	

Item 26 Customer's Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Personnel General (clause 8.5)	
Specify the Customer's Personnel who will be available to work with the Contractor and their roles and responsibilities: Also specify the times and duration of their involvement as well as their authority levels:	

Item 27 Specified Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specified Personnel (clause 8.8)	
Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:	

Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Agents and Subcontractors (clause 8.17)	
Specify which subcontractors are required to provide a Statutory Declaration by Subcontractor, substantially in the form of Schedule 7:	

Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(h))	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	

Item 30 Contractor's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(g))	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	

Item 31 Customer's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Warranties (clause 9.3(h))	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	
Specify any codes, policies, guidelines or standards the Customer is to comply with:	

Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Part 3 Dictionary (clauses 1.2 to 1.4)	
Acceptance Test Notification Period is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period: If no period is specified, the period is 2 Business Days:	
Acceptance Test Data is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:	
Acceptance Test Period is the period for the performance of any Acceptance Tests for any Deliverable. Specify this period: If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.	
Acceptance (clause 10.1)	
For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing: If not, the Deliverable will be Accepted	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
under clause 10.1(a).	
If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date (AAD) for a Deliverable occurs: If no period is specified, then the period is 2 Business Days.	
Conducting Acceptance Tests (clause 10.3)	
For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:	
Specify the identification of the Deliverables or part of the Deliverables to be tested:	
Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:	
Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use:	
Specify the methodology and process for conducting Acceptance Tests:	
Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:	
Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:	
Specify the Acceptance Test Data required:	
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	

Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clause 11.3)	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any fee that is applicable for payment by credit/debit card	

Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Existing Material (clauses 13.7 and 13.9)	
Specify any terms and condition applicable for granting a license for Existing Material owned by a third party:	
Specify any fees to be charged for any license to use any of Contractor's Existing Materials:	
Customer Owned New Material (clause 13.10)	
Specify if clause 13.10 applies, and if so, to which items of New Material:	

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.1)	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8 – Deed of Confidentiality:	

Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Insurance (clause 16.7)	
Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]	
Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if any higher limit of cover that is required by the Customer Contract:]	
If Services are being provided under the Customer Contract the default level of indemnity of professional indemnity	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
insurance for the total aggregate liability for all claims for the period of cover is \$1,000,000 [Only specify is a higher limit that is required by the Customer Contract:]	
Specify any additional insurance that the Contractor is to hold, including the type of insurance, the term of the insurance and the amount of the insurance:	

Item 37 Performance Guarantee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Guarantee (clause 17.2)	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	
Specify the date by which the Performance Guarantee must be provided to the Customer. If no date is specified the Contractor must provide the Performance Guarantee to the Customer within 30 days of the Commencement Date.	

Item 38 Financial Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Financial Security (clause 17.4)	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial Security:	
Specify the date by which the Financial Security must be provided to the Customer: If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	

Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Limitation of Liability (clause 18)</p> <p>If the Parties cannot agree the amount that is legally payable under the Customer Contract for the:</p> <ul style="list-style-type: none"> • Non-Recurring Service or Product; and/or • Short Term Recurring Service <p>(as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price).</p> <p>Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service.</p> <p>(See the definition of Contract Value in Part 3)</p>	<p>[insert, as applicable, the Estimated Contract Price for the:</p> <ul style="list-style-type: none"> • Non- Recurring Service or Product; and/or • Short Term Recurring Service <p>if applicable]</p>
<p>If Services are being provided under any of the following Modules:</p> <p>Module 6 – IT Personnel; Module 7 – Professional Services; Module 8 – Data Management; Module 11 – Web Services; Module 16 - Project Management Services; Module 17 - Change Management Services; Module 18 - Knowledge Transfer Services; or Module 20 - Whole of Government Requirements</p> <p>specify whether the Parties regard the relevant Services as being:</p> <ul style="list-style-type: none"> • the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring Services for the purpose of the limitation of liability; or • provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability. <p>(See definition of Non-Recurring Services and Recurring Services in Part 3)</p>	<p>[State either “Non-Recurring Services”/”Recurring Services” if applicable]</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the alternative cap of liability (clause 18.3):	This section must only be used if the Customer Contract is for Products or Services that are to be used for a Prescribed Use or where the Price Payable exceeds \$20,000,000

Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Reporting (clause 21.1)	
Specify the reports required, (if any), the time for provision and the agreed format:	

Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Dispute Resolution (clause 24.11)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7 to 24.8.	
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Termination for Convenience by the Customer (clause 25.4)	
Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3:	

Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any Additional Conditions: Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the Contract Authority's and the Director General's NSW Department of Finance and Services consent where an Additional Condition varies a Protected Clause.	

This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.

SIGNED AS AN AGREEMENT

Signed for and on behalf of *[insert name of Customer]*

By *[insert name of Customer's Representative]* but not so as to incur personal liability

Signature of Customer Representative

Print name

Date

Signed for and on behalf of *[insert Contractor's name and ACN/ABN]*

Signature of Authorised Signatory

Print name

Date

Schedule 3: Service Level Agreement

This SLA is a sample document only and includes guidance notes in italicised print for consideration in completing the SLA. These are included simply as suggestions. Users should obtain legal or other professional advice in developing an SLA to achieve their objectives and derive maximum benefit from the Service relationship.

1. Definitions and Interpretation

1.1 In this Service Level Agreement, unless the contrary intention appears:

“**Rebate**” means the rebate specified in the Service Level Agreement attached to the General Order Form.

“**Service Credit**” means the service credit specified in the Service Level Agreement attached to an Order.

1.2 Other capitalised words and expressions used in this SLA are defined in Part 3.

2. General

PURPOSE OF SLA

2.1 This SLA provides a mutual understanding of the Service Level expectations of the Parties and defines a benchmark for measuring the performance of the Service. [Insert details of any guiding principles such as continuous improvement, continuous satisfaction, proactive solutions and so on that the Parties wish to apply to the relationship.]

DURATION OF SLA

2.2 This SLA will commence on [*insert commencement date*] and expire on [*insert expiration date*].

REVIEW

2.3 This SLA will be reviewed every [*3/6/12 months*] from the date the SLA commences.

2.4 Where the Contractor is required to provide scoping Services after the commencement of this SLA, the Parties agree to review the SLA at the completion of those Services and update the SLA accordingly.

NOTIFICATION PROCEDURE

2.5 How are problems in relation to performance of the Services to be notified by the Customer to the Contractor?

ESCALATION PROCEDURE

2.6 The responsible officers in each Party's organisation should be identified and the circumstances in which matters may be escalated to those officers for review and resolution.

	Officer
Level 1	<p>Customer: Service Level Agreement Manager Name and Contact Details</p> <p>Contractor: Service Level Agreement Manager Name and Contact Details</p>
Level 2	<p>Customer:</p> <p>Contractor:</p>
Level 2	<p>Customer:</p> <p>Contractor:</p>
* Table 1 Escalation levels	

SITE INFORMATION

- 2.7** Location, specific requirements or unique features about the Site should be set out here, as applicable.

HOURS OF OPERATION

- 2.8** What are the Customer's normal hours of operation? When can Services be performed with minimal disruption to the Customer's operations?

CONTRACT VARIATIONS

- 2.9** Where the Customer requires services that are not included in the SLA or in the Order, or there is a significant change to the Services to the scope of the Customer's requirements under the Contract which impacts on the contractual terms, then a Contract Variation must be affected in accordance with clause 26.2 of the Customer Contract.

REFERENCED DOCUMENTS

- 2.10** Include details of any Documents that are relevant to the performance of the Services. See clause 21.1 of the Customer Contract.

3. Services

CUSTOMER RESPONSIBILITIES

- 3.1** Identify any resources that are to be supplied by the Customer and any responsibilities that are to be retained by the Customer. See clause 6.36 of the Customer Contract.

CONTRACTOR PROVIDED SERVICES

- 3.2** The Contractor agrees to provide the following Services:

Include a brief description of the Services to be provided by the Contractor.

TRANSITION IN

- 3.3** Specify the nature of transition in assistance required by the Customer from the Contractor in relation to transfer of equipment, contracts and disengagement from former contractors or in-house service providers.

MANAGEMENT AND CONSULTING

- 3.4** In addition to ensuring that the Contractor has adequate resources to provide the Services are there other management services required of the Contractor? Are there external contractual relationships or procurement issues that the Contractor is expected to manage?

Service review and planning for the future

See clause 6.10 of the Customer Contract. The items for review could include:

- Service provided during the review period*
- Major incidents during the review period*
- Problems that remain outstanding*
- Review of Contract Variation requests and progress for enhancements*
- Review of any Contract Variation plan*
- Future events or business developments that will affect the Service*
- Review any potential changes required to the SLA*
- Agree items for submission to the executive decision making*
- Review schedules for Services provided*

Reporting and Analysis

- 3.5** Identify the reports and analysis the Customer requires the Contractor to generate as to Service Level performance.

Risk Management and Problem Prevention

- 3.6** Identify the Risk Management process, including the methodology to be used, the people responsible for creating and approving the risk management reports, and the frequency with which they are produced.

Quality Management

- 3.7** Identify the Quality Assurance requirements and any methodology that is to be used during the project.

Asset Management

- 3.8** The Customer may require the Contractor to produce a plan for review and approval in relation to the above three issues.

The plan would be the basis for benchmarking and assessing Service Level performance.

DISASTER RECOVERY AND BUSINESS CONTINUITY PLANNING

- 3.9** The Customer may require the Contractor to prepare a plan for review and approval.
- 3.10** The plan would be the basis for benchmarking and assessing Service Level performance.

SECURITY

Information Security

- 3.11** Is the Contractor able to access or use Personal or Confidential Information, or Customer Data in the course of providing the Services? Are there practical requirements, in addition to the contractual requirements in clauses 14 and 15 of the Customer Contract that should be specified?

Security Audit and Internal Audit

- 3.12** The Customer may require the Contractor to provide a plan demonstrating how it will protect such information or data and take action against employees, against or subcontractors if they do not abide by that plan. The plan would be the basis for benchmarking and assessing Service Level performance.

TRANSITION OUT

- 3.13** Refer to relevant Modules to determine whether transition out assistance is required. Specify the transition out or disengagement services required from the Contractor.

TECHNICAL

- Hardware Maintenance and Support Services
- Software Support Services
- IT Personnel
- Professional Services
- Data Management
- Telecommunications
- X as a Service
- Hosting Services
- Managed Services
-
- System Integration Services

4. Assumptions

- 4.1** This clause is intended to provide a contextual reference for the assessment of the Contractor's performance against the Service Level. There are a number of issues that may be outside of the Contractor's control that could adversely impact on the Contractor's capacity

to deliver against set performance criteria such as the continuous availability of telecommunications links, bandwidth capacity or third party service interruption issues.

- 4.2** Also it may be an expectation of the Customer that the Contractor in performing the Service adhere to specific policy or procedural requirements that should be included in this clause.
- 4.3** In some instances the Service Levels may have been agreed prior to a scoping phase being completed under the Customer Contract. In that instance the Service Levels may be agreed against representations made by the Customer or a notional assessment of the scope of the task expressed as sizing metrics in terms of number of users, outputs, data volumes and so on.

5. Assumptions

CUSTOMER RESPONSIBILITIES

Responsibility

- 5.1** Indicate the responsibility e.g. maintenance of Customer retained equipment that impact on Contractor Service Levels if for instance the Service is provided off site.
- (a) Benchmarking
- (b) Service Level

CONTRACTOR RESPONSIBILITIES

Service

- 5.2** Indicate the Service e.g. Server maintenance
- (a) Benchmarking
- (b) Service Level

6. Performance Measurement

Depending on the type of Service provided by the Contractor, the performance may be measured on the basis of User satisfaction through review, virtual client assessment or survey process, or measurable on the basis of functionality, timed responses, frequency, speed, quality, or resolution of issues.

Service/Responsibility	Frequency	Benchmark	Service Level	Measurement	When measured
<i>Identify Service/Responsibility</i> <i>(Breakdown into components as necessary)</i>	<i>How often is the Service to be provided?</i>	<i>Outline high level expectations</i>	<i>Detailed performance criteria</i>	<i>Identify method/formula for measurement</i>	<i>Timing</i>

* Table 2 Outcomes and Performance Measurement

7. Payment Issues

PAYMENT SCHEDULE

- 7.1 Include a Schedule of Payments or rates for various services. A Rebate and Service Credit regime may then be applied against amounts due to the Contractor.

REBATES AND SERVICE CREDITS

- 7.2 Insert appropriate Rebate and Service Credit regime

Guide Notes:

The Parties may wish to apply categories of criticality to each Service Level for the purposes of assessing when rebates or service credits should apply. As an example:

Category 1 – High level of criticality

Category 2 – Moderate level of criticality

Category 3 – Low level of criticality

Rebates for failure to meet a Service Level could be expressed to apply in different percentages depending on the Service Level category outline above. By way of example if a 5% rebate were to apply to monthly charges payable to the Contractor for failure to meet a Service Level, the rate could be expressed as follows:

For **Service Level Category 1** failures: 100% of the 5% rebate

For **Service Level Category 2** failures: 50% of the 5% rebate

For **Service Level Category 3** failures: 10% of the 5% rebate

Service credits may be awarded for service delivery that exceeds the agreed targets. Service credits can be offset against any rebate due in an agreed accounting period so that the net Rebate can be calculated.

By way of example Service Credits can be accumulated on a monthly basis. The cumulative tally of Service Credits can be reset to zero at the end of an agreed period (perhaps quarterly) after offsetting against the Rebate applicable for that same period.

For exceeding all **Service Level Category 1** targets the Service Credit is 50% (of 5%)

For exceeding all **Service Level Category 2** targets the Service Credit is 30% (of 5%)

For exceeding all **Service Level Category 3** targets the Service Credit is 10% (of 5%)

CONTRACTUAL REMEDIES

- 7.3 Where the Contractor does not meet the same Service Level under the Service Level Agreement for each month in a consecutive six (6) month period, the Customer shall be entitled to treat such failure as a Substantial Breach for the purposes of clause 18.2 of the Agreement.

8. Incentives and Innovation

8.1 Where the Contractor:

- (a) exceeds targets for performance consistently over an agreed time period;
- (b) is innovative in developing new processes or systems; or
- (c) sources and implements new technologies; and

these accrue benefits and costs savings to the Customer, the Parties may agree to share those costs on terms agreed in the SLA.

Schedule 4: Variation Procedures

1. Procedures

- 1.1** Each request or recommendation for a change to the PIPP or any part of the Customer Contract must be submitted in a form substantially similar to the Change Request form attached to this Schedule.
- 1.2** For each draft Change Request submitted:
- (a) the Customer must allocate it with a sequential number;
 - (b) the draft Change Request must be logged and its progress documented by recording its status from time to time by the Contractor as follows:
 - (i) requested;
 - (ii) under evaluation;
 - (iii) awaiting authorisation;
 - (iv) cancelled;
 - (v) pending
 - (vi) approved/authorised;
 - (vii) expired;
 - (viii) in progress;
 - (ix) applied;
 - (x) delivered;
 - (xi) accepted.
- 1.3** The Party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):
- (a) request further information;
 - (b) provide written notification to the other Party of its approval or rejection of the Change Request.
- 1.4** If the Customer submits a draft Change Request to the Contractor, and the Contractor believes that there is more than 1 Business Day's work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request the Contractor may request that the Customer pays for the work involved to evaluate the draft Change Request. The Customer may then either revise the draft Change Request to require less than 1 Business Day's work to evaluate it, or agree to pay for the Contractor's work to evaluate the Change Request in an amount agreed by the Parties, or in absence of agreement, at the Contractor's then current commercial rates.
- 1.5** If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary a Protected Clause and the Customer approves of the Change

Request, the Customer must submit the Change Request to the Contract Authority and the Director General, NSW Department of Finance and Services, for approval immediately after it has notified the Contractor that it approves the Change Request.

2. Status

- 2.1 A Change Request is binding on the Parties only when both Parties have signed it. Once signed by both parties the Change Request updates the Customer Contract in accordance with the terms of the Change Request. The Contractor must not implement any draft Change Request until the Customer has signed the Change Request form.

3. Change Request Form

CHANGE REQUEST BRIEF DETAILS

Change Request Number		<i>Insert Change Request Number (supplied by the Customer)</i>
Date of Change Request		<i>Insert date of draft Change Request</i>
Originator of need for Change Request		<i>Customer or Contractor</i>
Proposed Implementation Date of Change		<i>Insert proposed date of implementation</i>
Date of expiry of validity of Change Request		<i>Insert validity expiry date. The Change Request is invalid after this date.</i>
Contractor's estimated time and cost of evaluation		<i>Insert estimated time and cost of evaluation</i>
Amount agreed to be paid to the Contractor for evaluating the draft Change Request, if any (This applies only if the Customer is the Party that originated the need for a Change Request; and the Contractor estimates the cost of evaluating and drafting the Change Request exceeds 2 Business Days)		<i>Insert amount to be paid to the Contractor for evaluating the draft Change Request</i>

CHANGE REQUEST HISTORY LOG

Change Request Version History			
Date	Issue Version	Status/Reason for New Issue	Author
<i>Insert date</i>	<i>Insert version</i>	<i>Insert status/reason</i>	<i>Insert author</i>

DETAILS OF CHANGE REQUEST

Summary

[Insert a summary of the changes, if required]

SCOPE

[Insert changes to the scope of Products to be provided and/or any Services, including any extensions to the Contract Period.]

EFFECT OF CHANGE ON CONTRACT SPECIFICATION

[Insert any changes to the Contract Specification]

EFFECT OF CHANGE ON PROJECT TIMETABLE

[Insert changes to the project timetable]

New PIPP (annexed)

[Annex new PIPP if required]

EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

[Insert new charges and the timing of payment into the new PIPP]

CHANGES TO CSI

[Insert any changes to the CSI]

CHANGES TO CUSTOMER PERSONNEL

[Insert any changes to the Customer's Personnel]

CHANGES TO CUSTOMER ASSISTANCE

[Insert any changes to the Customer's Assistance]

PLAN FOR IMPLEMENTING THE CHANGE

[insert the plan for implementing the change – if any.]

THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

[Insert the responsibilities of the respective Parties for implementing the change – if any.]

Responsibilities of the Contractor

[Insert the responsibilities of the Contractor for implementing the change – if any.]

Responsibilities of the Customer

[insert the responsibilities of the Customer for implementing the change – if any.]

EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE

[Insert if there will be any effect on the Acceptance Testing of any Deliverable – or alternatively insert None.]

EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

[Insert if there will be any effect on performance of any Deliverable – or alternatively insert None.]

EFFECT ON USERS OF THE SYSTEM/SOLUTION

[Insert if there will be any effect on users of the system/solution – or alternatively insert None.]

EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES

Changes will be required to the following documents:

[Add any other documents which may be affected.]

EFFECT ON TRAINING

Insert if there will be an effect on training or alternatively insert None.]

ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

[insert if there are any other matters.]

ASSUMPTIONS

The plan for implementing the changes outlined in this Change Request is based on the assumptions listed below:

[Insert any assumptions. If none then this section will be deleted].

If the assumptions are or become untrue, the Parties will address the effect of this through a subsequent Change Request.

LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

[Insert a list of the documents that form part of this Change Request]

CUSTOMER CONTRACT CLAUSES, SCHEDULES AFFECTED BY THE PROPOSAL ARE AS FOLLOWS:

[Insert amendments to clauses in the Customer Contract, relevant Schedules including Service Level Agreement]

Note that variations to any of the Protected Clauses require the Customer to obtain the Contract Authority's and the Director General, NSW Department of Finance and Services approval (clause 26.2))

AUTHORISATION

The Contractor must not commence work on the Change Request until it is signed by both Parties. Once signed by both Parties, the Customer Contract is updated by this Change Request and any provisions of the Customer Contract that conflict with this Change Request are superseded.

SIGNED AS AN AGREEMENT

Signed for and on behalf of *[insert name of Customer]*

By *[insert name of Customer's Representative]* but not so as to incur personal liability

Signature of Customer Representative

Print name

Date

Signed for and on behalf of *[insert Contractor's name and ACN/ABN]*

Signature of Authorised Signatory

Print name

Date

Schedule 5: Escrow Deed

Deed dated the [] day of [] 20 []

Between [insert name, and ACN/ABN, if applicable] (“Escrow Agent”) []

And [insert name, and ACN/ABN if applicable] (“the Contractor”) []

And [insert name of Government Party] (“the Principal”) []

RECITALS

- A. By License Agreement made on the day of 201[], the Contractor has agreed to grant a licence to the Principal to use the Licensed Software. By the Support Agreement made on the day of 201[], the Contractor has agreed to provide Software Support Services to the Principal in respect of that Licensed Software.
- B. The Contractor and the Principal have agreed to appoint an escrow agent and the Escrow Agent has agreed to act as an escrow agent and to hold the Escrow Material for the Licensed Software on the following terms and conditions.

NOW THIS DEED WITNESS:

1. Agreed Terms and Interpretation

1.1 In this Deed the following words have the following meaning:

Business Day means any weekday that is not a public holiday in New South Wales;

Contract Specifications has the same meaning as in the License Agreement;

Deed means this Deed of Agreement;

Defect means a defect, error or malfunction in that software such that the Licensed Software does not comply with and cannot be used in accordance with the Contract Specifications;

Escrow Fees means the fees set out in Attachment 1 to this Deed;

Escrow Materials means the source code and/or object code of the Licensed Software and all other software programs all as owned by the Contractor, documentation, drawings and plans as well as a list of any third party software programs that would enable a competent programmer skilled in the use of the Licensed Software and any necessary development tools to keep the Licensed Software in good order and repair that are stated in Attachment 3;

Insolvency Event means that a party to this Deed:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent with the meaning of Section 95A of the *Corporations Act 2001* (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in Section 459C(2) of the *Corporations Act 2001* (Cth);
- (d) fails to comply with a statutory demand within the meaning of Section 459F(1) of the *Corporations Act 2001* (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a mortgagee enter into possession of any property of that party;
- (g) has a controller within the meaning of the Section 9 of the *Corporations Act 2001* (Cth) or similar officer or appointed to all or any of its property; or
- (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

License Agreement means the Customer Contract entered into under the *Procure IT Framework* dated [insert date] pursuant to which the Contractor is providing Licensed Software to the Principal referred to in Recital A;

Licensed Software means the standard off-the-shelf software provided by the Contractor to the Customer and includes any Updates or New Releases of that software that may be provided to the Customer from time to time in accordance with the Software Support Agreement.

New Release means software which has been produced primarily to extend, alter or improve the Licensed Software by providing additional functionality or performance enhancement (whether or not Defects in the software are also corrected) while still retaining the original designated purpose of the Licensed Software;

Software Support Services means the services to be provided by the Contractor under the Support Agreement;

Support Agreement means the Customer Contract entered into under the *Procure IT Framework* dated [insert date] pursuant to which the Contractor is providing Software Support Services to the Principal in respect of Licensed Software referred to in Recital A; and

Update means software which has been produced primarily to overcome Defects in, or to improve the operation of, the Licensed Software without significantly altering the Contract Specifications whether or not the Licensed Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

1.2 In this Deed, unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause and sub clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its sub clauses;
- (d) words in the singular number include the plural and vice versa;
- (e) the words “include(s)” and “including” are not words of limitation;
- (f) words importing a gender include any other gender;
- (g) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (h) a reference to a clause or sub clause is a reference to a clause or sub clause of this Deed;
- (i) a reference to an Attachment is a reference to an Attachment to this Deed; and
- (j) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.3 Where an obligation is imposed on a party under this Deed, that obligation shall include an obligation to ensure that no act, error or omission on the part of that party’s employees, agents or subcontractors or their employees or agents occurs which will prevent the discharge of that party’s obligation.

COMPLIANCE WITH CONSUMER LAWS

1.4 To the extent that the provisions of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) apply to goods or services supplied under this Customer Contract, then the provisions of this Customer Contract are subject to the provisions of the CCA.

1.5 To the extent that there is a failure to comply with a guarantee under sections 54 to 59 of the CCA in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by law, the Contractor’s liability is limited to one or more of the following, at the election of the Contractor:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the cost of having the goods repaired.

1.6 To the extent that there is a failure to comply with a guarantee in respect of the supply of services under sections 60 to 62 of the CCA, then to the extent permitted by law, the Contractor’s liability is limited to one or more of the following, at the election of the Contractor:

- (a) supplying the services again; or
- (b) payment of the cost of having the services supplied again.

2. Duration

Subject to all applicable fees under this Deed being paid by the Principal in accordance with this Deed, this Deed remains in force until the Escrow Material is released in accordance with this Deed or this Deed is terminated or expires in accordance with its terms.

3. Appointment of Escrow Agent

The Escrow Agent is hereby appointed jointly by the Principal and the Contractor to hold the Escrow Material and, if the conditions for release under clause 8 below are met, to release the Escrow Material in accordance with this Deed.

4. Contractor's Obligations

- 4.1 The Contractor shall deliver to, and deposit with, the Escrow Agent one copy of the Escrow Material within 7 days of the date of this Deed (or such other time as otherwise agreed).
- 4.2 The Contractor shall maintain, amend, modify, up-date and enhance the Escrow Material quarterly and shall ensure on a quarterly basis that the Escrow Material deposited with the Escrow Agent is kept fully up-to date and accurately reflects the Licensed Software including all modifications, amendments, Updates and New Releases made to, or in respect of, the Licensed Software.
- 4.3 The Contractor warrants to the Principal that the Escrow Material is, to the best of the knowledge of the Contractor, free from any virus or program device which would prevent the Licensed Software from conforming with the Contract Specifications or which would prevent or impede a thorough and effective verification thereof.

5. Escrow Agent's Obligations

- 5.1 The Escrow Agent shall accept custody of the Escrow Material on the date of delivery in accordance with clause 4.1 above and, subject to the terms and conditions of this Deed, shall hold the Escrow Material on behalf of the Principal and the Contractor.
- 5.2 The Escrow Agent shall take all reasonable necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Escrow Material while it is in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an atmosphere which does not harm the Escrow Material or in a secure electronic environment.
- 5.3 The Escrow Agent shall bear all risks of loss, theft, destruction of or damage to the Escrow Material while it is in the Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, its employees or agents.
- 5.4 If the Escrow Material is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent shall immediately notify the Principal and the Contractor.
- 5.5 Unless this Deed is terminated in accordance with clause 9.2(b) below, the Contractor shall, upon receipt of notice from the Escrow Agent under clause 5.4 above, promptly deposit a replacement copy of the Escrow Material with the Escrow Agent.
- 5.6 Without limiting any other rights the Contractor and the Principal may have under this Deed or at law, where the loss, damage or destruction of the Escrow Material is caused by the negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, the Escrow

Agent must reimburse the Contractor for the reasonable cost of depositing a replacement copy of the Escrow Material.

- 5.7** The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the Escrow Material lodged with it.
- 5.8** To the extent permitted by law, the Escrow Agent's liability, to both the Principal and the Contractor collectively, in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out, of or in connection with, this Deed shall not exceed in aggregate for all claims that arise out, of or in connection with, this Deed the greater of:
- (a) \$100,000; or
 - (b) two times the Escrow Fees paid, or due and unpaid, in the year that the claim first arises.

6. Escrow Fee and Expenses

- 6.1** The Principal shall pay all applicable Escrow Fees plus any applicable GST to the Escrow Agent.
- 6.2** All expenses and disbursements incurred by the Escrow Agent in connection with this Deed shall be borne wholly and completely by the Escrow Agent.
- 6.3** All expenses and disbursements incurred by the Contractor in connection with this Deed shall be borne wholly and completely by the Contractor.

7. Testing and Verification

- 7.1** The Principal may engage the Escrow Agent or an independent assessor to undertake analysis and tests of the Escrow Material for verification purposes on its behalf.
- 7.2** The Escrow Agent shall release the Escrow Material to the independent party upon presentation of a release form signed by the Principal and the Contractor specifying the material to be released and identifying the person to whom that material may be released.
- 7.3** The Escrow Material released pursuant to clause 7.2 above must be returned to the Escrow Agent or its employees or agents and the Principal shall ensure that the confidentiality of the Escrow Material so released is preserved and that it is not used for any purpose other than the verification that the Contractor has complied with its obligations under this Deed.
- 7.4** All costs that Escrow Agent incurs in assisting the assessment shall be borne by the Principal, and must be paid within 7 days of receipt of an invoice from the Escrow Agent.

8. Release of the Escrow Material

- 8.1** The Escrow Agent shall not release, or allow access to, the Escrow Material except in accordance with the provisions of this Deed.
- 8.2** If:
- (a) an Insolvency Event has occurred in relation to the Contractor; or

- (b) the Principal has validly terminated the Support Agreement for cause (each of (a) and (b) being a **Trigger Event**),

8.3 and the Principal wishes the Escrow Agent to release the Escrow Material to it, the Principal must within 20 Business Days of the Trigger Event provide written notice in the form of a statutory declaration to both the Escrow Agent and the Contractor stating which Trigger Event has occurred. If the Contractor does not, within 20 Business Days of receiving the notice, rectify the Trigger Event or provide another remedy that is satisfactory to the Principal, the Principal may provide the Escrow Agent with a further statutory declaration confirming that the Contractor has not rectified the Trigger Event in the required time or provided another remedy that is satisfactory to the Principal and require the Escrow Agent to immediately release the Escrow Material to the Principal ("**Final Release Notice**"). The Escrow Agent shall release the Escrow Material to the Principal promptly after receiving the Final Release Notice.

8.4 Where:

- (a) the License Agreement has been lawfully terminated by the Contractor or the period of license has expired;
- (b) the Support Agreement has been lawfully terminated by the Contractor or the period of Software Support Services has expired;
- (c) the Principal has agreed to the release;
- (d) this Deed is terminated in accordance with clause 9 below; or
- (e) the Contractor is not obligated under the Agreement to execute a substantially similar Deed to replace this Deed,
- (f) the Escrow Agent shall, upon written request from the Contractor, release the Escrow Material to the Contractor.

8.5 In the event that the Escrow Materials are released to the Principal under this Deed, the Principal:

- (a) is granted a limited right to use the Escrow Materials:
 - (i) for the same usage rights as the Principal has been granted the right to use the Licensed Software under the License Agreement; and
 - (ii) to correct Defects in the Licensed Software; and
- (b) subject to (c), must use the Escrow Materials subject to all the other terms of the License Agreement, as if the Escrow Material is included in the definition of Licensed Software in that License Agreement; and
- (c) must keep the Escrow Materials strictly confidential and not disclose them to any person, and must not use them for any purpose other than that referred to in clause 8.5(a) above.

This clause 8.4 survives expiry or termination of this Deed.

9. Termination

9.1 The Escrow Agent may, by giving 3 months prior written notice to the Principal and the Contractor, terminate this Deed subject to the pro-rata refund of any advance payment of the Escrow Fee.

- 9.2** The Principal or the Contractor may terminate this Deed immediately if the Escrow Agent:
- (a) has become subject to any form of insolvency administration; or
 - (b) is in breach of any obligation under this Deed so that there is a substantial failure by the Escrow Agent to perform or observe this Deed.

9.3 If this Deed is terminated in accordance with this clause 9 while the Agreement remains in force, and the Principal continues to use the Licensed Software, the Principal and the Contractor shall enter into a new escrow agreement on substantially the same terms and conditions as are set out in this Deed, with an alternative escrow agent who is acceptable to both the Principal and the Contractor.

9.4 The Principal and the Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Deed, however in this case, no refund of advance payment of the Escrow Fee will be payable by the Escrow Agent.

10. Confidentiality

10.1 The Escrow Agent shall not, except as permitted by this Deed, make public or disclose to any person any information about this Deed or the Escrow Material.

10.2 The Escrow Agent shall not reproduce, or cause to have reproduced, a copy of the Escrow Material or any part thereof, except as may be necessary to electronically store (and maintain a back up) of the Escrow Material.

10.3 The obligations under this clause 10 shall survive the termination of this Deed.

11. Compliance with Laws

11.1 The Escrow Agent shall, in carrying out this Deed, comply with the provisions of any relevant statutes, regulations, by-laws and the requirements of any Commonwealth, State or local authority.

12. Resolution of Disputes

12.1 The Parties agree to resolve any conflicts or issues between them in relation to this Deed as follows:

Negotiation

- (a) if there is a disagreement between the parties arising out of this Deed (a "**Dispute**"), then within 10 Business Days of a Party notifying the other party or parties of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

Mediation

- (b) If the Dispute is not settled within 10 Business Days of notification under clause 12.1(a), the parties must submit the Dispute to mediation administered by one of the following bodies as agreed by the parties:
 - (i) the Australian Commercial Disputes Centre Limited (**ACDC**);
 - (ii) the Institute of Arbitrators and Mediators Australia (**IAMA**); or

- (iii) Lawyers Engaged in Alternative Dispute Resolution (**LEADR**); or failing agreement, the ACDC.
- (c) The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the President of the body determined under clause 12.1(b) above.
- (d) Any mediation meetings and proceedings under this clause 12.1 must be held in Sydney, New South Wales.

Court proceedings and other relief

- (e) A party may not start court proceedings in relation to a Dispute until it has followed the procedures in this clause 12.1 but the parties have not agreed a resolution within 30 Business Days of the appointment of the mediator, unless the party seeks injunctive or other interlocutory relief.

Continuation of rights and obligations

- (f) Despite the existence of a Dispute, each party must continue to perform this Deed.

13. Applicable Law

This Deed shall be governed by and construed in accordance with the laws from time to time in force in New South Wales. The parties shall submit to the exclusive jurisdiction of the courts of New South Wales.

14. Variation and Waiver

- 14.1** This Deed shall not be varied either in law or in equity except by a deed duly executed by the Escrow Agent, the Principal and the Contractor.
- 14.2** A waiver by one party of a breach of a provision of this Deed by another party shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of a party to enforce a provision of this Deed shall not be interpreted to mean that party no longer regards that provision as binding.

15. Assignment

The Contractor, Principal and the Escrow Agent, or any of these, shall not assign, in whole or in part, its benefits under this Deed without the written consent of the other two parties, which shall not be unreasonably withheld.

16. Severability

Each provision of this Deed, and each part of it shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable part, so that if any provision, or part of a provision is void or otherwise unenforceable for any reason, then that provision, or part shall be severed and the remainder shall be read and construed as if the severable part had never existed.

17. Notices

- 17.1** A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means. The address for services of notice for a party is, in the case of the:

Escrow Agent

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Contractor

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Principal

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

or such other address as a party may notify to the other party in writing from time to time.

- 17.2** A notice or other communication is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after three (3) Business Days;
 - (c) sent by post from or to an address outside Australia, after ten (10) Business Days; or
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours).

EXECUTED AS A DEED

Signed, sealed and delivered by [insert full legal name of Escrow Agent and ACN/ABN]

[Signature line for Escrow Agent]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

[Signature line for Director]

Signature Director

[Signature line for Director/Secretary]

Signature of Director/Secretary

[Print name line for Director]

Print name

[Print name line for Director/Secretary]

Print name

[Date line for Director]

Date

[Date line for Director/Secretary]

Date

Signed, sealed and delivered by [insert full legal name of Contractor and ACN/ABN]

[Signature line for Contractor]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

[Signature line for Director]

Signature Director

[Signature line for Director/Secretary]

Signature of Director/Secretary

[Print name line for Director]

Print name

[Print name line for Director/Secretary]

Print name

[Date line for Director]

Date

[Date line for Director/Secretary]

Date

Signed, sealed and delivered by [insert full legal name of Principal and ACN/ABN]

[Signature line for Principal]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

[Signature line for Director]

Signature Director

[Signature line for Director/Secretary]

Signature of Director/Secretary

[Print name line for Director]

Print name

[Print name line for Director/Secretary]

Print name

[Date line for Director]

Date

[Date line for Director/Secretary]

Date

Escrow Deed of Agreement

ATTACHMENT 1

Details of Escrow fees:

REVIEW OF FEES

ATTACHMENT 2

Details of licensed software to be held in Escrow

Source Code:

Flow Charts:

Diagrams:

Listings:

Escrow Deed of Agreement

ATTACHMENT 3

Supporting materials

Insert details of support material relevant to the Licensed Software, for example:

- technical documentation sufficient to allow a competent computer programmer to understand and maintain the version of the software to which the documentation relates.
- relevant maintenance tools and compilers and assemblers (if standard tools, description thereof will suffice) and third party software utilities.
- description of code generation.
- description of third party software required for support and availability thereof.
- identification of key personnel involved with the development of the software.
- operational manuals, listings, flow charts etc.
- details of machine/processor/system configuration.

Schedule 6: Deed Poll – Approved Agents

This Deed Poll is made on [insert date] by [insert full legal name of Approved Agent and ACN/ABN] (**Approved Agent**) in favour of [insert full legal name of Contract Authority] (**Contract Authority**)

1. Definitions

- 1.1 **Customer** means [insert full legal name of the Customer].
- 1.2 **Customer Contract** means the agreement dated [*insert date*] signed by the Customer and the Approved Agent as agent for the supply of the Products and/or Services under that agreement.

By this Deed:

The Approved Agent warrants to the Customer that it is the lawful agent of the Contractor to provide the Products and/or Services under the Customer Contract.

Signed, sealed and delivered by [insert full legal name of Approved Agent and ACN/ABN]

[Redacted signature line]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

[Redacted signature line]

Signature Director

[Redacted signature line]

Signature of Director/Secretary

[Redacted signature line]

Print name

[Redacted signature line]

Print name

[Redacted signature line]

Date

[Redacted signature line]

Date

Schedule 7: Statutory Declaration – Subcontractor

Oaths Act (NSW), 1900 Ninth Schedule

I, do solemnly and sincerely declare that to the best of my knowledge and belief:

1. *[insert full Subcontractor company name and its ACN/ABN]* (**Subcontractor**) has been selected as subcontractor to, *[insert name of the Contractor and its ACN/ABN]* (**Contractor**) under an agreement between the *[insert name of Customer]* (**Customer**) and the Contractor dated *[insert date of Customer Contract]*.
2. The Subcontractor will offer to enter into an agreement with the Contractor in connection with the Customer Contract on terms that are not inconsistent with the terms of the Customer Contract in so far as those terms are relevant to the Subcontractor.
3. As at the date of this Statutory Declaration there are no reasons of which I am aware that would prevent the Subcontractor's agreement with the Contractor from being performed in a manner that would allow the satisfactory and timely performance of that subcontract.

And I make this solemn declaration, as to the matter aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Declared at

the day of 20

Before me,

Schedule 8: Deed of Confidentiality

Deed of Agreement dated the day of 20

Between [insert name of the Customer (**Customer**)

And [insert name and address of Subcontractor] (**Subcontractor**)

RECITALS

- (A) In the course of the Subcontractor assisting in the supply by the Contractor of certain Deliverables for the Customer under a subcontract agreement between the Subcontractor and the Contractor, the Subcontractor will have access to, and may become aware of, Confidential Information belonging to, or in the possession of, the Customer.
- (B) Improper use or disclosure of the Confidential Information would severely damage the Customer's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the Customer.
- (C) The Customer requires, and the Subcontractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer's Confidential Information is kept confidential.
- (D) This Deed sets out the terms on which the Subcontractor will have access to the Confidential Information.

WHAT IS AGREED

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

2. Interpretation

DEFINITIONS

- 2.1 In the interpretation of this Deed unless a contrary intention appears the following expressions will have the following meanings:

Agreement means the Customer Contract entered into under the *Procure IT Framework* between the Contractor and the Customer under which the Contractor will supply Deliverables to the Customer dated [insert date].

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

Confidential Information means information that:

- (a) is by its nature confidential; or
- (b) is communicated by the Customer to the Subcontractor as confidential; or
- (c) the Subcontractor knows or ought to know is confidential; or
- (d) relates to:
 - (i) the Products and Services;
 - (ii) the financial, the corporate and the commercial information of the Customer;
 - (iii) the affairs of a third party (provided the information is non-public); and
 - (iv) the strategies, practices and procedures of the State and any information in the Subcontractor's possession relating to the State public service,

but excludes any information which the Subcontractor can establish was:

- (v) in the public domain, unless it came into the public domain due to a breach of confidentiality by the Subcontractor or another person;
- (vi) independently developed by the Subcontractor; or
- (vii) in the possession of the Subcontractor without breach of confidentiality by the confidant or other person.

Contractor means [insert name of Contractor].

Deliverables means any product or service and any associated material offered for supply or provided by the Contractor in accordance in the Agreement.

Express Purpose means the Subcontractor performing the obligations under its subcontract agreement with the Contractor.

Intellectual Property Rights means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep confidential information confidential, moral rights, business names, company names or domain names.

Notice means notice in writing given in accordance with this Deed.

State means the State of New South Wales.

GENERAL

- 2.2** Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply
- 2.3** A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced ,and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.4** If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.5** A singular word includes the plural, and vice versa.
- 2.6** A word which suggests one gender includes the other gender.
- 2.7** The words “include(s)” and “including” are not words of limitation.
- 2.8** If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

- 3.1** The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 3.2** The Customer may grant or withhold its consent in its discretion.
- 3.3** If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 3.4** If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.
- 3.5** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its directors, officers, employees and contractors;
 - (b) to the Contractor and its directors, officers, employees and the Contractor’s other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,

each referred to as **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.

- 3.6** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
 - (b) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 3.7** Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.8** The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
- 3.9** If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

4. Restriction on use

- 4.1** The Subcontractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Customer use the Confidential Information for any purpose other than the Express Purpose.
- 4.2** The Subcontractor must, unless otherwise authorised by the prior written consent of the Customer:
- (a) treat as confidential and secret all of the Confidential Information which the Subcontractor has already acquired or will acquire from the Customer;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
 - (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

- 5.1** This Deed will survive the termination or expiry of the Agreement for a period of 6 years.

6. Rights of the Customer

PRODUCTION OF DOCUMENTS

- 6.1** The Customer may demand the delivery up to the Customer of all documents in the possession or control of the Subcontractor containing the Confidential Information.
- 6.2** The Subcontractor must immediately comply with a demand under this clause 6.
- 6.3** If the Customer makes a demand under this clause 6, and documents containing the Confidential Information are beyond the Subcontractor's possession or control, then the Subcontractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
- 6.4** In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

LEGAL PROCEEDINGS

- 6.5** The Customer may take legal proceedings against the Subcontractor or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Indemnity and release

- 7.1** The Subcontractor is liable for, and agrees to indemnify and keep indemnified the Customer in respect of, any claim, damage, loss, liability, cost, expense, or payment which the Customer suffers or incurs as a result of:
- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
 - (b) the disclosure or use of the Confidential Information by the Subcontractor or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9. Waiver

- 9.1** No waiver by the Customer of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2** None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Customer unless by its express consent in writing.

10. Remedies cumulative

CUMULATIVE

- 10.1** The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

OTHER INSTRUMENTS

- 10.2** Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.

11. Variations and amendments

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

12. Applicable law

This Deed will be governed and construed in accordance with the laws of the State.

13. Notices

- 13.1** Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.
- 13.2** All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3** If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.

EXECUTED AS A DEED

Signed, sealed and delivered by [insert name of Customer]

[Signature line for Customer]

By [insert name of Customer Representative] but not so as to incur personal liability

[Signature line for Customer Representative]

In the presence of: [insert name of witness]

[Signature line for Witness]

[Signature line for Customer]

Signature of Customer

[Signature line for Witness]

Signature of Witness

[Print name line for Customer]

Print name

[Print name line for Witness]

Print name

[Date line for Customer]

Date

[Date line for Witness]

Date

Signed, sealed and delivered by [insert Subcontractor's name and ACN/ABN]

[Signature line for Subcontractor]

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

[Signature line for Director]

Signature Director

[Signature line for Director/Secretary]

Signature of Director/Secretary

[Print name line for Director]

Print name

[Print name line for Director/Secretary]

Print name

[Date line for Director]

Date

[Date line for Director/Secretary]

Date

Schedule 9: Performance Guarantee

Deed dated the

day of

20

Between [*insert full legal name of the Customer*] (Customer)

And [*insert full legal name and any ACN/ABN of the Guarantor*] (Guarantor)

Purpose [*insert full legal name and ACN/ABN of the Contractor*] (Contractor) has agreed to offer to supply Products and Services to the Customer under a contract dated [*insert date of Customer Contract*] (Customer Contract).

DEFINITIONS

Business Day means any weekday that is not a public holiday in New South Wales.

Contract Authority means [*insert legal name of Contract Authority*].

Head Agreement means [*insert date and parties to the Head Agreement*].

Insolvency Event means where the Contractor:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent with the meaning of Section 95A of the *Corporations Act 2001* (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in Section 459C(2) of the *Corporations Act 2001* (Cth);
- (d) fails to comply with a statutory demand within the meaning of Section 459F(1) of the *Corporations Act 2001* (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a mortgagee enter into possession of any property of that Party;
- (g) has a controller within the meaning of the Section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
- (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Notice in Writing means a notice signed by a party's authorised representative or his/her delegate or agent.

BY THIS DEED

By this Deed, the Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Customer Contract on the following terms and conditions:

1. If the Contractor (unless relieved from the performance of the Customer Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Customer Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Customer Contract.
2. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee, and:
 - (a) where the Customer Contract is made under a Head Agreement, the Contract Authority (acting as agent of the Customer); or
 - (b) in all other cases, the Customer,

may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor. *[amend this clause as applicable]*
3. The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Contractor and Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
4. The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.
5. The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed:
 - (a) the obligations and liabilities of the Contractor under the Customer Contract; and
 - (b) \$ [insert dollar amount].
6. Where the Contractor has failed to perform under the Customer Contract, the obligations of the Guarantor will continue even though the Contractor has been the subject of an Insolvency Event.
7. The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Customer Contract have been performed, observed and discharged.
8. A notice under this Deed of Guarantee must be a Notice in Writing.
9. The address for services of Notices in Writing under this Deed of Guarantee for a party is, in the case of the:

Guarantor

Physical address

Postal address

Fax number

Contractor

Physical address

Postal address

Fax number

Customer

Physical address

Postal address

Fax number

Or such other address as a party may notify to the other party in writing from time to time.

10. A Notice in Writing is deemed to be received if:
 - (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at 9.00 am the next Business Day).
11. The laws of the New South Wales govern the this Deed of Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

EXECUTED BY THE PARTIES AS A DEED AT THE DATE STATED BELOW

Signed, sealed and delivered by *[insert name of the Customer]*.

[Redacted signature line]

By *[insert name of Customer representative]*

[Redacted signature line]

In the presence of: *[insert name of witness not a party to this Deed]*

[Redacted signature line]

[Redacted signature line]

Signature of Customer representative

[Redacted signature line]

Print Name

[Redacted signature line]

Date

[Redacted signature line]

Signature of Customer's Witness

[Redacted signature line]

Print Name

[Redacted signature line]

Date

Signed, sealed and delivered by *[insert Contractor's name and ACN/ABN]*

[Redacted signature line]

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

[Redacted signature line]

Signature Director

[Redacted signature line]

Print name

[Redacted signature line]

Date

[Redacted signature line]

Signature of Director/Secretary

[Redacted signature line]

Print name

[Redacted signature line]

Date

Schedule 10: Financial Security

Deed dated the

day of

20

Between *[insert name of the Customer]* (Customer)

And *[insert name and ACN/ABN]* (Guarantor)

DEFINITIONS

Business Day means any weekday that is not a public holiday in New South Wales.

BY THIS DEED:

1. The _____ *[insert name of the Contractor and the ACN/ABN]* (Contractor) has agreed to supply Deliverables to the Customer under a contract *[insert date and name of parties to the Customer Contract]* (Customer Contract).
2. The Guarantor unconditionally agrees to pay to the Customer on demand without reference to the Contractor and separate from any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by the Customer to a maximum aggregate sum of \$ *[insert dollar amount]*.
3. The Guarantor's liability under this Financial Security will be a continuing liability until the sooner of:
 - (a) payment is made up to the maximum aggregate sum;
 - (b) the Customer notifies the Guarantor that this Financial Security is no longer required;
 - (c) *[insert date]; [Note: This date should be the date that is one year from the date that the last Deliverable under the Customer Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Contract]*
 - (d) the date the Customer and Contractor agree in writing to release the Guarantor.
4. No provision of this Financial Security may be waived, amended, supplemented or otherwise modified except by written instrument signed by the Guarantor and the Customer.
5. The laws of New South Wales govern this Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.
6. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy by facsimile to the address last advised by one of them to the other. Where the notice is given or served by facsimile, the sending party must confirm receipt by any other means.

7. The address for services of notice for a party is, in the case of the:

Guarantor

Physical address

Postal address

Phone number

Fax number

Contractor

Postal address

Phone number

Fax number

Customer

Postal address

Phone number

Fax number

or such other address as a party may notify to the other party in writing from time to time.

8. A notice or other communication under this Financial Security is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days; or
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours).

EXECUTED BY THE PARTIES AS A DEED ON THE DATE STATED BELOW

Signed, sealed and delivered by *[insert name of Customer]*

By *[insert name of Customer representative]*

In the presence of: *[insert name of witness not a party to this Deed]*

Signature of Customer representative

Signature of Contract Witness

Print name

Print name

Date

Date

The Common Seal of *[insert Guarantor's name & ACN/ABN]*

was affixed by *[authority of the Board of Directors]*

in the presence of *[insert name of Director/Secretary or other permanent officer]*

in the presence of *[insert name of Director/Secretary or other permanent officer]*

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

Date

Date

Schedule 11: Dispute Resolution Procedures

1. Expert Determination

- 1.1** If a Referral Notice is submitted under clause 24.7 of the Customer Contract, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Commercial Disputes Centre of NSW.
- 1.2** The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the technology that is the subject matter of the dispute, unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
 - (b) a person who has been connected with this Customer Contract or has a conflict of interest, as the case maybe; or
 - (c) a person who the Parties have not been able to agree on.
- 1.3** The expert may appoint any person that the expert believes will be able to provide the specialists skills that are necessary to make a determination, including an Australian legal practitioner. The expert must consult with both Parties prior to appointing such person.
- 1.4** When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for the determination set out in this Schedule; and
 - (d) any other matter which is relevant to the engagement.

2. Submissions

- 2.1** The procedure for submissions to the expert is as follows:
- (a) The Party that has referred the issue to expert determination must make a submission in respect of the issue, within 30 Business Days after the date of the letter of engagement referred to in clause 1.4.
 - (b) The other Party must respond within 30 Business Days after receiving a copy of that submission. That response may include cross-claims.
 - (c) The Party referred to in clause 2.1(a) may reply to the response, but must do so within 20 Business Days after receiving the response, and must not raise new matters.
 - (d) The other Party may comment on the reply, but must do so within 20 Business Days after receiving the reply, and must not raise new matters.

- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2.1, unless the Customer and the Contractor agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

- 3.1 The expert must arrange at least one conference with both Parties. The request must be in writing, setting out the matters to be discussed.
- 3.2 Each Party is entitled to be represented at any preliminary conference before the expert by its legal representatives and other authorised representatives, with information and knowledge of the issues.
- 3.3 The expert is not bound by the rules of evidence and may receive information in any manner the expert sees fit, but must observe the requirements of procedural fairness. Consultation between the expert and a Party must only take place in the presence of the other Party, unless a Party fails to attend a conference or meeting which has been convened by the expert and of which prior notice has been given. Any Party providing information to the expert must provide that information to the other Party.
- 3.4 The Parties agree that such a conference is considered not to be a hearing that would give anything under this Schedule the character of arbitration.
- 3.5 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off or counter-claim.

4. Questions to be determined by the Expert

- 4.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - (a) is there an event, act or omission that gives the claimant a right to compensation under the Customer Contract:
 - (i) for damages for breach of the Customer Contract, or
 - (ii) otherwise in law?
 - (b) if so:
 - (i) what is the event, act or omission?
 - (ii) on what date did the event, act or omission occur?
 - (iii) what is the legal right which gives rise to the liability to compensation?

- (iv) is that right extinguished, barred or reduced by any provision of the Customer Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- (c) in the light of the answers to clause 4.1:
 - (i) What compensation, if any, is due from one Party to the other and when did it fall due?
 - (ii) What interest, if any, is due when the expert determines that compensation?
- 4.2** The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.
- 4.3** The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 for the determination, and bear their own expenses.
- 4.4** If the expert determines that one Party must pay the other an amount exceeding the amount specified in General Order Form (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 4.5** Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Customer Contract:
 - (a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

5. Role of Expert

- 5.1** The expert must:
 - (a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
 - (b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
 - (c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
 - (d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
 - (e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d).
- 5.2** If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.

6. Confidentiality

6.1 Each Party involved in the expert determination process, including the expert, the Parties, their advisors and representatives shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of the expert determination process, the expert's determination, or any information received or obtained, in the course of the expert determination process, including the existence of that information, except to the extent:

- (a) the Parties have otherwise agreed in writing;
- (b) the information is already in the public domain;
- (c) disclosure is required to a Party's insurers, auditors, accountants or other professional advisers;
- (d) disclosure is required for the purposes of any legal proceedings relating to the dispute or the expert's determination; or
- (e) disclosure is otherwise required by law.

Schedule 12: PIPP

This PIPP is a sample document only and includes guidance notes for consideration. These guidance notes are included simply as suggestions. Users should obtain legal or other professional advice in developing the PIPP to achieve their objectives and receive the maximum benefit from the service relationship.

1. Introduction

DOCUMENT SCOPE

Outline the scope of the PIPP; i.e. what does it include?

2. Project Overview

Provide an overview of the project, the project objectives and any critical success factors.

Outline the details of any Whole of Government or multi Agency participation.

Outline any key assumptions or dependencies.

3. Scope of Work

PRODUCTS AND SERVICES

Specify the nature of the Products to be provided and/or any Services to be provided.

Specify details of who will be providing the Products and/or Services, including any Products or Services that are to be provided by Subcontractors.

Specify if the Contractor is supplying the Products or Services as a Reseller.

Specify if the Contractor is acting as an Approved Agent.

Specify any hardware, software or service that is to be provided by the Customer as CSI.

OVERVIEW OF DELIVERABLES

List of Deliverables

Provide a list of the Deliverables that are to be provided by the Contractor, including:

Hardware

Licensed Software

Hardware Maintenance and Support Services

Software Support Services

User Documentation

Bespoke Documentation (e.g. bespoke system manuals or training materials)

If any Open Source software is to be provided, and the licence terms under which it will be provided.

Where Services are being provided, and the Contractor is being contracted to deliver a specific output (e.g. a design document or a report), specify the outputs of those Services.

If support and/or maintenance is being supplied, specify when support/maintenance will commence.

If training is to be supplied specify when and where training will occur, and what training materials will be used.

Summary Table of Deliverables

Insert the list of Deliverables into the following table:

Note: The EXAMPLE in this table has been completed for the purchase of commodity hardware, software and related support and maintenance, together with training.

Deliverable ID	Deliverable Name	Format	Expected Delivery Date	Expected AAD	Support/Maintenance Period
	<i>[Identify Hardware]</i>		<i>[01/01/2011]</i>	<i>[2 Business Days after Delivery]</i>	<i>[1 year from AAD]</i>
	<i>[User Documentation for Hardware]</i>	<i>[1 hard copy]</i>	<i>[14/01/2011]</i>	<i>[2 Business Days after Delivery]</i>	<i>[1 year from AAD]</i>
	<i>[Identify Licensed Software]</i>	<i>[CD]</i>	<i>[14/01/2011]</i>	<i>[2 Business Days after Delivery]</i>	<i>[1 year from AAD]</i>
	<i>[User Documentation for Licensed Software]</i>	<i>[1 hard copy]</i>	<i>[14/01/2011]</i>	<i>[2 Business Days after Delivery]</i>	<i>[1 year from AAD]</i>
	<i>[Identify Open Source Software]</i>	<i>[Download from Web]</i>	<i>[14/01/2011]</i>	<i>[N/A]</i>	<i>[N/A]</i>
	<i>[Training Course 10 persons]</i>		<i>[17/01/01]</i>		

Note: It is very important to be consistent in the naming that is used for Deliverables throughout the PIPP and the other Schedules, as it is essential to be able to easily identify the same Deliverable in the many places where there is a reference to that same Deliverable, including where the Deliverable is:

- subject to Acceptance Testing;
- part of a Milestone,
- part of a Stage,

- an LD Obligation (i.e. may be subject to liquidated damages); and/or
- a Payment Milestone.

Both parties should be able to determine what elements comprise a Deliverable (including which parts of the Contract Specifications are met by the Deliverable, when the Deliverable should be provided, how the Deliverable will be Accepted, when will payment be made, when support or maintenance will commence, and whether liquidated damages will apply, and if so, when is the trigger date for payment and for how long will LDs continue to be payable.

OTHER SERVICES

If the Contractor is supplying other services such as:

- Professional services on a time and materials basis
- Data Management services
- Telecommunications services
- GTA Broadband Local Services
- Web Services
- Managed Services
- GTA ISM Services
- Systems Integration Services
- Major Project Systems Integration Services
- Project Management Services
- Knowledge Transfer Services
- Reseller Value Add Services

Then identify the scope of the services and the standards/performance requirements for those services.

CONTRACT PERIOD

Specify the project's Commencement Date and when the Contract Period will end. (**Clause 2.4 Customer Contract and Item 10 General Order Form**)

CONTRACT SPECIFICATIONS

List and provide details of the Contract Specifications.

The totality of any technical or descriptive specification of functional, operational, performance or other characteristics required of a Deliverable provided by the Contractor under the Customer Contract must be set out in detail here.

This section must be completed in using specify details, and avoiding generalities. Each requirement should be capable to being independently tested via the Acceptance Test process.

Where the Contract Specifications has evolved over time and are included in more than one document, it is best practise to reduce the Contract Specification to a single document.

In particular it is poor practise to simply state that the Contract Specifications is included in the Tender, as updated by the Contactor's Response to Tender. This approach is highly likely to lead to contract disputes.

Exclusions

Specify any exclusions to the Contract Specifications.

ASSUMPTIONS

Specify any assumptions to the scope of work.

Specify the consequences of any of the assumptions not being true.

4. Implementation

METHODOLOGY

Specify any approach and/or project methodology/quality standard which will be applied to the Services.

ROLES AND RESPONSIBILITIES

Specify the key roles and responsibilities of the parties within the project.

DELIVERY

If the Products or Services are to be physically delivered:

- specify the place of delivery and the hours during which delivery can be made.
- specify any delivery instructions.
- specify any other requirements in relation to the Site access.

Where work performed (Site)

Specify the Site where the work is to be performed.

If the work is to be provided at the Customer's Site:

- specify the address.
- specify the hours of access.
- any special requirements and any security arrangements that must be followed.

Site Specification

Note: Where it is stated in Item 18 of the General Order Form that a Site Specification is required.

If a Site Specification is required:

- the Site Specification must include at least the following information: environmental, operational, safety and management requirement in relation to the Site that are necessary for the provision of the Deliverables.
- specify any requirements for the preparation and maintenance of the Site.
- specify the name of the person who will approve the Site Specification on behalf of the Customer.

IMPLEMENTATION PLANNING STUDY

If the Contractor is to provide an implementation planning study:

- specify the implementation planning study objectives and time for provision of the study.
- specify a date for delivery of the implementation planning study to the Customer.
- specify if the implementation planning study needs to undergo Acceptance Tests in accordance with clause 10.1(b) of the Customer Contract.

BUSINESS CONTINGENCY PLAN

Note: A Business Contingency Plan details the nature and scope of the business contingency services to be provided by the Contractor to overcome any interruption to the Customer's business, including as applicable, information about time-frames, scheduling, service levels, methodologies, systems, processes or programs for the implementation of such services and any other requirements stated in Item 24 of the General Order Form. (**Clause 1.13 Part 3 Dictionary**)

Specify if and when a Business Contingency Plan is required.

Specify the periods that the Business Contingency Plan must be reviewed and updated by the Contractor.

Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan.

Provide a copy of the Business Contingency Plan as an attachment [insert attachment number and name].

5. Project Management

ISSUES LOG

Specify who is responsible for creating and maintaining the issues log.

Specify what the issues log must contain and how regularly it is updated.

RISK MANAGEMENT PLAN

Specify if a risk management plan is to be used. If so, it should be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed in writing.

Specify who is responsible for creating and maintaining the risk management plan, and how regularly it is to be updated.

CHANGE MANAGEMENT

Any changes made should be reflected over time in a new version of the PIPP must be implemented as a Change Request in accordance with the variations procedures stated in Schedule 4 – Variation Procedures, subject to clause 26.1 to 26.2 of the Customer Contract. Each Change Request must be agreed in writing and signed by both the Customer and Contractor to be valid.

Where the Customer contract is entered into under a Head Agreement, the Customer must obtain the consent of the Contract Authority and the Director General, NSW Department of Finance and Services prior to agreeing to a variation that includes a variation to any other Protected Clause.

6. Customer Supplied Items (CSI)

Note: Customer Supplied Items (CSI) are items set out in Item 22 of the General Order Form to be supplied by the Customer under a Customer Contract. A CSI may be: office access, desks etc (specify location, standards, times of access; Hardware or software (specify equipment, capacity, versions of software and dates of availability); VPN access or other remote access (specify capacity and hours available).

List of CSI's

Specify each CSI to be provided by the Customer.

CSI maintenance and support contracts

Specify if any CSI must be covered by maintenance and support contracts including the period of cover, the Contractor's rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor.

CSI requirements

Specify any requirements to attach to any CSI (e.g. any standards that the CSI must meet).

CSI verification

Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory.

If so, specify the verification check process for each CSI. Include: a process to manage satisfactory and unsatisfactory verification checks; a process to manage 'reissued' CSIs; a process to manage repeat CSI verification checks; a process to manage 'draft' or 'incomplete' and 'updated' CSIs; a process to manage rejected CSIs; a process to manage previously satisfactory CSI which becomes defective; a list of required verification check forms and/or registers and a corresponding data entry process; and a list of Customer and Contractor nominee/s for responsibility to undertake verification checks.

7. Specified Personnel

Note: Specified Personnel are the key personnel of the Contractor who are required to undertake the provision of the Deliverables or part of the work constituting the Deliverables. The identity and roles of any Specified Personnel are stated in Item 27 of the General Order Form. **(Clause 8.8 Customer Contract)**

Contractor's Specified Personnel identity, roles and responsibilities

If there are any Specified Personnel:

- specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel.
- specify if their role is full time or part time.

8. Customer Personnel

Customer's Personnel roles and responsibilities

Specify the Customer's Personnel who will be available to work with the Contractor and their roles and responsibilities.

This section should specifically include consideration of any of the Customer's subcontractors and any other Agency's personnel and contractors.

Customer's Personnel times, duration and authority levels

Specify the times and duration of the involvement for the Customer Personnel as well as their authority levels.

Where there is a multi Agency arrangement, specify who has authority to act and make decisions on behalf of Agencies other than the Customer.

9. Customer Assistance

Specify whether the Customer is to be provided any instructions, information, data, documents, specifications, plans, drawings or other materials.

Specify if the Contractor must conduct any verification checks of each item to ensure it is satisfactory.

If so, specify the verification check process for each item. Include: a process to manage satisfactory and unsatisfactory verification checks; a process to manage 'reissued' item's; a process to manage repeat verification checks; a process to manage 'draft' or 'incomplete' and 'updated' items; a process to manage rejected items; a process to manage previously satisfactory item which becomes defective; a list of required verification check forms and/or registers and a corresponding data entry process; and a list of Customer and Contractor nominee/s for responsibility to undertake verification checks.

10. Subcontractors

Note: This section only needs to include information for entities that are "Subcontractors" within the definition (See definition of Subcontractor – clause 8.15 of the Customer Contract)

Specify the full legal name of any Subcontractor that is to provide Services.

Provide an overview of the roles and responsibilities that each Subcontractor will undertake in the provision of the Services under the Customer Contract.

11. Acceptance Testing

Note: If a Deliverable is not to undergo Acceptance Testing, (as specified in Item 32 of the General Order Form), then the Deliverable will be Accepted 2 Business Days (or such other period as stated in Item 32 of the General Order Form as the Actual Acceptance Date (AAD)), following the delivery of the Deliverable as required in the Order Documents. (**Clause 10.1(a) and Item 32 General Order Form**).

There is a detailed Acceptance Test process set out in clause 10 which must be followed.

ACCEPTANCE

Complete a table like this for each Deliverable that is to undergo Acceptance Testing.

Deliverable	Date for Acceptance Test Criteria to be provided to Contractor (Default period is 60 Business Days prior to start of Acceptance Test Period)	Date for Acceptance Test Data to be provided to Contractor (Default period is 14 Business days prior to start of Acceptance Test Period)	Acceptance Test Period (Default period is 10 Business Days from delivery to Customer)	Acceptance Test Notification Period (Default period is 3 Business Days from the end of the Acceptance Test Period)	Expected AAD

CONDUCTING ACCEPTANCE TESTS

For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements.

Specify the identification of the Deliverable or part of the Deliverables to be tested.

Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting Acceptance Tests and who will attend the Acceptance Tests.

Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use.

Specify the methodology and process for conducting Acceptance Tests.

Specify the scheduling of Acceptance Tests including data the Acceptance Criteria must be agreed, the date that the Acceptance Test Data must be agreed, the Acceptance Test Period and the Acceptance Test Notification Period.

Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract (and must not include any other criteria).

Specify the Acceptance Test Data, or the process and timing for agreeing the Acceptance Test Data.

If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document and providing it as an attachment [insert attachment number and name].

Acceptance Test Results

Provide a definition of the Defect severity classifications.

Specifically identify which severity level of Defects will be considered “Minor”. **Note:** A Minor Defect is:

- (a) in respect of a Deliverable that is not a Document, a Defect that would not prevent the Deliverable from being used in a production environment even though there may be some inconvenience to less than 5% of users of the Deliverable provided that the Defect does not compromise security;
- (b) in respect of a Deliverable that is a Document, errors that are limited to errors in formatting, style, spelling or grammar,

unless otherwise agreed in the Order Documents. **(Clause 1.60 Part 3 Dictionary)**

For example: Specify the Defect severity classifications according to the criteria in the following table.

Severity Level	Definition	“Minor”
[Severity 1]		[No]
[Severity 2]		[No]
[Severity 3]		[Yes]
[Severity 4]		[Yes]

12. Project Plan

HIGH LEVEL PROJECT PLAN

Provide a high level project plan as an attachment [insert attachment name and number].

Note: The descriptors in the project plan must be consistent with the descriptor for the same thing used in other sections. They must also be consistent with the Customer Contract Dictionary. It is essential to identify the key Milestones, all Milestones where a payment is to be made (including any retention sum), start of the Acceptance Test Period for each Deliverable to undergo Acceptance Tests, ADD for each Deliverable, the end of the Warranty Period and the start of the period of support or maintenance.

If the project is being delivered in Stages:

- specify which Milestones or groups of Milestone are included in each Stage.
- specify the period (from the end of the Stage) that the Customer has to provide written notice to the Contractor to move to the next State (10 Business Days is the default period).

DETAILED PROJECT PLAN

A detailed project plan may be provided below or as an attachment [insert attachment name and number].

The detailed project plan must include the items listed in the High Level Project Plan (using the same description) as well as the sub-tasks/sub-events within each high level Milestone.

LIQUIDATED DAMAGES

Note: An LD Obligation is a Milestone for which late completion by the Contractor may require payment of Liquidated Damages.

Specify if Liquidated Damages (LD's) will apply, and if so to which Milestone (typically the final Milestone).

Insert a table showing the LD Obligation (Milestone), the Due Date for completion (the date by which an LD Obligation must be met, the period of weeks for the LD Obligation to be paid and the amount of the LD Obligation per week.

For example:

Milestone that is an LD Obligation	Due Date	Period of weeks for LD Obligation to be paid	Amount of LD per week
[Final System Acceptance]	[30 May 2011]	[12]	[\$[]]

Note: It is essential that the name of the Milestone that is used in this section is the same name for the same Milestone as set out in the Project Plan and any table of Deliverables/Milestones.

13. Payment Plan

ADDITIONAL PRODUCTS/SERVICES.

Specify whether additional Products/Services can be bought. If so specify the prices, dates during which the prices are valid and any indexation/exchange rate or other price variation mechanism.

BUSINESS MODEL

Where Services are being performed the business model to be applied to the project (i.e. time and materials, fixed price or a combination).

Time and Materials

Note: If it is at time and materials rates:

- (a) specify the hourly rates for each grade of person (showing the tax exclusive and the tax inclusive amount);
- (b) specify the overtime rates for each grade of person (if applicable), (showing the tax exclusive and tax inclusive amount);
- (c) specify a project plan showing the dates when each person is expected to perform the Services;
- (d) specify if expenses are chargeable and how they will be charged; and
- (e) specify when payment will be made (e.g. monthly in arrears).

Combination

Note: if it is a combined time and materials and fixed price or some other combination then provide relevant details to assist with calculation of payment.

CONTRACT PRICE

Insert the Contract Price.

Specify how this is calculated.

Here is an example table.

Deliverable	Price per Unit	Quantity	Extended Price
	Sub-Total:		
	Delivery Charges:		
	Any Other Charges:		
	GST:		
This is the Contract Price (plus GST)	Total Amount:		

PAYMENT

Insert details of the payment to be made by the Customer to the Contractor.

Note: use the following suggested format where Milestone payments will be made in Stages.

The Customer agrees to make Milestone payments as set out below to the Contractor:

Milestone Payment Number	Due Date for Payment	Price (ex GST)	GST Amount	Price (inc. GST)
Milestone [Project commencement]	Commencement Date	[insert]	[insert]	[insert]
Milestone 2	AAD of Milestone 2			
Milestone 3	AAD of Milestone 3			
	Total			

OR

The Customer agrees to pay the Contractor monthly for services performed in the previous month.

TERMINATION FOR CONVENIENCE

Note: The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience. In these circumstances the Contractor is entitled to the payments calculated in clause 25.4(a) and (b).

Specify the calculation of any amount described in clause 25.4(b).

14. Governance

AUTHORISED REPRESENTATIVE

Customer's Authorised Representative

Specify the Customer's Authorised Representative.

Contractor's Authorised Representative

Specify an employee who is the Contractor's Authorised Representative.

MANAGEMENT COMMITTEE

Specify individual who is on the management committee and his/her role.

Contractor's management committee membership

List the names of the Contractor's project manager, officers or other relevant persons who will sit on the management committee.

Customer's management committee membership

List the names of the Customer's project manager, officers or other relevant persons who will sit on the management committee.

All members of the management committee must be authorized and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Customer Contract. **(Clause 6.3 to 6.5 Customer Contract)**

Management committee function

Specify the functions that the management committee must perform, which at a minimum must include:

- (a) review and monitor progress under the Customer Contract; and
- (b) carry out any other functions stated in Item 16 of the General Order Form. **(Clause 6.6 Customer Contract)**

Management committee meetings

Note: Unless agreed otherwise, the members of the management committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time. **(Clause 6.8 Customer Contract)**

Specify the agreed time and location of the management committee meeting.

Management committee progress report

Specify the details that must be included in the progress report that must be provided by the Contractor's project manager, which at a minimum should include:

- (a) details (including dates) of Deliverables and Milestones commenced, completed or Accepted;
- (b) any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
- (c) a review of any:
 - (i) minutes and actions from the last meeting;
 - (ii) issues logs;
 - (iii) risk management plan, which must be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed in writing;
 - (iv) details of any outstanding invoices and any payments that are about to become due;
- (d) draft updates of relevant parts of the Contract Specifications;
- (e) any new Change Requests or Contract Variations (if applicable);
- (f) reviewing progress of any draft Change Requests or Contract Variations (if applicable). **(Clause 6.9 Customer Contract)**

Specify any other relevant details that must be included in the report.

ORGANISATION CHART

Provide an organization chart of the team structure as an attachment [insert attachment name and number]. The organisation chart should identify key roles within the project team and indicate the reporting relationships and information flows within the team.

Schedule 1: General Order Form

CUSTOMER

Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's full legal name:	NSW Department of Justice (ABN 11 005 693 553)

Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's service/delivery address:	Transition In Services are to be provided at a number of Customer locations but in the main at: Parramatta Justice Precinct 160 Marsden St PARRAMATTA NSW 2150

Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Customer's Authorised Representative:	[REDACTED] Director, Information Technology Services and CIO Level 8, Parramatta Justice Precinct 160 Marsden St PARRAMATTA NSW 2150

Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's full legal name:	Accenture Australia Holdings Pty Ltd (ABN 61 096 995 649)

Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's service/delivery address:	Accenture Australia Holdings Pty Ltd 48 Pirrama Road, PYRMONT NSW 2009 Attention: Associate Lead Counsel – ANZ (or equivalent office, but such named individual being [REDACTED] as at the Commencement Date).

Item 6 Contractor's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Contractor's Authorised Representative:	Eugene Hunt Managing Director – Accenture Enterprise Services for Government Telephone +61 (0) 2 9005 5000 Mobile: +61 (0) 417 849 491 Fax: +61 (02) 9005 5001 Email: eugene.a.hunt@accenture.com (as at the Commencement Date and as notified by the Contractor from time to time)

Item 7 Head Agreement

This Item 7 must be completed when the Customer Contract is entered into under a Head Agreement.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.1)	
Specify the Head Agreement number:	Not applicable.
Specify the Head Agreement title:	Not applicable.
Specify the Term of the Head Agreement: Start Date: End Date: If the Term of the Head Agreement has expired the Customer must obtain the Contract Authority's approval to enter into a further Customer Contract, and this approval should be attached to this General Order Form.	Not applicable.
Insurance (clause 16.2)	
Specify the insurances required under the Head Agreement:	Not applicable.
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for	Not applicable.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	
The default insurance requirement under the Head Agreement is product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	Not applicable.
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement. If so, the default insurance requirement is for a limit of cover of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	Not applicable.
Workers' compensation insurance in accordance with applicable legislation:	Not applicable.
Specify any other type of insurance required under the Head Agreement and the specified amount:	Not applicable.
Performance Guarantee (clause 17.1)	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	Not applicable.

Item 8 Modules that form part of the Customer Contract

Formation (clause 3.8(a))

Indicate, by marking with an X, the Modules that apply

Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>	Module 11 – Telecommunications Services	<input type="checkbox"/>
Module 2 – Hardware Maintenance and Support Services	<input type="checkbox"/>	Module 12 – Managed Services	<input type="checkbox"/>
Module 3 – Licensed Software	<input type="checkbox"/>	Module 13 – Systems Integration	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 14 – Hosting Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input type="checkbox"/>	Module 15 - Satellite Services	<input type="checkbox"/>
Module 6 – Contractor Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 7 – Professional Services	<input checked="" type="checkbox"/>		<input type="checkbox"/>
Module 8 – Training Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 9 – Data Migration	<input type="checkbox"/>		<input type="checkbox"/>
Module 10 – As a Service	<input checked="" type="checkbox"/>		

Item 9 Schedules that form part of the Customer Contract in addition to the General Order Form

Formation (clause 3.8(b))

Indicate, by marking with an X, the Schedules that apply

Schedule 1 – General Order Form	Applies	Schedule 7 – Statutory Declaration - Subcontractor	<input type="checkbox"/>
Schedule 2 – Agreement Documents	<input checked="" type="checkbox"/>	Schedule 8 – Deed of Confidentiality	<input checked="" type="checkbox"/>
Schedule 3 – Service Level Agreement	<input checked="" type="checkbox"/>	Schedule 9 – Performance Guarantee	<input checked="" type="checkbox"/>
Schedule 4 – Variation Procedures	<input checked="" type="checkbox"/>	Schedule 10 – Financial Security	<input type="checkbox"/>
Schedule 5 – Escrow Agreement	<input checked="" type="checkbox"/>	Schedule 11 – Dispute Resolution Procedures	<input checked="" type="checkbox"/>
Schedule 6 – Deed Poll – Approved Agents	<input type="checkbox"/>	Schedule 12 – Project Implementation and Payment Plan	<input checked="" type="checkbox"/>
		Schedule 13 – Additional Conditions	<input checked="" type="checkbox"/>

Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contract Period (Clause 2.4)	
Specify the Commencement Date if it is not the date when the Customer and the Contractor sign the Customer Contract:	The date the Customer and the Contractor sign the Customer Contract.
Specify the end of the Contract Period:	5 years from the end of the Consolidation Period for Wave 3.
Specify any period of extension of the Contract Period in days/weeks/years:	Up to four extensions each of twelve months pursuant to the conditions and notice periods set out in Attachment 13-4 (Transition Out Services and Catalogue Pricing Adjustments).

Item 11 Common Details

Formation (clause 3.4)			
Product and/or Service	Fixed Fee (ex GST)	GST	Fixed – Fee (inc GST)
[REDACTED]			
[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			

[REDACTED]			
[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Additional Services may be purchased by the Customer as detailed in Schedule 12 (Project Implementation and Payment Plan) and the Contract Price will be amended accordingly.

Item 12 Delivery Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Delivery (clause 5.1)	
Specify the address of the Site where delivery is to be made:	Access to the Services will be provided to Permitted Users of the Customer via the GovDC services backbone. Transition In Services to be provided at a number of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	locations in Sydney but in the main at: Parramatta Justice Precinct 160 Marsden St PARRAMATTA NSW 2150
Specify any delivery instructions:	As specified in Schedule 12 (PIPP) and Schedule 3 (Service Level Agreement).
Specify the hours during which delivery may be made to the Site:	Software Services to be available as specified in Schedule 3 (Service Level Agreement). For the delivery of Products comprised in the Deliverables, during normal Business Hours, unless otherwise agreed with the Customer.

Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
If the Contract Specifications are the User Documentation leave this Item blank. If the Contract Specifications comprise other documents, list those documents in order of priority:	The following documents form the Contract Specifications, in order of precedence: <ul style="list-style-type: none"> Schedule 3 (Service Level Agreement) and Schedule 12 (PIPP); and Customer's Request for Quotation ERP System released 3 September 2015 and the Contractor's specifications included in its response dated 17 September 2015.

Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clauses 11.1 and 11.2)	
Invoicing (clause 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	██████████ Executive Director, IT Services and Chief Information Officer
Specify address to which invoices should be sent:	Level 8, Parramatta Justice Precinct 160 Marsden St PARRAMATTA NSW 2150
Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment. If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.	Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.
Specify when the Contract Price must be paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one	In accordance with Schedule 12 (PIPP). The Price in respect of Recurring Services will be invoiced monthly in advance.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
occasion then consider using a PIPP under Item 20.	
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	Fixed

Item 15 User Documentation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
User Documentation (clause 5.4(b))	
Specify the Price of any additional copies of the User Documentation:	Additional copies of the User Documentation to be provided free of charge as digital copies by download as detailed in the User Documentation.

Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Management Committee (clause 6.4)	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	As specified in Attachment 3-2 (Management Committee) to Schedule 3 (Service Level Agreement).
Management Committee (clause 6.6)	
Specify the function to be performed by the management committee:	Review and monitor progress under the Customer Contract. The Management Committee and its processes are to be established within four weeks after the Commencement Date. Details as specified in Attachment 3-2 (Management Committee) to Schedule 3 (Service Level Agreement).
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	To be confirmed but likely to be: For Transition-In [REDACTED], Executive Director, IT Services and Chief Information Officer [REDACTED], ERP Program Manager [REDACTED], Director, Corporate Services Management Office For On Going Services [REDACTED], Executive Director, IT Services and Chief Information Officer [REDACTED], Director, ERP Systems [REDACTED], Director, Corporate Services Management Office
Management Committee (clause 6.8)	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	As specified in clauses 6.6 to 6.8 and Schedule 3 (Service Level Agreement).

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any other details:	Further governance requirements are as set out in Attachment 3-2 (Management Committee) to Schedule 3 (Service Level Agreement).

Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Reviews (clause 6.10)	
Specify if a service and performance review/s of the Contractor's performance of the Customer Contract is to apply:	Yes, as set out in Schedule 3 (Service Level Agreement).
Specify any specific time intervals for service and performance reviews:	As set out in Schedule 3 (Service Level Agreement).

Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Site Specifications (clause 6.12)	
Specify if a Site Specification is required:	No.
Access to Customer's Site (clause 7.1(b))	
Specify any other requirements in relation to the Site access:	Contractor will be given access to the Site as required to perform its requirements under the Customer Contract.
Specify any requirements for the preparation and maintenance of the Site:	None.

Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Implementation Planning Study (clause 6.14)	
Specify if the Contractor must provide an implementation planning study:	No.
Specify the implementation planning study objectives and time for provision of study:	N/A
Date for delivery of the implementation planning study to the Customer:	N/A
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	N/A

Item 20 Project Implementation and Payment Plan (PIPP) and Staged Implementation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Project Schedule (clause 6.17)	
Invoicing (clause 11.7)	
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	Yes. Included at Schedule 12 (PIPP) to the Customer Contract.
Staged Implementation (clause 6.20)	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the PIPP together with the period during which the Customer must give written notice to move to the next Stage (if greater than 10 Business Days):	No.

Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Liquidated Damages (clause 6.28 to 6.34)	
Specify if Liquidated Damages (LDs) will apply:	[Redacted]
Specify the Milestones which are LD Obligations:	[Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
Specify the Due Date for completion of each LD Obligation:	[Redacted]
Specify the calculation and amount of LDs for each LD obligation:	[Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Specify the maximum number of days LDs are to be paid for each LD obligation:	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Item 22 Customer Supplied Items (CSI) and Customer Assistance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer						
Customer Supplied Items (CSI) (clause 6.36)							
<p>Specify each CSI to be provided by the Customer:</p> <p>CSI may be:</p> <ul style="list-style-type: none"> office access, desks etc (specify location, standards, times of access); Hardware or software (specify equipment, capacity, versions of software and dates of availability); VPN access or other remote access (specify capacity and hours available). <p>[Note: details of any Customer Personnel should be specified in Item 26].</p>	<table border="1"> <thead> <tr> <th>CSI Ref</th> <th>Customer Supplied Item</th> <th>Notes</th> </tr> </thead> <tbody> <tr> <td>CSI1</td> <td>SAP and related Licences</td> <td>The Customer will provide the Contractor with SAP and related licenses and associated license keys necessary for the execution of the Transition In Services and the ongoing Services as detailed in the SAP and related software listed in Table A of Attachment 13-3 (SAP Licences) to Schedule 13 (Additional Conditions).</td> </tr> </tbody> </table>	CSI Ref	Customer Supplied Item	Notes	CSI1	SAP and related Licences	The Customer will provide the Contractor with SAP and related licenses and associated license keys necessary for the execution of the Transition In Services and the ongoing Services as detailed in the SAP and related software listed in Table A of Attachment 13-3 (SAP Licences) to Schedule 13 (Additional Conditions).
CSI Ref	Customer Supplied Item	Notes					
CSI1	SAP and related Licences	The Customer will provide the Contractor with SAP and related licenses and associated license keys necessary for the execution of the Transition In Services and the ongoing Services as detailed in the SAP and related software listed in Table A of Attachment 13-3 (SAP Licences) to Schedule 13 (Additional Conditions).					

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer	
	CSI2	Customer Data Customer will be responsible for providing the Data Conversion Plan and Customer Data extracted from its current systems.
	CSI3	Project Facilities Customer will provide project facilities for Contractor onshore personnel (peak of 25 personnel) at the Site collocated with the Customer team. Project facilities will be limited to: (a) office space and desks; (b) building access; and (c) Personal Computers with access to the Customer network as required.
	CSI4	Third Parties (a) Access to third party systems to which SAP interfaces.
	CSI5	Security and Access Applications (b) Directory services (authorisation and authentication of AESG); (c) Federated identity services (cross-domain access to AESG); and (d) Identity management services (extending single sign-on to AESG), as further defined in the SLA.
	CSI6	Services Backbone The Customer's Permitted Users will access the AESG Software as a Service via GovDC services backbone (Services Backbone). Customer is responsible for configuration and provisioning of sufficient network bandwidth up to AESG Service solution point of presence to access the AESG solution (as further described in Attachment 3-3 (Service Definition) of Schedule 3 (Service Level Agreement)).

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer																				
	CSI7	Transactional User Group and Super User Group	The Customer will create and maintain throughout the Contract Period an effective Transactional User Group which will include a Super User Group that shall closely work with Permitted Users to address business, policy and other matters as detailed in the Schedule 3 (Service Level Agreement).																		
<p>Specify if any CSI must be covered by support and maintenance contracts including the period of cover, the Contractor's rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor:</p>	<table border="1"> <thead> <tr> <th data-bbox="694 705 821 817">CSI Ref</th> <th data-bbox="821 705 1013 817">Customer Supplied Item</th> <th data-bbox="1013 705 1380 817">Support and Maintenance Contracts</th> </tr> </thead> <tbody> <tr> <td data-bbox="694 817 821 1176">CSI1</td> <td data-bbox="821 817 1013 1176">SAP and related Licenses</td> <td data-bbox="1013 817 1380 1176">The Customer will procure and maintain Enterprise Support with respect to the SAP and related Software (identified in Item CSI1 in the above row) throughout the Contract Period. Customer will provide Contractor with the facility to log and administer support calls directly with SAP and related vendors.</td> </tr> <tr> <td data-bbox="694 1176 821 1355">CSI3</td> <td data-bbox="821 1176 1013 1355">Project Facilities</td> <td data-bbox="1013 1176 1380 1355">Support with respect to project facilities (identified in CSI3 in the previous row) sufficient to permit the Contractor to provide the Services.</td> </tr> <tr> <td data-bbox="694 1355 821 1534">CSI4</td> <td data-bbox="821 1355 1013 1534">Third Parties</td> <td data-bbox="1013 1355 1380 1534">Support with respect to interfacing systems and vendor management of third parties (including SAP) throughout the Contract Period.</td> </tr> <tr> <td data-bbox="694 1534 821 1713">CSI5</td> <td data-bbox="821 1534 1013 1713">Security and Access Applications</td> <td data-bbox="1013 1534 1380 1713">Support with respect to the applications (identified in CSI5 in the previous row) sufficient to permit the Contractor to provide the Services.</td> </tr> <tr> <td data-bbox="694 1713 821 1904">CSI6</td> <td data-bbox="821 1713 1013 1904">Services Backbone</td> <td data-bbox="1013 1713 1380 1904">Support and maintenance of network availability, capacity and performance in respect of the services backbone (identified in CSI6 in the previous row).</td> </tr> </tbody> </table>	CSI Ref	Customer Supplied Item	Support and Maintenance Contracts	CSI1	SAP and related Licenses	The Customer will procure and maintain Enterprise Support with respect to the SAP and related Software (identified in Item CSI1 in the above row) throughout the Contract Period. Customer will provide Contractor with the facility to log and administer support calls directly with SAP and related vendors.	CSI3	Project Facilities	Support with respect to project facilities (identified in CSI3 in the previous row) sufficient to permit the Contractor to provide the Services.	CSI4	Third Parties	Support with respect to interfacing systems and vendor management of third parties (including SAP) throughout the Contract Period.	CSI5	Security and Access Applications	Support with respect to the applications (identified in CSI5 in the previous row) sufficient to permit the Contractor to provide the Services.	CSI6	Services Backbone	Support and maintenance of network availability, capacity and performance in respect of the services backbone (identified in CSI6 in the previous row).		
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CSI5	Security and Access Applications	Support with respect to the applications (identified in CSI5 in the previous row) sufficient to permit the Contractor to provide the Services.																			
CSI6	Services Backbone	Support and maintenance of network availability, capacity and performance in respect of the services backbone (identified in CSI6 in the previous row).																			
<p>Specify the times when each CSI is to be provided:</p>	<table border="1"> <thead> <tr> <th data-bbox="694 1904 821 2027">CSI Ref</th> <th data-bbox="821 1904 1013 2027">Customer Supplied Item</th> <th data-bbox="1013 1904 1380 2027">To be Provided By</th> </tr> </thead> <tbody> <tr> <td data-bbox="694 2027 821 2027"></td> <td data-bbox="821 2027 1013 2027"></td> <td data-bbox="1013 2027 1380 2027"></td> </tr> </tbody> </table>	CSI Ref	Customer Supplied Item	To be Provided By																	
CSI Ref	Customer Supplied Item	To be Provided By																			

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer		
	CSI1	SAP and related Licenses	In accordance with Schedule 12 (PIPP).
	CSI2	Customer Data	In accordance with Project Plan included at Appendix E of Schedule 12 (PIPP).
	CSI3	Project Facilities	Commencement Date
	CSI4	Third Parties	Commencement Date
	CSI5	Security and Access Applications	In accordance with Project Plan included at Appendix E of Schedule 12 (PIPP).
	CSI6	Services Backbone	In accordance with Project Plan included at Appendix E of Schedule 12 (PIPP).
	CSI7	Transactional User Group and Super User Group	Commencement Date
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	CSI Ref	Customer Supplied Item	Requirement
	CSI1	SAP Licenses	Customer SAP licenses can be used on a multi-tenant basis (where one SAP installation is shared by multiple NSW Government customers providing their own SAP licenses).
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	Not Applicable		
If so, specify the verification check process for each CSI: Include: <ul style="list-style-type: none"> a process to manage satisfactory and unsatisfactory verification checks; a process to manage 'reissued' CSI's: a process to manage repeat CSI verification checks: a process to manage 'draft' or 'incomplete' and 'updated' CSI's; a process to manage rejected CSI's: a process to manage previously satisfactory CSI which becomes defective: a list of required verification check forms and/or registers and a 	Not Applicable		

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>corresponding data entry process: a list of Customer and Contractor nominee/s for responsibility to undertake verification checks:</p>	
Specify any amount payable by the Contractor to the Customer for any item of CSI:	None
Customer Assistance (clause 6.41)	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	Not Applicable

Item 23 Escrow

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Escrow (clause 6.42)	
Specify if an escrow arrangement is required:	<p>Yes.</p> <p>The Escrow Materials will include:</p> <ul style="list-style-type: none"> • The configured SAP client of the AESG Services, including: <ul style="list-style-type: none"> - an SAP client export, consisting of configuration settings and code supporting Adopt and Adapt components together with the integration code for all SAP components in use by the Customer; - a design blueprint, process flows, process descriptions, configuration templates, test scripts, data load templates; - training materials and other artefacts necessary to deliver the Service, including the following: <ul style="list-style-type: none"> • training overviews; • job aids; and • training assessments; and - documentation to enable a rebuild of the environment and import of the SAP client export, (the Customer Configuration).
Specify the parties to the escrow arrangement:	Contractor, Customer and escrow agent.
Specify the time for the escrow arrangement to endure:	From the expiry of the Consolidation Period until the end of the Contract Period and the period of any Transition Out Services.

Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Contingency (clause 6.45)	
Specify if a Business Contingency Plan is required:	A Business Contingency Plan is required.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify when the Business Contingency Plan is required:	An update to the Business Contingency Plan is required prior to the Cutover Date for each Deployment as detailed in Schedule 12 (PIPP).
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	As detailed in Schedule 3 (Service Level Agreement) sections 4.9 to 4.18 and Schedule 12 (PIPP).
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	Prior to each Deployment in accordance with Schedule 12 (PIPP) and then annually, as further described in Schedule 3 (Service Level Agreement) sections 4.9 to 4.18.
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	For each Deployment, and annually, as further described in Schedule 3 (Service Level Agreement) sections 4.9 to 4.18.

Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Access to Customer's Site (clause 7.4)	
Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.	Information Security Policy D12/534139; ITS Applications Security Standard D14/332454; ITS Authentication Standard D12/283153; ITS Encryption Standard D12/283151, as further described in Attachment 3-5 (Security Services) to Schedule 3 (Service Level Agreement).

Item 26 Customer's Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Personnel General (clause 8.5)	
Specify the Customer's Personnel who will be available to work with the Contractor and their roles and responsibilities: Also specify the times and duration of their involvement as well as their authority levels:	As detailed in Schedule 12 (PIPP).

Item 27 Specified Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specified Personnel (clause 8.8)	
Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:	Eugene Hunt, Managing Director – Accenture Enterprise Services for Government (Australia) – Client Account Lead ██████████ AESG ANZ Delivery Lead ██████████ Delivery Lead (onshore) ██████████ Delivery Lead (offshore) ██████████ AESG ANZ Ongoing Service Lead ██████████ Accenture HR/Payroll Lead

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>██████████ Accenture Test Lead</p> <p>██████████ Accenture Payroll Analyst</p> <p>██████████ Time management lead</p> <p>██████████ Quality assurance director</p>

Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Agents and Subcontractors (clause 8.17)	
Specify which subcontractors are required to provide a Statutory Declaration by Subcontractor, substantially in the form of Schedule 7:	Not Applicable.

Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(h))	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	As detailed in Schedule 3 (Service Level Agreement).

Item 30 Contractor's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(g))	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	Only the Statutory Requirements, in respect of the Contractor in its capacity as a provider of the Deliverables.
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	<p>Statutory Requirements;</p> <p>NSW Government Standard Business Processes as updated from time to time by the Department of Finance, Services and Innovation;</p> <p>NSW Government Procurement Policy Framework October 2014 Version 3;</p> <p>Customer Information Security Management System D12/534139;</p> <p>ITS Applications Security Standard D14/332454;</p> <p>ITS Authentication Standard D12/283153;</p> <p>ITS Encryption Standard D12/283151,</p> <p>as amended from time to time and as further described in Attachment 3-5 (Security Services) to Schedule 3 (Service Level Agreement).</p>

Item 31 Customer's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Warranties (clause 9.3(h))	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	Nil
Specify any codes, policies, guidelines or standards the Customer is to comply with:	Nil

Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Part 3 Dictionary (clauses 1.2 to 1.4)	
Acceptance Test Notification Period is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period: If no period is specified, the period is 2 Business Days:	N/A Written notice must be provided within the Acceptance Test Period.
Acceptance Test Data is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:	As detailed in the PIPP and elaborated in the Test Plan.
Acceptance Test Period is the period for the performance of any Acceptance Tests for any Deliverable. Specify this period: If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.	For documentary Deliverables, 10 Business Days unless otherwise set out in the PMP. For other Deliverables, as specified in the PMP.
Acceptance (clause 10.1)	
For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing: If not, the Deliverable will be Accepted under clause 10.1(a).	The "Software as a Service" Services will all be subject to Acceptance Testing. Other Deliverables as specified in the PIPP will be subject to Acceptance Testing.
If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date (AAD) for a Deliverable occurs: If no period is specified, then the period is 2 Business Days.	10 Business Days unless otherwise agreed by the Parties.
Conducting Acceptance Tests (clause 10.3)	
For each Deliverable that is to undergo Acceptance Tests, specify details of the	In the case of the "Software as a Service" Services, as

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Acceptance Testing requirements:	detailed in the PIPP and elaborated in the Test Plan. The Deliverable conforms to the Acceptance Criteria documented in Schedule 12 (PIPP).
Specify the identification of the Deliverables or part of the Deliverables to be tested:	The "Software as a Service" Services will all be subject to Acceptance Testing. Other Deliverables as agreed.
Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:	As set out in the PIPP for each type of Acceptance Test.
Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use:	Contractor to provide the test environment.
Specify the methodology and process for conducting Acceptance Tests:	As detailed in the PIPP and elaborated in the Test Plan.
Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:	As detailed in the PIPP and elaborated in the Test Plan.
Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:	As detailed in the PIPP and elaborated in the Test Plan.
Specify the Acceptance Test Data required:	As detailed in the PIPP and elaborated in the Test Plan.
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	Not applicable.

Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clause 11.3)	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	Credit/Debit not applicable. Payment by EFT may be made to: Account Name: [REDACTED] Bank: [REDACTED] BSB: [REDACTED] Account No: [REDACTED]
Specify any fee that is applicable for payment by credit/debit card	Not applicable.

Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Existing Material (clauses 13.7 and 13.9)	
Specify any terms and condition applicable for granting a license for Existing Material owned by a third party:	None.
Specify any fees to be charged for any license to use any of Contractor's Existing Materials:	The licence is provided for the Contract Period and otherwise as may be required on termination as set out as part of the Transition Out Services and Attachment 13-4 (Transition Out Services and Catalogue Pricing Adjustments). Any other use will be at an additional fee to be agreed between the parties.
Customer Owned New Material (clause 13.10)	
Specify if clause 13.10 applies, and if so, to which items of New Material:	Clause 13.10 will not apply to any New Material.

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.1)	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8 – Deed of Confidentiality:	Contractor must arrange for its Subcontractors (which are not Related Companies) to execute a Deed of Confidentiality substantially in the form of Schedule 8.

Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Insurance (clause 16.7)	
Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]	Public liability insurance of \$US10,000,000 is to apply per occurrence.
Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if any higher limit of cover that is required by the Customer Contract:]	Product liability insurance of \$US10,000,000 is to apply per claim and in the annual aggregate.
If Services are being provided under the Customer Contract the default level of indemnity of professional indemnity insurance for the total aggregate liability for all claims for the period of cover is \$1,000,000 [Only specify is a higher limit that is required by the Customer Contract:]	Professional indemnity insurance of \$ [REDACTED] per occurrence and in the annual aggregate.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any additional insurance that the Contractor is to hold, including the type of insurance, the term of the insurance and the amount of the insurance:	None

Item 37 Performance Guarantee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Guarantee (clause 17.2)	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	Yes
Specify the date by which the Performance Guarantee must be provided to the Customer. If no date is specified the Contractor must provide the Performance Guarantee to the Customer within 30 days of the Commencement Date.	

Item 38 Financial Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Financial Security (clause 17.4)	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial Security:	No
Specify the date by which the Financial Security must be provided to the Customer: If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	N/A

Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Limitation of Liability (clause 18)</p> <p>If the Parties cannot agree the amount that is legally payable under the Customer Contract for the:</p> <ul style="list-style-type: none"> • Non-Recurring Service or Product; and/or • Short Term Recurring Service <p>(as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price).</p> <p>Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service.</p> <p>(See the definition of Contract Value in Part 3)</p>	<p>The Contract Price as noted at Item 11.</p>
<p>If Services are being provided under any of the following Modules:</p> <p>Module 6 – IT Personnel; Module 7 – Professional Services; Module 8 – Data Management; Module 11 – Web Services; Module 16 - Project Management Services; Module 17 - Change Management Services; Module 18 - Knowledge Transfer Services; or Module 20 - Whole of Government Requirements</p> <p>specify whether the Parties regard the relevant Services as being:</p> <ul style="list-style-type: none"> • the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring Services for the purpose of the limitation of liability; or • provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability. <p>(See definition of Non-Recurring Services and Recurring Services in Part 3)</p>	<p>Where any Services are provided under Module 7 (Professional Services), the Services will be deemed to be Non-Recurring Services unless agreed otherwise by the parties prior to the commencement of the relevant Services.</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the alternative cap of liability (clause 18.3):	

Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Reporting (clause 21.1)	
Specify the reports required, (if any), the time for provision and the agreed format:	As set out in Schedule 3 (Service Level Agreement)

Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Dispute Resolution (clause 24.11)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7 to 24.8.	
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Termination for Convenience by the Customer (clause 25.4)	
Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3:	Nil, provided that Customer gives Contractor notice as specified in Attachment 13-4 (Transition Out Services and Catalogue Pricing Adjustments).

Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any Additional Conditions: Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the Contract Authority's and the Director General's NSW Department of Finance and Services consent where an Additional Condition varies a Protected Clause.	Refer to Schedule 13 (Additional Conditions)

This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.

SIGNED AS AN AGREEMENT

Signed for and on behalf of *[insert name of Customer]*

NSW Department of Justice

By *[insert name of Customer's Representative]* but not so as to incur personal liability

[Redacted signature area]

Signature of Customer Representative

[Redacted signature area]

Print name

[Redacted name area]

Date

Signed for and on behalf of *[insert Contractor's name and ACN/ABN]*

Accenture Australia Holdings Pty Ltd (ABN 61 096 995 649)

[Redacted signature area]

Signature of Authorised Signatory

[Redacted signature area]

Print name

[Redacted name area]

Date

Schedule 2 : Agreement Documents

Itemise all documentation (including any supplemental terms and conditions agreed to by the Customer, accepted tenders, offers or quotes from the Contractor, and any letter of acceptance or award issued by the Customer) between the Customer and the Contractor. All such documentation must be itemised in this Schedule 2 and listed below in descending date order (i.e. the latest document is listed first.)

Document	Date of Document
1. Accenture Response to DJ Request for Quotation ERP System RFQ (Updated) (#2 below)	Issued 5 November 2015
2. DJ Request for Quotation ERP	Issued 3 September 2015
3. Accenture Response to the Expression of Interest (EOI) NSW Justice Cluster Enterprise Resource Planning (ERP System)	Issued November 21, 2013

Schedule 3: Service Level Agreement

See separate document.

Schedule 3: Service Level Agreement

1. Definitions and Interpretation

The definitions set out in Attachment 13-2 (Consolidated Dictionary) to Schedule 13 (Additional Conditions) will apply to this Schedule.

2. General

PURPOSE OF SLA

- 2.1 This SLA provides a mutual understanding of the expectations of the Parties with respect to the performance of the Service and shall be used to measure the Contractor's performance of the Services in accordance with this Schedule.

DURATION OF SLA

- 2.2 This SLA will commence at the Commencement Date and will continue until the end of the Contract Period.

REVIEW

- 2.3 This SLA will be reviewed every 12 months from the Commencement Date. The purpose of the review will be to consider the previous 12 months of Service Level reports and the overall performance of the Services with respect to the Service Levels. Each Party may provide feedback with respect to Service Levels for consideration at the appropriate Management Committee.
- 2.4 The Contractor has scoped the requirements of the Customer and the Services within scope are defined in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement). The Customer and Contractor also agree to review the SLA in the event of any changes to the scope of Services that may impact Service Levels.

NOTIFICATION PROCEDURE

- 2.5 Defects in relation to performance of the Services may be notified by the Customer to the Contractor through the Help Desk. The Help Desk must operate between the hours of 7am to 6pm on normal Business Days ie Monday to Friday excluding public holidays. Severity 1 and Severity 2 Incidents, however, can be logged with the Help Desk on a 24 X 7 basis by telephone or the self service portal. The Contractor will also log any Defects which it discovers in the ordinary course of operation of the Services.

ESCALATION PROCEDURE

- 2.6 In the case of Defect resolution, the following escalation procedure will apply:

Escalation Level	Contractor and Customer Representative Role and Contact Detail	Escalation Point
First point of escalation	Operational Service Delivery Management Committee. Roles and Contacts as defined in Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement).	Minimum Service Level not met.
Second point of escalation	AESG Service Management Committee. Roles and Contacts as	Minimum Service Level not met for 2 out of any 6 consecutive months.

Escalation Level	Contractor and Customer Representative Role and Contact Detail	Escalation Point
	defined in Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement).	
Third point of escalation	AESG Executive Governance Board. Roles and Contacts as defined in Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement).	Minimum Service Level not met for 3 out of any 12 consecutive months.

SITE INFORMATION

2.7 The Support Services will be provided from agreed locations in Australia and India.

HOURS OF OPERATION

2.8 The Customer’s normal office hours of operation are 7am to 6pm on Business Days but may vary depending on operational needs, for example at financial year end. Outages to the service are to be in line with Outage requirements defined in the Service Level Table.

CONTRACT VARIATIONS

2.9 Where there is a change to the Services as defined in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement), then any such change will be subject to Schedule 4 (Variation Procedures) and where required a Contract Variation must be affected in accordance with clause 26.2 of the Customer Contract.

REFERENCED DOCUMENTS

2.10 Attachments to this SLA that are relevant to the performance of the Services are:

- (a) Attachment 3-1 (Service Level Requirements and Targets);
- (b) Attachment 3-2 (Management Committees);
- (c) Attachment 3-3 (Service Definition);
- (d) Attachment 3-4 (Support Services);
- (e) Attachment 3-5 (Security Services);
- (f) Attachment 3-6 (SAP PO as a Service); and
- (g) Attachment 3-7 (Request Handling for Priority/VIP Service Requests and Incidents).

2.11 See also clause 21.1 of the Customer Contract.

3. Services

CUSTOMER RESPONSIBILITIES

3.1 Customer responsibilities in relation the performance of this SLA are defined in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement) and associated RACI matrix for the purposes of clause 6.26 of the Customer Contract.

CONTRACTOR PROVIDED SERVICES

3.2 The Services consist of the following:

- (a) the AESG Service

- (b) Transition In Services as described in the PIPP;
- (c) Support Services as set out in Attachment 3-4 (Support Services) to Schedule 3 (Service Level Agreement);
- (d) Security Services as set out in Attachment 3-5 (Security Services) to Schedule 3 (Service Level Agreement);
- (e) SAP PO as a Service as set out in Attachment 3-6 (SAP PO as a Service) and
- (f) Transition Out Services as set out in Attachment 13-4 (Transition Out Services and Catalogue Pricing Adjustments) to Schedule 13 (Additional Conditions), including any continuation of the AESG Service and the Support Services provided during the period of the Transition Out Services.

3.3 The Contractor must provide the Services outlined in section 3.2 of this Schedule:

- (a) so as to meet or exceed each of the Minimum Service Levels; and
- (b) with the target of achieving the Expected Service Levels.

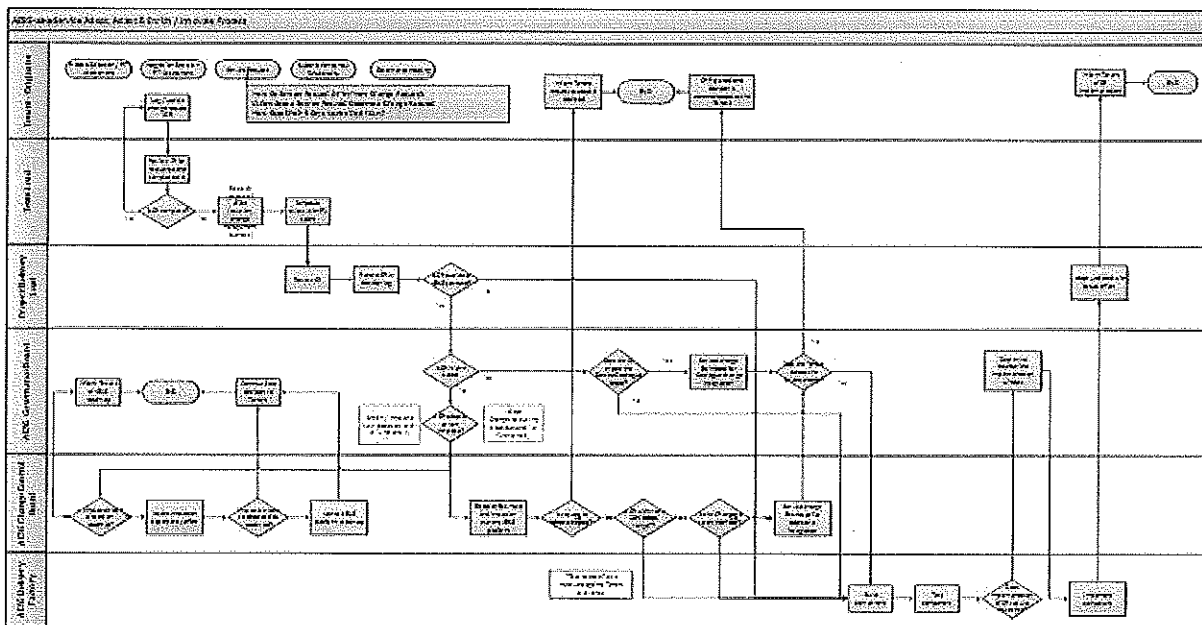
BUILD, CONFIGURATION AND TRANSITION IN SERVICES

3.4 The Contractor will provide Build, Configuration and Transition In Services for the AESG Services as set out in the PIPP, as well as providing on-going service delivery for all implemented services, (including SAP POaaS services) and functionality to agreed standards.

3.5 Transition In Services will be scheduled across the Customer and will involve various drops to the individual business areas in line with an agreed timetable as set out in the PIPP.

SCOPE CHANGE MANAGEMENT PROCESS

3.6 The diagram below shows the steps and responsibilities for the scope change management process, subject always to Schedule 4 (Variation Procedures).



MANAGEMENT AND CONSULTING

3.7 The Contractor is required to manage all third party external sub-contractors engaged by the Contractor to support the Services.

SERVICE REVIEW AND PLANNING FOR THE FUTURE

3.8 The Contractor and Customer will maintain for the duration of the contract appropriate service review and planning governance as defined in Attachment 3-2 (Management Committees) to

Schedule 3 (Service Level Agreement) for the purposes of clause 6 of the Customer Contract including but not limited to:

- (a) Services provided during the review period;
- (a) major Incidents during the review period;
- (b) Problems that remain outstanding;
- (c) review of contract variation requests and progress for enhancements;
- (d) review of any contract variation plan;
- (e) future events or business developments that will affect the Service;
- (f) review any potential changes required to the SLA;
- (g) agree items for submission to the executive decision making; and
- (h) review schedules for Services provided.

REPORTING & ANALYSIS

- 3.9** The Contractor will implement appropriate procedures and automated measurement, monitoring and management tools to enable it to:
- (a) detect and record the metrics in the Service Levels and enable reporting to the Customer of any Service Level Default; and
 - (b) notify and accurately report to the Customer in accordance with this Service Level Agreement.
- 3.10** The Contractor must provide the Customer with access to data and tools required to validate or measure the Services or the Service Levels. The Contractor will provide:
- (a) online access;
 - (b) all standard data feeds; and
 - (c) if requested by the Customer, an up to date copy of all Customer Data.
- to enable the Customer to access the same data and information that is available to the Contractor.
- 3.11** The Contractor must provide the Customer on request with information concerning, and access to, such data and measurement, monitoring and management tools for audit and inspection purposes. The audit information shall solely involve access to Customer Data, access to relevant documentation and access to evidence to verify the Contractor's processes and controls. Such documentation and evidence may include but is not limited to the Contractor's data and logs directly related to the Customer's use of the Services, the Contractor's architecture, systems and procedures, independent certifications or interviews.
- 3.12** The Contractor must conduct regular Risk assessments in relation to the Service Levels and the Contractor's compliance with the Service Levels and deliver a comprehensive Service Level Risk register through the appropriate Management Committee to the Customer on a quarterly basis.
- 3.13** Subject to the capacity of the Service Requests and audits detailed in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement), the Contractor must not charge the Customer any run time, or other charges for the operation of or access to any such data or measurement, monitoring and management tools or standard data feeds or copies including where the Contractor is required to separate Customer Data from data belonging to the Contractor or other Tenants.
- 3.14** Measurement and reporting of Service Levels will start from the beginning of the first full calendar month after the relevant Cutover Date and will continue until the end of the Contract Period.
- 3.15** Within seven (7) Business Days from the end of each Measurement Period, the Contractor must deliver to the Customer a Service Level report in a form acceptable to the Customer in respect of each Service Level.

- 3.16** As part of the Service Level report, the Contractor must in relation to the relevant Measurement Period:
- (a) show the extent to which the relevant Service Levels are being met, as further described in section 7;
 - (b) calculate the applicable Rebate payable for each of the Services in accordance with the relevant Critical Service Levels; and
 - (c) provide such supporting information as may be necessary to demonstrate the extent to which any Service Level Default may be excused.
- 3.17** Unless otherwise agreed, the standard reports must contain a level of detail sufficient to enable the Customer to:
- (a) verify the Contractor's compliance with the Service Levels; and
 - (b) verify the amount of Rebates payable.
- 3.18** The Contractor is not obliged to include in its reports any of the Services which have not passed their applicable Cutover Date.
- 3.19** The Customer will use reasonable efforts to consider the Service Level report in a timely manner to enable each Party to raise issues and enable appropriate discussion at the next scheduled Management Committee meeting, or in any event without unreasonable delay.

RISK MANAGEMENT AND PROBLEM PREVENTION

- 3.20** The Contractor must establish and use auditable, repeatable and integrated processes approved by the Customer to effectively identify, manage and report Risks in a manner that is consistent with the nature and scope of the software, hardware and Services, including by:
- (a) maintaining a documented Risk management framework/procedure detailing the risk management process, roles and responsibilities and governance/monitoring activities;
 - (b) identifying any Risks relevant to the Customer, the Contractor and the Services, and analysing the likelihood and impact of such Risks occurring;
 - (c) implementing appropriate Risk Controls;
 - (d) proactively monitoring Risk Controls, including the effectiveness of the design and operation of the Risk Controls;
 - (e) continuously monitoring and reviewing Risks to allow for changes in factors affecting Risks and to ensure that the Risk Controls remain up-to-date and effective; and
 - (f) unless the Customer agrees otherwise in writing, maintaining a Risk Register.
- 3.21** The Contractor must ensure that the Risk Register is kept up-to-date at all times and includes:
- (a) a detailed description of each Risk;
 - (b) a categorisation of each Risk as determined reasonably by the Contractor;
 - (c) the likelihood and impact of each Risk occurring; and
 - (d) the Risk Controls which are agreed with the Customer, must be put in place by the Contractor to mitigate each Risk, and the associated timeframes and implementation status for those Risk Controls.
- 3.22** The Contractor must, on a quarterly basis, or at such other intervals as the Customer may require, report to the Customer on:
- (a) all identified Risks for this Customer Contract;
 - (b) the extent to which such Risks are recorded in the relevant Risk Register;
 - (c) the effectiveness of Risk Controls in terms of managing and mitigating such Risks; and
 - (d) the treatment plans and timetable for any Risks identified as being insufficiently controlled.

- 3.23 The identification of Risks by the Contractor in accordance with this Service Level Agreement (including the identification of Risks that may be affected by the acts or omissions of the Customer) will not limit the Contractor's other obligations under this Customer Contract.

QUALITY ASSURANCE

- 3.24 The Contractor agrees to maintain, and ensure its Related Companies and Subcontractors, maintain a quality assurance plan for the scope of services being delivered throughout the Contract Period.
- 3.25 The Customer may audit the quality assurance plan of the Contractor, its Related Companies and Subcontractors in accordance with clause 5.4 of Module 10 – As a Service and the Contractor agrees to comply, and ensure its Related Companies and Subcontractors comply, with any reasonable direction of the Customer to improve any aspect of the quality assurance plan.

4. Disaster Recovery and Business Contingency Plan

DISASTER RECOVERY

INFRASTRUCTURE DISASTER RECOVERY

- 4.1 The Contractor will provide a 'dual site' disaster recovery approach with the AESG Service (including for the avoidance of doubt SAP POaaS). The dual site will make use of a primary data centre and backup data centre.
- 4.2 Using a "LAN to LAN" connectivity Contractor will provide an "Asynchronous Clustered Data Centre" approach whereby the hosted systems are to be split across the two data centres with the productive environment hosted in the primary data centre. The non-productive environments (i.e. disaster recovery and development environments) will be hosted in the backup data centre. The productive data will be replicated across the two data centres. This configuration offers a type of 'Cold Standby' whereby in the event of a BC Event all AESG Services can be switched to the backup data centre. This offers a:
 - (a) recovery point objective (RPO) of a maximum time of 30 mins from the last Customer Data replication; and
 - (b) a recovery time objective (RTO) in respect of ECC of :
 - (i) 4 hours for DR Events arising during Operating Hours;
 - (ii) 8 hours for DR Events occurring outside of Operating Hours provided that the RTO must be no more than 4 hours from the start of Operating Hours on such Business Day; and
 - (c) a recovery time objective (RTO) in respect of non-ECC instances of 8 hours.
- 4.3 The Disaster Recovery environment will be initiated upon the occurrence of a DR Event.
- 4.4 During normal operation (if the production environment is functioning within normal parameters) the Disaster Recovery environment will be on "standby". Disaster Recovery compute capacity and storage in this mode may also be used for development and testing purposes.
- 4.5 Manual failover of production environment to Disaster Recovery environment will be initiated upon the occurrence of a DR Event. A fail over to the Disaster Recovery environment may occur if a disruption is detected at the application level.

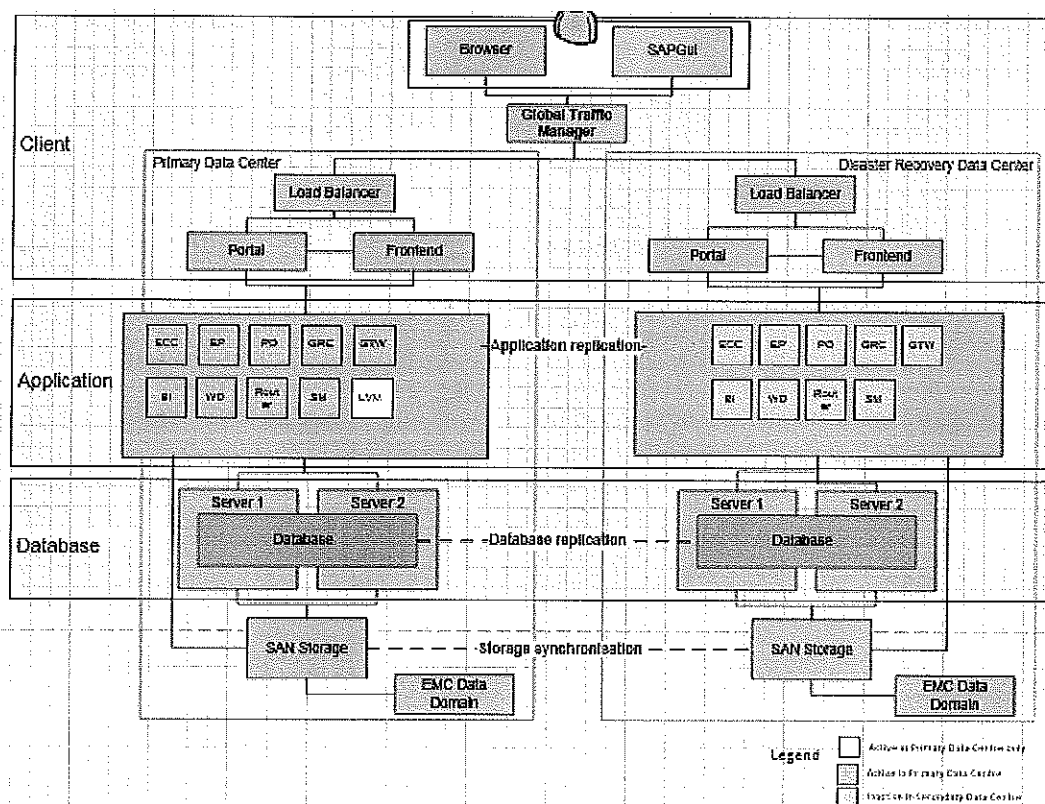
APPLICATION DISASTER RECOVERY

- 4.6 If there is a significant incident:
 - (a) Contractor and Customer business owners together, as part of an escalation management process first decide whether or not the event is a DR Event (the affirmation of executive management is necessary to declare a disaster);
 - (b) if a DR Event is agreed to have occurred:

- (i) the AESG Service will be failed over to the backup data centre; and
- (ii) the hardware allocated to AESG Services (non-production environment) will be used to host the AESG Services as the production environment. This means in the case of a DR Event, there will be no AESG Services available in a non-production environment until the DR Event has been resolved and normal operation is restored.

4.7 At an application level VMware SRM and database technologies will be used to maintain consistency across both the production and disaster recovery environment in normal operation. Database infrastructure to host the AESG Services in the disaster recovery environment will be used as replication targets for the production environment.

4.8 The disaster recovery technical architecture is depicted in the following diagram:



BUSINESS CONTINGENCY PLAN

- 4.9 The Contractor must develop, prior to the Cutover Date for each Wave, an updated Business Contingency Plan to provide for the continuity of critical business functions at agreed Service Levels in the event of the loss, disablement, impairment or suspension of key facilities, resources, technologies or contractors, and also for normal Service Levels to be fully restored within a timeframe acceptable to the Customer after such an event.
- 4.10 The Contractor will liaise with the Customer in the updating of the Business Contingency Plan and will regularly review and update this Plan during the course of Service deployment to ensure that the Business Contingency Plan is acceptable to the Customer, covers the Services implemented under this Contract.
- 4.11 The Business Contingency Plan must:
- (a) be based upon a formal assessment of the applicable Risks and business impacts;
 - (b) include plans for Disaster Recovery;
 - (c) be developed in accordance with recognised best practice standards and any applicable standards issued by Standards Australia and NSW Government policy;
 - (d) be reviewed and updated at least annually;

- (e) be available to be audited by or on behalf of the Customer at least annually;
- (f) be tested at least annually in accordance with the Customer's requirements (including performing the tests contemplated by the Contractor's plan in conjunction with any Customer testing), with an independent or Customer representative present to verify the results of any actions for rectification;
- (g) comply with sections 4.15 to 4.18 below; and
- (h) adequately protect the Customer's interests at all times in relation to this Customer Contract to a level reasonably acceptable to the Customer.

4.12 The Contractor will provide the Customer with a copy of the:

- (a) updated Business Contingency Plan on the Cutover Date for each Wave;
- (b) revisions of the updated Business Contingency Plan when necessary as services are implemented;
- (c) a fully updated Business Contingency Plan on completion of the Transition-In of all Services outlined in the PIPP; and
- (d) updated Business Contingency Plan and test results annually and from time to time upon request.

4.13 Subject to clause 5.4 of Module 10 (As a Service) and where an audit is in progress under that clause, the Contractor will allow the Customer, its authorised representatives and any regulatory authority reasonable site visits, at reasonable times, to the Contractor's premises for the purpose of monitoring, reviewing or auditing business continuity risks for the Customer associated with the Services.

4.14 The Contractor will ensure that all of sections 4.9 to 4.13 will apply equally to any Subcontractor of the Contractor permitted under this Customer Contract.

BUSINESS CONTINGENCY PLAN INCLUSIONS

4.15 The BCP will support the two impact levels of BC Events defined in the table below.

Level	Description of Disruption	Typical Recovery Strategy
1	There is a partial disruption on the Original Facility that does not require invocation of the alternative facility. Recovery of Critical Services is maintained in the Original Facility but at agreed recovery levels.	Relocate the affected AESG Personnel to another area in the same building.
2	There is a disruption that affects the Original Facility making the facility not operational and invocation of recovery to an alternative facility is required.	Relocate the affected AESG Personnel to another building in the same city (where possible or otherwise in an alternative Australian city).

BCP VALIDATION

4.16 Within a reasonable time of the Cutover Date for each Wave, and no longer than 6 months after the final Cutover Date, the Contractor and the Customer shall conduct a BCP exercise to validate that the BCP will be able to meet operational requirements for all AESG services used by the Customer. The Contractor will provide an exercise test plan to Customer prior to the exercise and on completion of the exercise a report summarising the results of the test exercise.

BCP TRAINING

4.17 The Contractor and the Customer shall train and have sole responsibility for training its own Personnel on their respective roles and responsibilities under the BCP.

CONSUME SERVICES DURING BC EVENT

- 4.18** At a minimum of 24 hours, but in no event more than 72 hours, from the time of a disruption, as per the BC Event impact level table set out in section 4.15, the Contractor shall re-establish at least 30% of the ongoing Services personnel assigned to Customer at an alternative facility (**Critical Personnel**). Critical Personnel shall be equipped with the following basic technology:
- (a) workstation with standard Contractor desktop configuration;
 - (b) VPN connectivity at the recovery location (does not include dedicated bandwidth); and
 - (c) access to shared printer/Fax machine and telephones.

5. Security

SECURITY FUNDAMENTALS

- 5.1** The Contractor will maintain the security standards and data protection protocols outlined in this section and in Attachment 3-5 (Security Services) to Schedule 3 (Service Level Agreement).
- 5.2** The Contractor will implement a standard roll on/roll off process which includes an acknowledgement of the need to protect confidentiality of the Customer's Confidential Information and Customer Data. This acknowledgment will be regarded as an internal Contractor record, but must be made available for audit if required by the Customer.
- 5.3** The Contractor acknowledges that the security of Customer Data is fundamental to the business of the Customer and that, without limitation, any security breach may directly affect the Customer's;
- (a) duties to its Personnel or to citizens;
 - (b) obligations under the *Privacy and Personal Information Act 1998* (NSW) and other Statutory Requirements as applying to NSW Government.
- 5.4** The Customer Data is to remain in Australia and must be accessed only by staff of the Contractor in Australia unless authority to access the Customer Data remotely for support and maintenance purposes is set out in an agreed protocol between the parties or otherwise agreed in writing by the Customer. Permission may be granted in the agreed protocol or will in the circumstances of another agreement in writing, only be granted for short term interim access required to resolve Incidents, Problems or Issues. Agreed protocols will be used in relation to support (including information contained in the incident management system) which would include the ability to resolve Incidents, Problems or Issues.
- 5.5** Where appropriate to the Services being performed, the Contractor will ensure that appropriate security frameworks, standards and compliance are in place for the Contractor and any Subcontractors at a standard equivalent to ISO 27001.
- 5.6** The Contractor agrees to incorporate specific emerging cloud security standards where appropriate, and agrees to maintain compliance for the duration of the Customer Contract.

CONTRACTOR PROCEDURES

- 5.7** Without limiting any other obligations of the Contractor under this section 5, the Contractor must:
- (a) subject to the Use Terms establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised interference with, use, destruction, loss or alteration of Customer Data and the Customer's other Confidential Information; and
 - (b) notify the Customer, and keep the Customer notified, through the appropriate Management Committee, at all times of the Contractor's current safety and security procedures and safeguards and any amendments to such procedures and safeguards that are proposed to be made from time to time.

COMPLIANCE WITH SECURITY REQUIREMENTS

- 5.8** The Contractor must comply with the security requirements set out in Item 25 of the General Order Form, together with reasonable, Whole of Government, standard security requirements of the Customer from time to time communicated to the Contractor, including security requirements relating to access to, and use of, any data, information systems or facilities provided by the Customer (**Security Requirements**).
- 5.9** If the Contractor becomes aware of:
- (b) an actual, alleged or suspected breach of the Security Requirements in force from time to time, that impact the AESG Service or the Customer Data; or
 - (c) any unauthorised disclosure of the Customer Data,
- it must as soon as reasonably practicable:
- (d) notify the Customer;
 - (e) investigate any alleged or suspected breach, and:
 - (i) implement rectification measures if an actual breach occurred or a breach is likely to occur;
 - (ii) cooperate with the Customer and any applicable regulator in respect of the alleged or suspected breach;
 - (iii) keep the Customer updated regarding the Contractor's investigations;
 - (iv) if a breach has occurred, provide the Customer with a report and such other information as the Customer may require regarding the breach, the rectification of the breach and the steps to be taken to prevent the breach occurring again;
 - (v) if no breach has occurred, confirm to the Customer that no actual breach occurred or is likely to occur; and
 - (f) in consultation with the Customer, notify appropriate law enforcement authorities if a breach has occurred which has or may result in a criminal offence.

CUSTOMER DATA

- 5.10** The Contractor must take all reasonable technical, administrative, and physical steps to ensure that:
- (a) any Customer Data held or controlled by the Contractor in connection with this Customer Contract is protected against misuse, loss, unauthorised access, interference, modification or disclosure; and
 - (b) the Customer Data is accessed only by authorised Contractor Personnel whose role requires access to the Customer Data in order for the Contractor to perform its obligations under this Customer Contract.
- 5.11** The Contractor will utilise the NSW Government's Information Classification and Labelling Guidelines in delivery of Customer assets. The Customer will require security classification up to the "Unclassified" classification (or equivalent) set out in these guidelines.
- 5.12** From time to time, the Customer may direct that the Contractor take specified steps or achieve specified types or levels of security, secrecy or privacy protection in respect of the Customer Data and the Contractor must comply with such directions (and such compliance will be at no cost to the Customer where the steps are necessary to comply with the terms of the Customer Contract).

AUDIT REQUIREMENT

- 5.1** The Contractor must comply with any audit/control requirement as may be required by NSW Government policy or guidelines. TPP14-05 *Certifying the Effectiveness of Internal Controls Over Financial Information* requires that certifications comply with the requirements of relevant audit standards issued by the Audit and Assurance Standards Board (AASB), i.e.:

- ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information
- ASAE 3402 Assurance Reports on Controls at a Service Organisation.

The Contractor must:

- (a) provide to the Customer (on at least an annual basis prior to 30 June) a letter that provides assurance to NSW Treasury, the Audit Office of NSW and the Customer's satisfaction as to the design and effectiveness of the internal controls of the Contractor as they relate to, and impact on, the Customer's financial information and reporting; and
- (b) allow the Customer to audit or seek an independent opinion on the design and operating effectiveness of controls in the Contractor as they relate to the Customer's financial information and reporting.

The content of such a letter will be agreed annually prior to provision of the letter, but will satisfy the requirements of TPP14-05 and the above mentioned audit standards.

6. Assumptions

CUSTOMER RESPONSIBILITIES

Responsibility

SUPER USER GROUP

- 6.1 The Customer will be responsible for creating a Super User Group for each process area. The Super User Group will be a sub group of the Transactional User Group. Members of the Super User Group have a high degree of understanding of the SAP ERP system as well as the business processes being undertaken.
- 6.2 The Customer will ensure that the Super User Group:
 - (a) are the primary contact point for the Contractor's support teams to assist in the triage / analysis of Incidents or other issues (for example providing detailed steps to recreate issues);
 - (b) track issues and escalate to Contractor as necessary;
 - (c) ensure that all available relevant details are provided to Contractor during escalation of a ticket;
 - (d) actively participate in high severity Incident resolutions as required to be a single point of contact for information to be provided to or by the Customer;
 - (e) help coordinate, along with Customer's Service Desk, communications about the Service including Incidents and Service Request related information, change and release coordination etc. to the Permitted Users and other internal Customer business areas;
 - (f) deliver Permitted User and refresher training in relation to the application as required provided that the Customer may request the Contractor to provide Training Services as an additional Service;
 - (g) coordinate configuration of Customer-side software when necessary (together with support from Customer's technical support);
 - (h) creation of Services Requests – on the basis that a Permitted User would contact a Super User to discuss a business requirement and the Super User would have the knowledge to determine how to address the requirement or whether to raise a Service Request, if necessary;
 - (i) work with key Customer stakeholders to define requirements for any operational changes or enhancements submitted to the Contractor;

- (j) help coordinate the timing and delivery of Acceptance Tests as requested by the Contractor;
 - (k) manage Incident escalations with the Help Desk; and
 - (l) monitor system change requests and raise to Contractor as necessary.
- 6.3** The Customer will ensure that the Super User Group works closely with Permitted Users and the Contractor to address and close issues which are not Incidents including but not limited to:
- (a) business, policy and legislative related questions;
 - (b) questions with respect to the normal use and operation of the Services, such as 'how to' explanations;
 - (c) requests to add users;
 - (d) updates to user access (where such access is part of available, pre-defined profiles);
 - (e) communication with user groups during AESG Service outages;
 - (f) issues related to the Customer's desktop standard operating environment, such as freezes, error messages, or slow performance; and
 - (g) user account administrative issues such as lockouts and password resets.
- 6.4** The Customer and the Contractor agree that they will work towards the objective of minimising the number of Level 1 Requests that the Contractor receives. The number of Level 1 Requests will be reviewed and managed through the appropriate Management Committee. The Level 1 functions are identified in the RACI chart included in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement).
- 6.5** The Customer will use reasonable endeavours to ensure, through adequate training and resource planning, that it maintains a Super User Group of sufficient numbers and ability to differentiate between Level 1 Requests and those to be allocated to the Contractor for resolution.

CONTRACTOR RESPONSIBILITIES

Service

Assumptions in relation to the Contractor's responsibilities in relation to the performance of this SLA are also defined in the Attachments to this Service Level Agreement.

7. Performance Measurement

- 7.1** For each full Measurement Period after each relevant Cutover Date, the Contractor shall measure the performance of the Services against each of the Service Levels. The Contractor shall obtain necessary data and calculate its performance as specified in the Service Level Table.
- 7.2** The Service Level Table sets out the Expected Service Level, Minimum Service Level, Measurement Period and other relevant information as applicable for each Service Level.
- 7.3** The Service Level Table defines each Critical Service Level and Key Service Level and specifies how they shall be measured.
- 7.4** Each Service Level will be calculated on the basis of a full Measurement Period. Partial Measurement Period results will not be measured.
- 7.5** The Contractor is not obliged to include in its reports on the Service Levels data relating to any part of the Services which have not passed their relevant Cutover Date.

8. Payment Issues

PAYMENT SCHEDULE

- 8.1** The Contract Price is to be paid in accordance with Schedule 12 (PIPP).

REBATES AND SERVICE CREDITS

8.2 The following Principles apply in relation to Rebates:

- (a) the Service Level Table categorises Service Levels as Key Service Levels or Critical Service Levels;
- (b) Service Level Defaults in relation to Key Service Levels are not subject to Rebates. Any such Service Level Default must be managed through the relevant Management Committee;
- (c) a Service Level Default in relation to a Critical Service Level is subject to Rebates;
- (d) Rebate amounts are based on a percentage of the At-Risk Amount for the AESG Services for the relevant month based on the formulas detailed in sections 8.4, 8.5, 8.8 and 8.9 below.
- (e) Rebates will be calculated monthly from the Commencement Month and will be accrued and applied to the next invoice for the Services. Rebates are not payable for Services implemented during the Consolidation Period for such Services. Any open Severity 1 or Severity 2 Incidents at the end of the Consolidation Period will be deemed to have been raised at the closure of the Consolidation Period;
- (f) Rebates for services implemented as part of Contract 1 will be applicable for breaches relating to those services during the Consolidation Period for Services implemented as outlined in the PIPP.
- (g) where Rebates are due for both the Availability Service Level and the Incident Resolution Service Level, the Rebate of the higher value will apply. Rebates are not cumulative;
- (h) in no event will the amount of the Rebates payable by the Contractor with respect to all Service Level Defaults in a Measurement Period exceed the At-Risk Amount;
- (i) Rebates are a reduction in the amounts payable by the Customer in respect of the Services;
- (j) the parties agree that:
 - (i) Rebates are not the sole remedy of the Customer with respect to failure by the Supplier to meet a Service Level; and
 - (ii) the amount of damages that the Customer may recover in respect of a failure by the Contractor to meet a Service Level will be reduced by the amount of any Rebates paid or credited under this Customer Contract in respect of the failure;
- (k) for any Service Level Default, the Contractor will advise the Customer of the nature of the Service Level Default, determine its root cause (to the extent reasonable in the circumstances) and provide the Customer with advice on how the risk of the default reoccurring will be minimised or eliminated;
- (l) if any Rebate remains outstanding upon the expiration or termination of this Customer Contract, and no invoice remain payable, Contractor will pay Customer such remaining amount within the period of three (3) months following such expiration or termination; and
- (m) the Customer has a discretion as to whether or not to apply Rebates and in exercising this discretion will take into account the business impact of any relevant Service Level Default.

AVAILABILITY SERVICE LEVEL

8.3 The following guidelines apply to the Availability Service Level:

- (a) Availability is calculated on a per second basis. The AESG Services will not be available when it is not actually available for, or capable of, ordinary use by the Customer or, in respect of a period of intermittent availability, when the intermittent availability causes the system to be not reasonably available or reliable for ordinary

use by the Customer. The AESG Services will also not be available during periods of Degraded Availability. The calculation is follows

$$\text{Availability} = 1 - (X / (\text{Number of seconds in the Measurement Period} - Y))$$

Where

X = the period that the AESG Services are unavailable, in seconds.

Y = the period of any Outage, in seconds.

- (b) the percentage of availability does not include the period of any Outages.
- (c) the Contractor will inform and consult with the Customer in relation to scheduling Outages. The normal period of notice from the Contractor to the Customer for Outages, will be a minimum period of 10 Business Days;
- (d) the Customer will advise the Contractor of any issues in timing of Outages in a timely manner so that the Contractor and the Customer can work together to resolve the issues or reschedule the Outage so as not to impact critical business processes; and
- (e) the period for which an Incident is open to correct an average page response time of less than 2,750ms at the server level will be considered a period of Degraded Availability (excluding online queries which should be submitted as background tasks).

‘AVAILABILITY’ DEFAULT AND REBATE:

8.4 Rebate eligibility for the Availability Service Level is based on a Service Level Default in either of the following criteria

- (a) the Minimum Service Level is not met over consecutive Measurement Periods; or
- (b) the degree of Availability is below the Tolerance Limit.

8.5 The Rebates for the Availability Service Level will be calculated as follows:

- (a) if Availability in any Measurement Period is lower than the Minimum Service Level but greater than the Tolerance Limit, the Rebate will be:
 - (i) First Measurement Period - no penalty, but parties shall meet to discuss possible corrective actions in the appropriate Management Committee;
 - (ii) Second consecutive Measurement Period - the Rebate will be 10% of the At-Risk Amount for the relevant Measurement Period;
 - (iii) Third consecutive Measurement Period and any further consecutive Measurement Periods - the Rebate will be equal to 20% of the At-Risk Amount;
- (b) if Availability in any Measurement Period is less than 95% but is higher than 90% the Rebate will be equal to 50% of the At-Risk Amount; and
- (c) if Availability in any Measurement Period is less than 90%, the Rebate will be equal to the At-Risk Amount.

8.6 Availability Rebate example calculations are included in the following table:

AVAILABILITY REBATE EXAMPLE SCENARIOS		
Anticipated Availability Example Assumptions		Hours
1	Total hours in 30 day month (ie 30x24)	720
2	Planned outage windows per month excluded (based on 4 weeks (ie (4x6)+ 8 weekly and monthly as per SLA-05)	32
3	Maximum hours of system availability (ie 1-2)	688
Service Level Availability Expectations		

4	Expected Service Level 99.7% of expected availability (ie 99.7% is equivalent to 685.94 hours expected uptime)	685.94
5	Minimum Service Level is 99% of expected availability (ie 99% of 688 hours)	681.12
6	1% unavailability	6.88
Tolerance calculations		
7	95% availability (ie 95% of 688 hours)	653.6
8	5% system unavailability (additional to planned outage times)	34.4
9	90% availability (ie 90% of 688 hours)	619.2
10	10% system unavailability (additional to planned outage times)	68.8

Availability Examples		No of hours affected	% Availability	% Unavailability	Rebate Calculations
1	System is unavailable for a total of 2 hours (ie <1%) above Minimum Service Level.	2	99.71%	0.29%	\$0.00
2	System is unavailable for a total of 10 hours (ie 1.45%) in a single Measurement Period	10	98.55%	1.45%	\$0.00
3	System is unavailable for a total of 34 hours in a single Measurement Period	34	95.06%	4.95%	\$0.00
4	System is unavailable for more than 6.88 hours (ie >1%) but less than 34.4 hours (ie < 5%) in two consecutive Measurement Periods		<99% but >95%	max 5%	10% rebate on the At-Risk amount for the second month fee
5	System is unavailable for more than 6.88 hours (ie >1%) but less than 34.4 hours (ie <5%) in three or more consecutive Measurement Periods		<99% but >95%	max 5%	20% rebate on the At-Risk amount for the 3rd and further consecutive months fees
System Availability falls below Tolerance levels					
6	System available less than .95% but greater than 90% of Service Level Availability (ie unavailable for between 5% ie 34.4 hours and 10% ie 68.8 hours) in any Measurement Period	>34.4 but <68.8	>95% but <90% (ie	unavailability of 5% or more but less than 10%	50% of the At-Risk amount for the month fee
7	System available less than 90% of Service level Availability (ie unavailable for more that 10% ie 68.8 hours or more) in any Measurement Period	>68.8	<90%	unavailability of more than 10%	100% of the At-Risk amount for the month fee

INCIDENT RESOLUTION SERVICE LEVEL - SEVERITY 1 OR SEVERITY 2 INCIDENTS

- 8.7 The Incident Resolution Service Level for Severity 1 and Severity 2 Incidents are categorised as 'Critical' Service Levels. A Service Level Default relating to the Incident Resolution Service Level may attract Rebates.

SEVERITY 1 AND SEVERITY 2 INCIDENT REBATE:

- 8.8** Rebate eligibility for the Incident Resolution Service Level is based on either of the following criteria:
- (a) the Minimum Service Level is not met over consecutive Measurement Periods; or
 - (b) the number of Severity 1 or Severity 2 Incidents is greater than the relevant Tolerance Limits.
- 8.9** The Rebates for the Incident Resolution Service Level will be calculated as follows
- (a) If the Minimum Service Level for Severity 1 or Severity 2 Incidents is not met in any Measurement Period (and where a Rebate is not due as the relevant Tolerance Limit is exceeded in such Measurement Period), the Rebate will be:
 - (i) First Measurement Period - no penalty but parties shall meet to discuss possible corrective actions in the appropriate Management Committee;
 - (ii) Second consecutive Measurement Period - the Rebate will be 10% of the At-Risk Amount for the relevant Measurement Period;
 - (iii) Third consecutive Measurement Period and any further consecutive Measurement Period - the Rebate will be 20% of the At-Risk Amount for the relevant Measurement Period.
 - (b) If the Tolerance Limit is exceeded for either Severity Level 1 or Severity Level 2, Rebates are due as follows:
 - (i) First Measurement Period - no penalty; and
 - (ii) Second consecutive Measurement Period and any further consecutive Measurement Periods thereafter - the Rebate will be 20% of the At-Risk Amount for the relevant Measurement Period.
- 8.10** Severity 1 and Severity 2 Resolution Rebate example calculations are included in the following table:

SEVERITY 1 AND SEVERITY 2 RESOLUTION REBATE EXAMPLE SCENARIOS

Service Level Resolution Expectations

- 1 95% of Severity 1 incidents will be resolved within 4 hours
- 2 90% of Severity 2 incidents will be resolved within 8 hours

Tolerance calculations

- 3 maximum occurrence of █ unique severity 1 incidents in a measurement month
- 4 maximum occurrence of █ unique severity 2 incidents in a measurement month

Resolution Examples		Rebate Calculations
1	Less than 95% of Severity 1 incidents have not been resolved within 4 hours in a single Measurement Period	\$0.00
2	Less than 95% of Severity 1 incidents have not been resolved within 4 hours in any two consecutive Measurement Periods	10% rebate on At-Risk amount for second and further months fees
3	Less than 95% of Severity 1 incidents have not been resolved within 4 hours in any three or more consecutive measurement periods	20% rebate on At-Risk amount for 3rd and further months fees
4	Less than 90% of Severity 2 incidents have not been resolved within 8 hours in a single Measurement Period	\$0.00
5	Less than 90% of Severity 2 incidents have not been resolved within 8 hours in any two consecutive measurement periods	10% rebate on At-Risk amount for second and further months fee
6	Less than 90% of Severity 2 incidents have not been resolved within 8 hours in any three or more consecutive measurement periods	20% rebate on At-Risk amount for 3rd and further month fees
Resolution of Severity 1 & 2 Issues fall below Tolerance levels		
7	█ or more Severity 1 incidents have occurred in a single Measurement Period	\$0.00
8	█ or more Severity 1 incidents have occurred in two or more consecutive Measurement Periods	20% rebate on At-risk amount for 2nd and any further months fees
9	█ or more Severity 2 incidents have occurred in a single Measurement Period	\$0.00
10	█ or more Severity 2 incidents have occurred in two or more consecutive Measurement Periods	20% rebate on At-risk amount for 2nd and any further months fees



[REDACTED]

Attachment 3-1: Service Level Requirements and Targets

Service Level Requirements and Targets		See Attachment 3-4 (Support Services) (Section 2 – Help Desk Service)				
	Service Level	Minimum Service Level	Expected Service Level	Measurement Period	Critical or Key Service Level	
SLA-01	Help Desk	<ul style="list-style-type: none"> Speed to answer (telephone): The time it takes for the Help Desk to pick up the telephone from the first ring. Speed to answer (email or web via the self-service portal): The time it takes the Help Desk to create a ticket on receipt of an email based request. Number of calls needing to be reopened as considered unresolved by Customer 	<ul style="list-style-type: none"> 90% of calls are answered within 30 seconds and calls missed will be reported on. 85% within 90 minutes and the remainder will be reported on A maximum of 7% of calls having to be reopened 	<ul style="list-style-type: none"> 95% of calls are answered within 30 seconds and the remainder are answered within 60 secs. 90% within 90 minutes and the remainder are answered within a further 45 minutes. <5% of calls having to be reopened as closed before issue resolved 	<ul style="list-style-type: none"> Monthly Monthly Monthly 	<ul style="list-style-type: none"> Key Key Key
Service Request Targets						
SLA-02	Service Requests	<ul style="list-style-type: none"> See Attachment 3-4 (Support Services) (Section 3 – Service Requests); and 80% of Service Requests are completed within the agreed or reprioritised timeframe. 100% of Priority/VIP Requests are completed, tested and satisfactorily implemented within the agreed or reprioritised timeframe. 				

Service Level Requirements and Targets

Incident Response and Resolution

- See attachment 3-4 Support Services (Section 4 – Service Level Categories).

Service Level	Minimum Service Level	Expected Service Level	Hours of operation	Critical or Key Service Level	Tolerance Limit
Incident Response					
Incident Response – Severity 1	95% within 30 minutes	100% within 30 minutes	24 X 7	Key	
Incident Response – Severity 2	95% within 1 hour	100% within 1 hour	24 X 7	Key	
Incident Response – Severity 3	90% within 4 hours	95% within 4 hours	Business Hours	Key	
Incident Response – Severity 4	90% within 8 hours	95% within 8 hours	Business Hours	Key	
Incident Resolution					
Incident Resolution – Severity 1	95% within 4 hours	95% within 4 hours	24 X 7	Critical	Problems resulting in Severity 1 Incidents the Measurement Period.
Incident Resolution – Severity 2	90% within 8 hours	95% within 8 hours	24 X 7	Critical	Problems resulting in Severity 2 Incidents in the Measurement Period.
Incident Resolution – Severity 3	90% within 5 days	95% within 5 days	Business Days	Key	N/A
Incident Resolution – Severity 4	90% within 30 days	95% within 30 days	Business Days	Key	N/A

Note: Measurement Period for Incident SLAs is monthly.

Incident Severity Definitions are as follows:

Level Severity Definition

Service Level Requirements and Targets													
Severity 1 – Emergency	<p>Critical production issue that severely impacts the Customer's use of the Services, including.</p> <ul style="list-style-type: none"> • Service is down or unavailable; • Data corrupted or lost and must restore from backup. 												
Severity 2 – High	<p>Major functionality is impacted or significant performance degradation is experienced with the Services. The situation is causing a high impact to the Customer and no reasonable workaround exists.</p> <ul style="list-style-type: none"> • A critical documented feature / function of the Service is not available; • Service is operational but highly degraded performance to the point of major impact on usage; • Important features of the Service offering are unavailable with no acceptable workaround. 												
Severity 3 – Medium	<p>There is a partial, non-critical loss of use of the Service with a medium-to-low impact on the Customer, but the Customer's business continues to function. Short-term workaround is available.</p>												
Severity 4 - Low	<p>Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Acceptable workaround available.</p> <p>Note: Any type of Customer request that does not relate to a Defect is not an Incident.</p>												
Critical Incident Reviews	<ul style="list-style-type: none"> • Critical Incident Reviews, including root cause analysis or applicable action plan, will be conducted on all Severity 1, Severity 2 and Security incidents within 5 Business Days (or as otherwise agreed) of resolution of the incident. • Critical Incident Review findings and mitigation strategies will be implemented to minimise likelihood of the same incident occurring in the future, will be included in monthly client reports. 												
SLA-04 Application Availability	<p>See Attachment 3-3 - Service Definition</p> <table border="1"> <thead> <tr> <th>Service Level</th> <th>Minimum</th> <th>Expected</th> <th>Measurement</th> <th>Criticality</th> <th>Tolerance</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Service Level	Minimum	Expected	Measurement	Criticality	Tolerance						
Service Level	Minimum	Expected	Measurement	Criticality	Tolerance								

Service Level Requirements and Targets

Service Level	Service Level	Period	Key Service Level	Limit
Availability	99.00%	Monthly	Critical	95%

Outage Windows Requirements

- The Service must have scheduled and published Outages. Scheduled work with disruption to service should occur during Outages. Maximum Outages are:

Timing	Duration	Comment
Weekly	6 hours	Out of Business Hours
Monthly	8 hours	Out of Business Hours
Quarterly	24 hours	Out of Business Hours
Yearly	72 hours	Out of Business Hours

Note: Duration periods are not cumulative (ie each week there is a 6 hour window and this does not accrue from week to week).

- All Outages will be completed within the approved outage windows.
- The Contractor will have provided a minimum of 2 hours' notice (or a shorter period as agreed) for all additional Outages or required changes to the approved Outage windows.
- The Contractor will have provided a minimum of 2 hours' notice (or a shorter period as agreed) for all Emergency Planned Outages required.

Backups, Restores, and Data Retention Requirements and Targets

- Backups will be completed as per defined backup schedule outlined in the Contactors backup strategy and Business Contingency Plan.
- Backups will be stored off site from the production system.
- The Contractor will need to complete periodic testing to ensure restores can be completed in a timely manner when required.

Service Level Requirements and Targets	
SLA-06	<p>Backup and Restore Targets</p> <ul style="list-style-type: none"> • 100% of restore requests completed within agreed timeframes. • 100% of restores completed in the RPO and RTO timeframes as defined in section 4.2 of this SLA. <p>Data Retention Requirements</p> <ul style="list-style-type: none"> • The backup retention period required is 14 days for non-production and 30 days for production. • The Contractor will consult the Customer, and will obtain the Customer's approval, in respect of the development of the data archiving strategy. Subject to further consideration by the Customer of its record-keeping and archiving requirements, the Customer's minimum requirements are: <ul style="list-style-type: none"> ○ Data will remain live in the Production environment until archived. ○ Off line archiving should take place no earlier than 7 years after the record is closed ○ Archive data will be retained for a minimum period of 7 years and may not be destroyed without the specific approval of the Customer within such 7 year period. • On-line archiving should take place no earlier than the later of: <ul style="list-style-type: none"> ○ the end of the Initial Contract Period; and ○ 2 years after the record is closed. • Offline archiving must be maintained in a medium that allows it to be effectively accessed and read as need be.
SLA-07	<p>Data Retention Targets</p> <ul style="list-style-type: none"> • 100% of the Customer's defined data retention targets will be met over the life of the contract.
Audit Targets	
SLA-08	<p>Auditability Requirements</p> <ul style="list-style-type: none"> • Standard pricing includes two audit activities per year of no more than five (5) days effort each to support. Effort associated with areas of concern or non-conformance will be addressed through the standard Incident and Problem management process, including determination of responsibility for cost to resolve. <p>Auditability Targets</p> <ul style="list-style-type: none"> • Two (2) standard audits of up to five (5) days effort to support for each will be undertaken within the cost of the standard AESG Service. • 100% of additional audits required will be facilitated in agreed timeframes and at additional cost to the Customer in line with the AESG Catalogue. • The Contractor will be required to develop a plan to address areas of concern or non-compliance resulting from the audits. Escalation of issues will be addressed through the appropriate Management Committee.

Service Level Requirements and Targets	
Release Management Requirements	
SLA-09	<ul style="list-style-type: none"> The Contractor will inform and consult with the Customer on all essential patch requirements on a monthly basis as part of the appropriate Management Committee. 100% of essential patches will be tested and implemented within a timely period, as agreed with the Customer, in line with software currency support services detailed in sections 1.32 to 1.33 of Attachment 3-3 - Service Definition. Security patches will be prioritised to ensure that Risks to the Customer and Customer Data are minimised. The Contractor will provide advice to the AESG Management Committee to consider functionality to be released, timeframes and pricing implications for Customers who wish to adopt the new or additional functionality resulting. In no way will the release of new functionality impact the Customer adversely under the terms of their existing contract.
Customer Satisfaction	
SLA-10	<ul style="list-style-type: none"> The Contractor will work with the Customer to conduct annual Customer Satisfaction Surveys to determine level of satisfaction with operation of functionality. Customer Satisfaction survey information will be considered as an input towards AESG Roadmap and change and innovation directions.
SAP PO as a Service Requirements	
SLA-11	<ul style="list-style-type: none"> SAP PO as a Service is to have the same availability as the AESG Services Outages are to be linked to outage requirements of application.
Service Level Notes – Help Desk	
(a) Severity 1 and Severity 2 Incidents are to be logged by Super Users by phone or the self -service portal.	

Service Level Notes – Incident Resolution Service Level

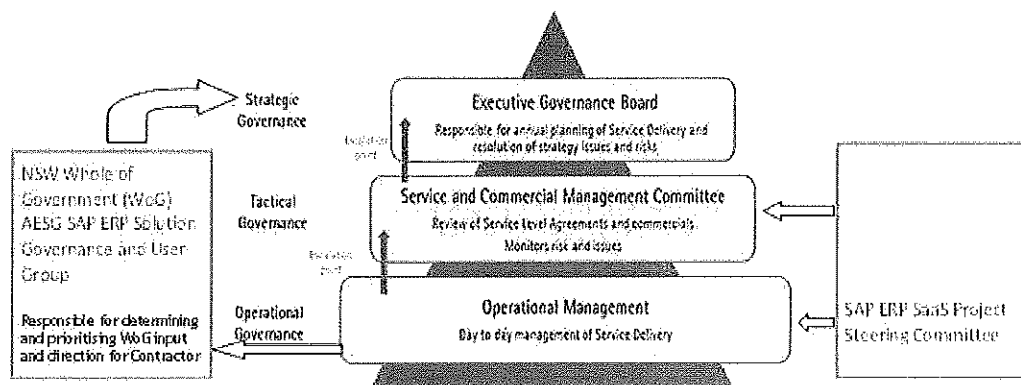
- (a) Time starts running once the Incident is either detected by the Contractor or is reported to the Contractor by a member of the Customer's Super User Group or any other personnel authorized by the Customer to make such reports. The Incident notification is to be logged immediately by the Contractor into its Contractor's Help Desk Management System where it will be tracked.
- (b) Resolution Time for all Incidents shall be measured from the time that the Incident is detected or reported until the time of resolution of that Incident. The Contractor will establish a Contractor Service Management System to record and hold this information.
- (c) The Severity level for each Incident shall be initially assigned by the Customer and recorded in the Contractor Help Desk Management System. This assignment will be reviewed and may be adjusted by Contractor with agreement from the Customer.
- (d) Where an Incident is downgraded to a lower Severity level, the measures for that lower Severity level shall apply to the entire Incident.
- (e) Where an Incident is upgraded to a higher Severity level, the measures for that higher Severity level shall apply from the time of upgrading the Incident.
- (f) Incidents shall be measured in the Measurement Period in which they are resolved. All open Incidents shall be included in the regular reporting so as to provide visibility to any Incidents that may be outside the Service Level.
- (g) Where multiple Incidents occur for the same event, those Incidents shall be aggregated and reported as the single first lodged Incident that relates to the issue.
- (h) [REDACTED]

Attachment 3-2: Management Committees

1. Management Committees

- 1.1 This Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement) provides details on the structures and processes necessary to effectively manage the relationship between the Contractor and the Customer. Each committee established under this Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement) will be deemed to be a "Management Committee" for the purposes of Item 16 of the General Order Form and clauses 6.3 – 6.9 of the Customer Contract.
- 1.2 Clauses 6.3 – 6.9 of the Customer Contract will apply to each Management Committee established under this Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement).
- 1.3 The following levels of service delivery governance involving both Contractor and Customer are defined below:
- strategic governance;
 - tactical governance;
 - operational governance;
 - project governance; and
 - NSW Whole of Government governance.

A high level diagram depicting the levels of operational service delivery and project governance follows:



- 1.4 Project governance is separate to the operational service delivery governance structure although there may be some overlap in membership representation. The Management Committee for project governance will be the "SAP ERP SaaS Project Steering Committee". The project governance structure will be used in the first instance for the Transition In Services, and the same governance structure will then be used for any subsequent projects. Project governance and relevant committee will only be required to meet when there are active projects.
- 1.5 NSW Whole of Government governance is also shown in the diagram to ensure that an appropriate forum is in place to best inform the Contractor of determined and prioritised NSW Whole of Government needs and directions and to ensure the Contractor is provided with early notice of impending changes required to be incorporated into the standard solution for NSW Whole of Government.
- 1.6 The Management Committees to be established to support the above governance structure will be as follows:
- AESG Executive Governance Board;
 - Service and Commercial Management Committee;

- (c) Operational Management Committee;
- (d) SAP ERP SaaS Project Steering Committee; and
- (e) NSW Whole of Government AESG SAP ERP Solution Governance and User Group.

The membership of each Management Committee and its functions are detailed in section 2 below.

- 1.7** The Contractor must establish each of the Management Committees required and both Parties must ensure that their relevant Personnel attend each Management Committee meeting.
- 1.8** The Management Committees may appoint and determine sub-committees to carry out any of its functions, provided that each sub-committee has appropriate representation from both Contractor and Customer.
- 1.9** The Contractor and Customer may have additional internal committees to provide direction to organisational representatives of the above committees.

2. Governance Functions

2.1 The key governance bodies and functions are as detailed in the following table:

Governance Body	Meeting Frequency	Chaired By	Governance Functions	Members
AESG Executive Governance Board (AESG Service - Strategic Governance) (AESG SAP ERP Solution - Contractor Governance Forum)	Annual	Contractor	<ul style="list-style-type: none"> Provide overall direction of the AESG Service as a multi tenant offering. Approve the AESG Roadmap and Annual Plan. Review services to be delivered to the Customer based on Customers forecast of requirements, expected SAP release schedule etc. Approve Outage calendar. Review demand management and consider impacts of required changes associated with tenancy changes (including increase or decrease in tenancy numbers). Approval of additional Tenants. Ensure appropriate infrastructure is in place to provide quality AESG Services. Approve of significant Updates, Upgrades, additional functionality or product changes. Conduct annual service review. Approve changes to AESG Catalogue. Review enrich and innovation opportunities. Consider Customer feedback on potential future directions, enhancements or increased functionality requirements to feed into future AESG Roadmap. Manage strategic Risk and Issues. Act as highest point of escalation for Customer related Risks and Issues within the governance structure. Resolve Issues affecting the Customer and other Tenants. Determine timeables for implementation of new features and/or priorities. 	<ul style="list-style-type: none"> AESG ANZ Client Executive AESG ANZ Service Delivery Manager Customer CIO as Customer Contract Management Executive (Note: Customer included on this Board as the foundation client).
AESG Service	Quarterly	Contractor	<ul style="list-style-type: none"> Oversee the ongoing delivery of the AESG Services 	<ul style="list-style-type: none"> AESG ANZ Service Delivery Manager

Governance Body	Meeting Frequency	Chaired By	Governance Functions	Members
<p>Management Committee (Service Management Tactical Governance)</p> <p>(Contractor and Client Service Management Governance Forum)</p>			<ul style="list-style-type: none"> Review activities and delivery of Services against the Service Definition and the Annual Plan. Seek feedback from Customer and review Customer feedback register, to ensure customer expectations are being met or feedback is included in forward planning where necessary. Adjust Annual Plan forward view as required. Review Adapt Compliance Statement and Adapt Units used and available for use by the Customer. Review performance against agreed Service Levels. Customer to identify and advise of known peak periods or business critical periods. Identify opportunities for Service improvement, new products or product innovation. Review fees and invoices. Contractor to consult with Customer on any proposed changes to the AESG Catalogue identifying contractual impact or price implications of such proposed changes. Review Rebates applied. Communicate and consult with Customer on annual schedule release dates and Outage calendar. Manage Risks and issues associated with Service delivery. Manage and prioritise variations and requests for additional work. Resolve escalations referred by Operational Management Committee. Identify changes in volumes or Customer requirements. Review report on all Security Incidents and make required decisions associated with mitigating similar future incidents. Customer to advise of any intentions to reduce services required (including providing notice of planned termination or transitioning out from AESG Service). 	<ul style="list-style-type: none"> AESG ANZ Contract Manager Customer CIO as Customer Contract Management Executive Customer Director Operations as Customer Vendor/Service Delivery Manager
Operational Service Delivery Management	Monthly	Customer	<ul style="list-style-type: none"> Review operational service delivery performance in line with the SLA and service delivery expectations. 	<ul style="list-style-type: none"> AESG ANZ Service Delivery Manager

Governance Body	Meeting Frequency	Chaired By	Governance Functions	Members
<p>Committee</p> <p>(Service Delivery Operational Governance)</p> <p>(Contractor and Client Business as Usual (BAU) Service Delivery Management Forum)</p>			<ul style="list-style-type: none"> • Review service delivery reports including the Customer Satisfaction Survey and Critical Incident Reports. • Identify, manage and resolve Risks and issues associated with service delivery. • Approve or decline Contractor invoices for payment. • Raise and resolve issues, escalating issues where timely resolution not achievable. • Determine any Rebates required. • Manage Outage requests. • Review any unplanned outages and resultant Critical Incident review reports. • Provide early advice on changes to Service delivery requirements or adoption of new functionality. • Manage and prioritise Service Requests. • Manage additional Service Requests. • Prioritise additional Service Requests and monitor Adapt Unit usage. • Approve contract variations. 	<ul style="list-style-type: none"> • Customer Management Rep • Customer Service Delivery Manager
<p>Service Delivery Management</p> <p>(Day to day Service Delivery Management)</p> <p>(Contractor and Client Vendor Management Forum)</p>	As required	Contact by either party on needs basis	<ul style="list-style-type: none"> • Day to day service delivery contract management of the AESG Service. • Contact point for approval of changes to Outage calendar including Emergency Planned Outages and Additional Planned Outages. 	<ul style="list-style-type: none"> • Contractor Service Delivery Manager • Customer AESG Vendor Manager
SAP ERP SaaS Program Working Party	Monthly	Customer	<ul style="list-style-type: none"> • Provides overall management, direction and control of projects to ensure all projects undertaken are delivered on time, within budget and that project delivery meets specified requirements. 	<ul style="list-style-type: none"> • Contractor Project Manager (Delivery Lead) • Customer Contract Management

Governance Body	Meeting Frequency	Chaired By	Governance Functions	Members
			<ul style="list-style-type: none"> • Approve plan for Transition In of Customer. • Review progress against agreed Transition Plan. • Ensure that the Transition Plan and Schedule 12 (PIPP) are complied with, and that the Milestones are met. • Act as the point of escalation for any issues arising from the Transition In Services. • Track and monitor all Risks relating to any projects including the Transition In Services project. • Oversee the Transition In Services, including Acceptance Testing. • Review and manage project costs against approved budgets. • Approve additional cost variations in line with approved budget and delegations. • Manage project variations. • Review, approve/reject and prioritise variations within allocated budget. • Ensure resourcing meets needs to complete project satisfactorily on time and within budget. • Identify issues that need to be escalated to AESG Executive Governance Board. • Identify issues that need to be escalated within the Department of Justice. 	<p>Executive/ Project Sponsor</p> <ul style="list-style-type: none"> • Customer Business Executive(s) - as required dependent on project. • Customer SAP ERP Program Manager • Customer Project Manager.
<p>Project Working Parties</p> <p>(Each Project in the Program will have a Project Working Party to ensure each project remains on track)</p>	Weekly	Customer	<ul style="list-style-type: none"> • Project Management meetings between Customer Project Manager(s) and Contractor Project Manager and Customer Program Manager. • Review progress and status reports to ensure projects remain on track, within budget and on time. • Review status of progress against planned Milestones. • Review and manage Risks and issues associated with project. <ul style="list-style-type: none"> ◦ Review change requests to determine those that should be escalated.. • Prioritise and re-prioritise project activities where required. • Resolve project issues /disputes ad provide direction and 	<ul style="list-style-type: none"> • Contractor Project Manager (Delivery Lead) • Customer Program Manager • Customer Project Manager(s)

Governance Body	Meeting Frequency	Chaired By	Governance Functions	Members
<p>HR/Finance Executive Working Party Sub Committee</p> <p>(To provide necessary direction and clarification in relation to specific business needs)</p>		Customer	<p>clarification when required.</p> <ul style="list-style-type: none"> • Review functional Change Requests and endorse for approval as required. • Recommend business resources where required. • Provide direction and clarification as required. • Provide guidance and clarifications on business change impacts and organisation change management activity. 	<ul style="list-style-type: none"> • Customer Director • CSMO • Customer SAP ERP Program Manager • Executive Director • HR • Executive Director • Finance Strategy
<p>NSW Whole of Government AESG SAP ERP Governance and User Group</p> <p>(To ensure Whole of Government priorities and directions are understood and incorporated into standard product where appropriate)</p>	Bi-annually or as otherwise required	NSW Government AESG customer Agencies on rotation, starting with the Customer	<p>The AESG SAP ERP User Group will provide the forum to:</p> <ul style="list-style-type: none"> • foster collaboration between NSW Government AESG Customers • provide early advice to the Contractor on Whole of Government changes to standard processes or additional mandatory system requirements • provide information to DFSI to enable refinement of the Standard Processes where necessary, to enable the successful delivery, adoption and use of a standardised 'as a service' ERP solution for NSW Government Agencies • prioritise cross agency change initiatives to ensure that government priorities are fully understood and managed effectively (whilst assisting in maintaining the 90% Adopt 10% Adapt criteria) • facilitate the use of standard processes across Government Agencies in relation to ERP functionality requirements, facilitate appropriate sharing of relevant information on the solution across NSW Government Agencies • promote review and standardisation of the Standard Processes across non Customer Agencies • provide input into the AESG Roadmap to ensure that processes are standardised, that innovation and enrichment 	<ul style="list-style-type: none"> • Customer CIO • Customer Director • CSMO • Customer Director • Operations • Executive Director • ICT Strategic Delivery (DFSI) • CSSR Executive (DFSI) • AESG ANZ Client Executive • AESG ANZ Service Delivery Manager • CIO representative from all other NSW Government AESG customers, maximum one per cluster.

Governance Body	Meeting Frequency	Chaired By	Governance Functions	Members
			<p>adds maximum value to NSW Government and to assist in ensuring that the AESG solution continues to meet government objectives.</p> <ul style="list-style-type: none"> • provide DFSI with the information required to assist them in determining the gap/fit of the AESG solution for NSW Government Agencies. • validate AESG solution certification. 	

Attachment 3-3: Service Definition

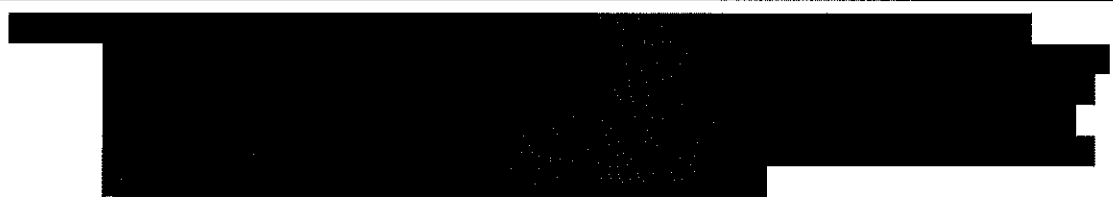
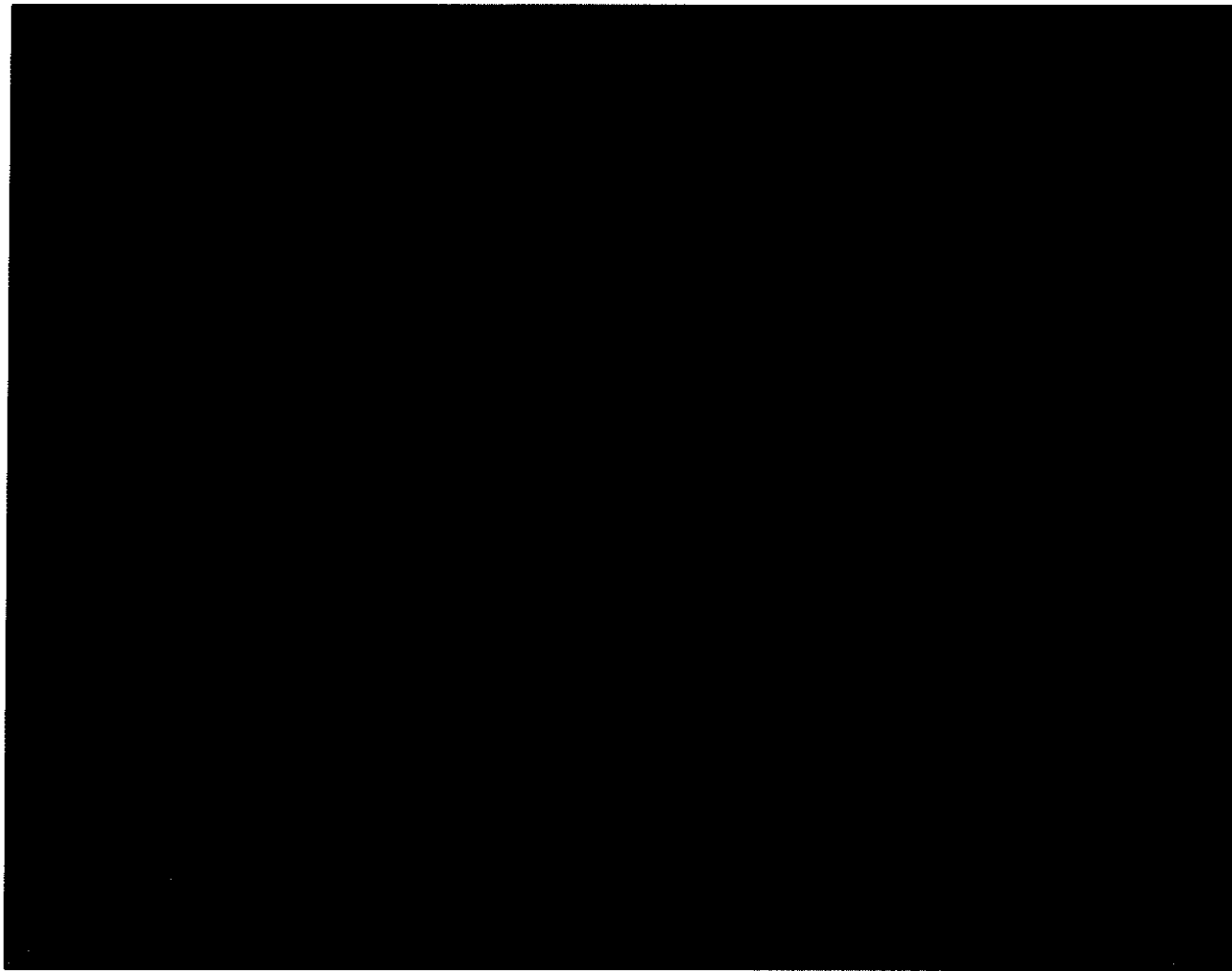
1. Software as a Service

SCOPE

- 1.1 The AESG Service is delivered as a multi-tenant cloud service for Australian Public Sector, with the Contractor responsible for the provision of infrastructure and applications (save for any Customer Supplied Items) required to make the AESG Service available remotely to Customer.
- 1.2 The AESG Service is provisioned for the Customer to support the organisational, functional and RICEFW scope described in the PIPP.
- 1.3 The AESG Service is a multi-Tenant service that the Contractor will continue to develop in accordance with this Service Level Agreement and other provisions of this Customer Contract, and may otherwise develop at its discretion, to provide a single consistent Enterprise Resource Planning (ERP) as a Service to the Australian Public Sector.
- 1.4 Subject to the terms of this Customer Contract, the AESG Services will not be tailored to the specific needs of any one Tenant. They are standard services which provide Tenants with the capacity to personalise and adapt to their requirements, within pre-defined limits so as to ensure:
 - (a) consistency in the AESG Services across Tenants; and
 - (b) minimal or no impact on the AESG Services from the actions or use of one Tenant (for other Tenants).

ADOPT AND ADAPT MEASUREMENT PRINCIPLES

- 1.5 Customer acknowledges that the AESG Service is a commoditised service intended to be consumed by multiple Tenants. In order to provide the efficiencies of a multi-tenant deployment model, Customer agrees to limit its adaptations of the Service as detailed in this section.
- 1.6 For the purposes of this Section, the AESG SaaS scope and corresponding Transition In effort is categorised as either Adapt, Adopt or Additional Services.
- 1.7 The overall distinction between Adopt and Adapt is represented in the following diagram:



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ADAPT COMPLIANCE GOVERNANCE

1.12 Adapt compliance will be governed based on the following guidelines:

- (a) Adapt compliance for the Customer will be reviewed on a regular basis (at least quarterly) through the governance forums described in Attachment 3-2 Management Committee to Schedule 3 (Service Level Agreement).
- (b) If the Customer is approaching or likely to exceed, or has exceeded the Adapt Capacity, the parties will meet to agree an action plan to reduce the number of Adapt components or take other action, so that Customer returns to compliance as soon as possible (**Action Plan**).
- (c) Progress for achieving the Action Plan will be monitored through the governance forums described in Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement).

1.13 Customer may propose a change that would result in the Customer exceeding the Adapt Capacity where there is a critical unavoidable requirement. The Contractor will give reasonable consideration to such request.

REVIEWS

1.14 As part of each review the Parties will review and update the Adapt Compliance Statement and will discuss forecast changes to the Adapt Compliance Statement for a rolling 12 month period.

1.15 The Customer may also request a forecast of the Adapt Compliance Statement from time to time due to potential changes within the Customer (e.g. due to machinery of government). The parties accept that in these circumstances the Customer may exceed the Adapt Capacity, but the parties will institute an Action Plan in accordance with section 1.10(b) in order to achieve compliance as soon as possible.

1.16 The Operational Management Committee will prioritise Additional Service requests and monitor Adapt Unit usage as a standing item at its monthly management meetings.

FURTHER CONSIDERATIONS

1.17 Contractor reserves the right to reject change requests (such as a new process or RIEFW) which in Contractor's opinion would have a negative impact on the AESG SaaS or any other Tenant's use of the AESG Service whether or not that change would result in usage which exceeds the Adapt Capacity.

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STANDARD BUSINESS PROCESSES

- 1.19** The Contractor must, whenever a new version of the CSSR processes, as published by the NSW Department of Finance, Services and Innovation (the Standard Processes) is released, within one month of release:
- (a) review the new version of the Standard Processes to assess whether they are correctly implemented by the AESG Services; and
 - (b) if the new Standard Processes are not correctly implemented, advise the Customer of a reasonable timeframe for aligning the AESG Services to the new Standard Processes (**Standard Process Notice**),

provided that in determining the reasonable timeframe, the intention is that the AESG Services will align to a currently supported version of the Standard Processes so far as reasonably necessary.

- 1.20** The Contractor must:
- (a) align the AESG Services to the new Standard Processes in accordance with the Standard Process Notice at no additional charge to Customer; and
 - (b) if required by Customer, implement the new Standard Processes in a faster timeframe as required by Customer, but such implementation will be at the Customer's cost and agreed in accordance with Schedule 4 (Variation Procedures).
- 1.21** The Contractor must submit the AESG Services to verification for conformance to the current version of the Standard Processes by DFSI at least once in any 12 month period.

SOLUTION CURRENCY

- 1.22** The Contractor is responsible for keeping the AESG Service up to date in line with the Service Levels and RACI chart.
- 1.23** The Contractor may issue updates to the AESG Service from time to time according to its development schedule, for which it maintains exclusive control. The Contractor is under no obligation under this Customer Contract to provide any Updates or Upgrades to the AESG Service other than as specified in the Contract. If the Contractor does generally release an Update or an Upgrade to the AESG Service it will apply the Update or Upgrade to the AESG Service according to its implementation schedule, but will not unreasonably delay implementing any Update or Upgrade for the Customer. The Contractor will make commercially reasonable attempts to update the AESG Service only during periods of scheduled maintenance.
- 1.24** The Contractor will make reasonable efforts to keep the Customer apprised of planned changes to the AESG Service which include the removal of features or functionality and will provide at least 60 days' prior written notice of the proposed removal of any feature or functionality. No removal of any feature or functionality may occur without the Customer's prior written approval, unless it is necessary to remove such feature or functionality in order to address any legal or regulatory issue and the Contractor will endeavour to provide Customer as much prior written notice as commercially practicable. This clause does not limit the Contractor's obligation under clause 4.4 of Module 10 (As a Service).
- 1.25** "AESG bundles" of functionality cannot be diminished during the period of the contracts ie the Contractor cannot redefine AESG bundles and reduce the scope of the functionality offered or change bundles thereby resulting in the addition of cost to the Customer for the services originally contracted.
- 1.26** The Contractor will be responsible for keeping the AESG Service updated. All changes to the AESG Service should be made in accordance with the Service Definition and the RACI.
- 1.27** The Customer is responsible for integration of the AESG Service with its own systems in the case of an Update or an Upgrade. The Customer may engage the Contractor to provide Additional Services with respect to any Update or Upgrade, and in that case the Customer is responsible for all costs associated with those Additional Services including system integration services, business process analysis, web development updates, any updates to integrations or any required data transformations.

SAP PLATFORM CURRENCY

- 1.28** With respect to the currency of existing SAP products, The Contractor will evaluate new SAP Software releases applicable to the AESG Service as they are made available by SAP. The Contractor will align its roadmap to new SAP technologies based on that assessment.
- 1.29** The Contractor will promptly implement any new releases relating to the SAP Software where the release addresses a security risk or defect in the SAP Software.
- 1.30** With respect to the operating system, the Contractor will apply security patches or updates supplied by the vendor of the operating system or the relevant original equipment.

APPLICATION PACKS

- 1.31** The specific timing of all patching will be based on the agreed maintenance windows, urgency of the update and other operational issues, provided that security-related patches will be implemented promptly;

SOFTWARE CURRENCY

- 1.32** The Customer will maintain the following PC SOE for client side as published by SAP and amended from time to time with respect to the SAP Software versions as detailed below or as subsequently notified to Customer:

SAP Note number 1728946 for Browser

Detailed notes are available from SAP Support Portal (<http://support.sap.com/notes>). In the event SAP replaces or substitutes new applicable notes for the above, then the new note applies in its place.

- 1.33** The Contractor will maintain the currency of the AESG Service by supplying and implementing corrective patches, OSS notes, SAP provided support packs, and legislative and enhancement pack application (as defined in SAP vendor documentation). The Contractor will also provide the following Services in respect of the AESG Services:
- (a) Emergency patching – this activity will be performed as and when required. emergency patches may comprise of corrections, security and urgent legislative patches.
 - (b) Regular support packs as provided by SAP (including corrective, OSS notes, support packs and legislative packs) – Contractor will implement these packs on a quarterly basis. Contractor will carry out a simple suite of regression tests to investigate whether application of these packs have adversely impacted the service.
 - (c) Enhancement packs - these packs will be prioritised for release based on importance and effort, with a goal of n-1 Adherence. Activation of any included enhancements for use by the Customer may entail further effort not included within the Base Services fee, and is subject to review by the Contractor AESG Service governance.
 - (d) No Major Upgrade will be made to the SAP Software for the term of the Customer Contract unless otherwise agreed with the Customer.
- 1.34** The n-1 Adherence means the Software applications remain on supported versions of the vendor's software using the 'n-1' approach where applications running on the latest version are denoted as N and the prior version of software as n-1;
- 1.35** Prior to making any changes to the AESG Services (including applying patches, support packs or enhancement packs), the Contractor will test the relevant changes in a test environment to ensure that the change will have no adverse effect on the AESG Services or the Customer when implemented. If any change implemented by the Contractor has a material adverse effect on the AESG Service, the Contractor

will at the request of the Customer roll the relevant software back to the version or configuration that prevailed immediately prior to the relevant change being implemented.

- 1.36** The Customer will carry out its own Acceptance Test to test and report to Contractor any impacts to its Service.
- 1.37** In case further adaptive changes are required on customer-specific implementation as a result of legislative or SAP provided application of any patches or packs, the capacity to perform these changes shall be obtained either through use of Customer specific Service Request capacity or where that has been exhausted, through Additional Services.

AESG PRODUCT INNOVATION

- 1.38** The Contractor shall maintain the AESG Roadmap.
- 1.39** The AESG Roadmap is intended to be flexible, adjusting to current trends and needs and is subject to re-planning at the Contractor's discretion, noting that the Customer will have input through the AESG Executive Governance Board.
- 1.40** The AESG Roadmap will be based on Tenants' feedback, current market needs and the expected requirements of future Tenants anticipated to be onboarded to the AESG Service.
- 1.41** The Contractor shall have regard to the following factors when considering the AESG Roadmap and priorities (the sequence is not reflective of the importance or weighting attached to each item):
- (a) requested functionality from the Tenant community and the ability of the requested functionality to meet requirements of multiple Tenants. The Contractor retains sole discretion to include, or not include, functionality requested by Tenants;
 - (b) SAP Software future functional AESG Roadmap;
 - (c) SAP Software maintenance and ongoing enhancement investment for an application component;
 - (d) overall ERP SaaS market demand and direction;
 - (e) Risks associated with new solution components and the impact on the current Tenant base;
 - (f) costs associated with the new functionality (implementation, support, SAP Software licensing, infrastructure); and
 - (g) any other factors the Contractor considers would be beneficial to its Customers.

FEEDBACK PROCESS

- 1.42** The Contractor will ensure that the following items are included for consideration at the appropriate Management Committee meetings:
- (a) AESG Service improvement feedback;
 - (b) innovation feedback;
 - (c) results from the annual Customer Satisfaction Survey.
- 1.43** The Contractor will create and maintain a register of the Customer's feedback which will be used as input to the AESG Roadmap planning and the Annual Plan for Customer.
- 1.44** The Contractor will consider the feedback from the Customer at least quarterly in reviewing the AESG Roadmap.

- 1.45** The Contractor will comment on the Customer's registered feedback items in the next governance meeting.
- 1.46** The Contractor will have the final decision on which innovations items will be implemented, the timing and manner of implementation.

UPDATES AND INNOVATION

- 1.47** Updates to the AESG Service will be either:
- (a) mandatory, based on a change to the system (e.g. patching); or
 - (b) optional (e.g. new functionality). The Customer will have the option to accept or refuse any specific optional updates. Optional functional Updates that include bug fixes to existing functionality will be optional at no additional charge to the Customer. The Contractor will notify the Customer of any new functionality available for implementation.
- 1.48** For optional items (new AESG Service functionality or components) that become available from time to time, the Contractor will notify the Customer if there are any SAP Software licensing or other technical requirements for the Customer to receive the update.

UPDATE IMPLEMENTATION PLAN

- 1.49** In respect of any Updates to the AESG Services, the Contractor will provide to the Customer an implementation plan which will specify the following:
- (a) the adjustment required to Adapt Units (if any) as a result of the implementation;
 - (b) the sequence, timing, dependencies and responsibilities for activities to implement the new functionality (if any) for the Customer; and
 - (c) the implementation plan will be developed based on the Transition In methodology described in Schedule 12 (PIPP) subject to any modifications required by the circumstances and the scale of the change.

COMPUTE AND STORAGE CAPACITY

- 1.50** The Contractor will provision sufficient compute resources to ensure satisfactory delivery of the AESG Services.
- 1.51** The Contractor will provision suitable storage for the environments and landscapes in the scope of this AESG Service. The sizing scope is based on sizing questionnaires completed with the Customer and outputs from the technical workshops.
- 1.51** The Contractor estimates that the storage estimates are sufficient to satisfy the Customer's requirements for the period of this contract and if insufficient the Contractor will provisional additional capacity at no cost for the Customer.
- 1.52** The Contractor's storage services comprise:
- (a) provisioning, monitoring and management of the storage system; and
 - (b) replication of production data to backup data centre to support disaster recovery.
- 1.53** Platform capacity consumption for Additional Services purchased will be costed on the basis of pricing outlined in the AESG Catalogue.

INFRASTRUCTURE SERVICES

- 1.54** The Contractor will implement suitable monitoring tools such as Zabbix for infrastructure monitoring, Solution Manager and Computer Associates Wily for application to monitor the AESG Service on a 24 x 7 basis.

- 1.55** The Contractor will apply the necessary security features to ensure requirements in section 5.8 of the SLA are met.

BACKUP AND RECOVERY

- 1.56** The Contractor will provide the following backup and recovery features in accordance with the Service Levels:

- (a) disk and tape backup and recovery at primary and backup data centres (tapes stored off-site);
- (b) backups include all operating systems and Customer Data; and
- (c) backups will be encrypted using AES256 encryption.

- 1.57** With regards to backup management, the Contractor will perform the following services:

- (a) daily incremental backup (to disk) and weekly full backup (to tape);
- (b) weekly backups will be sent offsite for storage;
- (c) retention of daily and weekly production backups for 30 days;
- (d) retention of non-production backups for 14 days; and
- (e) upon request as a Service Request provide the Customer with a full SAP data export or if the Customer is appropriately licensed, a full SAP client export.

- 1.58** Data restore requests, not resulting from any system failure or action by the Contractor, are regarded as an Additional Service.

NETWORK CONNECTIVITY

- 1.59** The AESG Service will be connected to Services Backbone and the Customer will access the AESG Service by using the Services Backbone connectivity.
- 1.60** The Customer must provision connectivity to the Services Backbone by way of a pair of redundant connections.
- 1.61** The Customer must provide the Services Backbone as low latency redundant network design.
- 1.62** The Customer is responsible for configuration of all the required network devices (switching/routing/security) up to the AESG Service point of presence.
- 1.63** The Customer is responsible for monitoring and management of network devices at their premises and for any infrastructure comprising the Services Backbone and its connectivity to the Services Backbone of the AESG Service point of presence.

NETWORK CAPACITY

- 1.64** The Contractor must provision a 200 Mbps network bandwidth between the primary and backup data centres.
- 1.65** The Customer must provision sufficient network bandwidth up to the AESG Service solution point of presence to access the AESG Service. As at the date of this Customer Contract, the sufficient bandwidth required will be 74Mbps based on 300 concurrent users with an average dialogue size of 200kb per user per second. The Contractor must from time to time advise the Customer of any increased network bandwidth requirements, acting reasonably.

CUSTOMER DEVICES:

- 1.66** The Customer will maintain all personal computers (PCs) and other client side infrastructure required for its personnel to access and use the AESG Service as a remote server application.

- 1.67** The Customer will ensure currency of the PC SOE to ensure SAP versions can continue to be run effectively on its PCs.

SUSPENSION

- 1.68** The Contractor may not suspend the provision of any part of the Services to the Customer (or any of its Permitted Users), except and to the extent it is necessary to lock access of a Permitted User or terminate processes to address an identified risk to the use of the Services that:
- (a) poses a security risk to or may materially harm the Services or any third party; or
 - (b) may adversely impact the services, systems or content of any Tenant,
- provided that any such suspension must:
- (c) be in respect only of the relevant Permitted User and the minimum necessary portion of the Services;
 - (d) not be in respect of more than five Permitted Users in relation to the identified risk without the prior consent of the Customer; and
 - (e) be for only as long as reasonably necessary.
- 1.69** The Contractor will, where not prohibited by law and reasonable under the circumstances:
- (a) provide Customer with prior notice of any such suspension of Services; and
 - (b) allow the Customer an opportunity to take steps to avoid any such suspension.
- 1.70** Upon any suspension of the Customer's or any Permitted User's right to access or use any portion or all of the Services and if the suspension is due to the fault of the Customer or such Permitted Users, then:
- (a) the Customer will continue to be liable to pay the usual Fees for the Services during the period of suspension;
 - (b) the Customer will be responsible for any applicable fees and charges for any Services to which Customer or any Permitted User continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension; and
 - (c) the Customer will not be entitled to any rebates under any Service Levels pertaining to any suspended Service.
- 1.71** If the suspension is not due to the fault of the Customer or any Permitted Users, the Customer will not be liable for any fees or charges relating to the suspended Services for the duration of the suspension.

2. Support Services

SERVICE LOCATIONS

- 2.1** The Contractor's Support Services will be provided from locations in Australia and India.

SUPPORT SERVICES

- 2.2** The Contractor's Support Services are subject to the controls outlined in Attachment 3-4 (Support Services), 3-5 (Security Services) to Schedule 3 (Service Level

Agreement) and Attachment 13-4 (Transition Out Services and Catalogue Pricing) of Schedule 13 (Additional Conditions).

APPLICATION SUPPORT SERVICES

- 2.3 The Contractors day to day operational AESG Services are summarised as follows and within the security framework as outlined in Section 5 and Attachment 3-5 (Security Services) to Schedule 3 (Service Level Agreement):

AESG Service	High Level Service Summary
Ongoing service & delivery management	<ul style="list-style-type: none"> • Day-to-day Service delivery and oversight; • Provision of reporting detailed in the Customer Contract; • Service Level monitoring; • Participation in reviews, client satisfaction surveys and governance activities; • Participation in a minimum of two audits for up to 5 days each.
AESG level 2 Help Desk services	<ul style="list-style-type: none"> • Single point of contact for all Incidents and Service Requests as escalated by Super User Group; • Call logging & tracking; • Working with Super Users to provide communications & updates, and obtain clarifications where required.
AESG level 2 and 3 support & operations	<ul style="list-style-type: none"> • Incident / problem management & resolution; • Service Requests (80 hours per month); • Provision of Additional Services where required and agreed to; • 'Priority/VIP Requests and/or Additional Services where required and agreed to with delivery being in negotiated and agreed timeframes; • Production support (BASIS, DBA, technical architecture, performance management & environment management); • Production control & scheduling (batch operations); • Software currency services (corrective patches, OSS notes, support packs, enhancement packs); • Infrastructure administration & support; • Application administration and support; • Security investigations as required; • Data centre LAN management.

SERVICE EXCLUSIONS

- 2.4 The following functions are out of scope for the Contractor as part of the ongoing Services of this Contract after the Cutover Date, but may be considered, as available Additional Services with costs associated as detailed in the AESG Catalogue:
- Level 1 Requests;
 - Business process support and legislative support;
 - Enhancements and changes that do not fall within definition of Service Requests and are not consistent with the AESG Roadmap;
 - Fast Track Service Requests, that cannot be delivered in required timeframe, using the normal Service Request monthly hours allowance;
 - Major Upgrades will be addressed through Additional Services and are not part of the Base Services;

- (f) Permitted User training;
- (g) Customer site based services;
- (h) Customer LAN, desktop and PC SOE management;
- (i) User security – identity management; and
- (j) NSW Government Data Centre: where the data centre is GovDC, the Contractor is not responsible for any issues related to the GovDC facilities (including electricity and utility supply, air conditioning and physical security) provided that Contractor will flow through to the Customer a proportion (divided proportionately between Tenants based on their number of FTEs) of the remedy under any SLA which it has which is provided by GovDC to Hosting Provider in respect of that same Service Level failure..

SERVICE MANAGEMENT PROCESSES

- 2.5 The Contractor’s AESG Service is delivered using Contractor’s proprietary Accenture Delivery Methodology (ADM) processes with respect to Support Services which are aligned to ITIL standard processes.
- 2.6 Support Services are described in Attachment 3-4 (Support Service) to Schedule 3 (Service Level Agreement).

BUSINESS CONTINGENCY

- 2.7 The Contractor will develop a detailed Business Contingency Plan before the Cutover Date for each Wave as part of the Transitioning In Project, and will review and update this Plan as new services and additional areas of the business are included. The Business Contingency Plan will comply with requirements as detailed in sections 4.9 to 4.17 of the SLA.

3. Services RACI Chart

DETAILED RESPONSIBILITY MATRIX

- 3.1 The key service delivery accountabilities for Contractor and Customer in relation to the AESG Service and Support Services are defined in the following Service RACI chart:

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