

**PROCURE IT FRAMEWORK
VERSION 3.2**

PART 2: CUSTOMER CONTRACT

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1. Recitals

PROCURE IT FRAMEWORK

- 1.1** The New South Wales Department of Customer Service administers the *Procure IT Framework*.
- 1.2** The Procure IT Framework sets out the standard terms used by NSW Government buyers for the acquisition of information and communications technology related products and services. Such standard terms are set out in:
- (a) in respect of Panel Arrangements, the relevant Part 1 - Head Agreement;
 - (b) Part 2 - the Customer Contract, including its Schedules;
 - (c) Part 3 - the Dictionary;
 - (d) Part 4 - the Modules; and
 - (e) Part 5 - the Module Order Forms.
- 1.3** 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 Government Agency or for other Government Agencies, subject to any terms and conditions of its accreditation.
- 1.4** The Board may issue directions and policies in relation to the NSW Government's procurement system under section 175 of the PWP Act. When engaging contractors under the Procure IT Framework, Government Agencies must comply with all such directions and policies of the Board that are applicable from time to time.
- 1.5** The Contract Authority is the head of a Government Agency, which may procure goods and services for that Government 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.
- 1.6** 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.
- 1.7** 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

- 1.8** 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*.

- 1.9** 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

- 1.10** 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

- 1.11** 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.

- 1.12** The Parties agree to perform their obligations in accordance with the terms and conditions of this Customer Contract.

DICTIONARY

- 1.13** 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 Contractor must supply Products and/or Services stated in the Order Documents in accordance with the Head Agreement and Customer Contract, 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 Contractor must supply the Products and/or Services stated in the Order Documents in accordance with the Customer Contract.

PRICING

- 2.3** The Price payable by the Customer for the Products or Services is set out in Item 11 of the General Order Form. In relation to Panel Arrangements, the amounts set out in Annexure 3 to

the relevant Head Agreement are the maximum amounts payable by a Customer for the Products or Services acquired during the Term of such 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 Secretary, New South Wales Department of Customer Service in accordance with the directions and policies of the Board that are applicable from time to time.

- 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) 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), the 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 is 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 and is executed by the parties by means of electronic communication in accordance with relevant Statutory Requirements.
- 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; and
- (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 Deliverables 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 statutory guarantee under sections 54 to 59 in Schedule 2 of the CCA in respect of Deliverables comprising of goods, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other 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; and
- (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 statutory guarantee in respect of the supply of Deliverables comprising of services under sections 60 to 62 in Schedule 2 of the CCA, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

- (a) the supplying of the services again; or
- (b) the 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 or 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** Except where expressly specified in the Order Documents or any Additional Conditions, 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.

SYSTEM

- 5.11** If it is stated on the General Order Form that the Products and Services procured by the Customer pursuant to this Customer Contract comprise a System:

- (a) the Contractor must in an efficient and well-coordinated manner, and in accordance with the PIPP:
 - (i) develop suitable technical and functional specification documents for the proposed System;
 - (ii) design, develop and build the System; and
 - (iii) assist the Customer with Acceptance Testing the System,
in accordance with this Customer Contract and the relevant Modules; and
- (b) final acceptance of the System under this Customer Contract will not occur until such time as the System as a whole, including all components, passes all Acceptance Tests, including such Acceptance Tests as are designed to ensure that the System is in accordance with the Contract Specifications.

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 and 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 (if any).
- 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 a 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 any 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 (if any).

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 to claim any loss, damage or expense (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) suffered by the Contractor that arise out, or in connection with a delay 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 the Contractor 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 a Force Majeure 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 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 failure to complete the LD Obligation (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 or expense that arise 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;
 - (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 (or such other document reasonably acceptable to the Customer) 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 within 30 days of the Commencement Date or such other period agreed by the Parties in writing.
- 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.

CUSTOMER DATA

- 7.4** The Contractor does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in the Customer Contract and the relevant Modules.
- 7.5** The Contractor must not transfer, take or send Customer Data which is a State Record outside the jurisdiction of New South Wales, Australia, or transfer the possession of the Customer Data, without the Customer's prior written consent or as specified in Item 25A of the General Order Form.

- 7.6** If the Customer provides the Contractor with consent under clause 7.5, the Contractor must comply with any conditions imposed by the Customer in relation to the Customer Data the subject of the consent.
- 7.7** The Contractor must retain only the Customer Data that the Customer has agreed the Contractor may retain and must only retain that Customer Data for the period of time and in the volumes notified by the Customer from time to time, after which date the Contractor must destroy the Customer Data or return it to the Customer, at the Customer's election.
- 7.8** Where the Customer has agreed in writing that Customer Data may be used for testing purposes, the Contractor must not use any Customer Data for testing purposes unless that Customer Data has first been masked or de-identified in a manner approved by the Customer.
- 7.9** If stated in a Module Order Form, the Contractor must take and maintain back ups of Customer Data that is loaded into a Deliverable so that there is no loss of Customer Data in the event that any failure of any Deliverable causes damage to, or loss of, any Customer Data.

SECURITY

- 7.10** The Contractor must:
- (a) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised access, use, destruction, loss or alteration of Customer Data and the Customer's other Confidential Information; and
 - (b) notify and keep the Customer notified at all times of the Contractor's current safety and security procedures and safeguards in respect of Customer Data and keep the Customer notified of any amendments to such procedures and safeguards that are made from time to time.
- 7.11** Without prejudice to clause 7.10, 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.
- 7.12** Unless approved by the Customer's Chief Information Officer and expressly agreed in the General Order Form, if the Contractor becomes aware of an actual, alleged or suspected breach of the secrecy and security requirements referred to in clause 7.10 or 7.11 (**Security Issue**), it must:
- (a) immediately notify the Customer of the Security Issue;
 - (b) within 48 hours from the notification in clause 7.12(a) conduct an investigation into the Security Issue and notify the Customer of the Contractor's findings in respect of whether a secrecy or security breach has occurred, the nature of the breach, its consequences and plan to remedy; and
 - (c) if a secrecy or security breach has occurred, within 24 hours from the conclusion of the investigation in clause 7.12(b) remedy the security breach and notify the Customer of the remedy.

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 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 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) require the Contractor to meet with the Customer 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 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, damage or expense 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 – 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 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 8 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 omissions 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.

9.3 If stated in the General Order Form that the Products and Services procured by the Customer pursuant to this Customer Contract comprise a System:

- (a) subject to clauses 3.11 to 3.13 (inclusive), any qualifications to the warranties provided by the Contractor under the Modules in respect of the Products and Services comprising the System are excluded; and
- (b) the Contractor warrants to the Customer that to the best of its knowledge and belief:
 - (i) the System will comply with the Contract Specifications and the Customer Contract;
 - (ii) the System will be properly installed in a professional and competent manner;
 - (iii) each Deliverable comprising the System will be compatible, interoperable and integrate properly with each other Deliverable comprising the System; and
 - (iv) the System will be compatible, interoperable and integrate properly with the Designated Environment.

CUSTOMER WARRANTIES

9.4 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

9.5 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 9.5 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 10.3 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 To the extent that:

- (a) Acceptance Test Data is required for the Contractor to complete the Acceptance Tests; and
- (b) the provision of that Acceptance Test Data is specified as the Customer's responsibility in the Order Documents or the documents setting out the Acceptance Tests,

the Customer must provide that Acceptance Test Data to the Contractor:

- (c) at the times specified in the Order Documents or the documents that set out the Acceptance Tests; or
- (d) if no times are specified in those documents, at least 14 Business Days prior to the date on which the Acceptance Test Period for the applicable Acceptance Tests commences.

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 Tests.

10.7 The Parties are entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Tests.

10.8 The Party conducting the Acceptance Tests must provide the other Party within the Acceptance Test Notification Period a written test notification specifying:

- (a) a written summary of the Acceptance Tests;
- (b) the results achieved from those Acceptance Tests; 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 Without prejudice to the Customer's other rights and remedies, 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.

11.5 The Customer may retain a proportion of the payment for any Milestones in the amount and for the period stated in the 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 may be 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 of the dispute, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and
 - (b) pay the undisputed portion of the invoice 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 13.11 applies.

13.3 All Intellectual Property Rights in any New Material vest in, or, are 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 "Public Service agency" or other "government sector agency" (as defined in the *Government Sector Employment Act 2013* (NSW)), any NSW Government agency or statutory body representing the Crown (as referenced in section 13A of the *Interpretation Act 1987* (NSW)), any other public authority that is constituted by or under an Act of the State of New South Wales or that exercises public functions, and any "public health organisation" (as defined in 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, to a contractor that is providing outsource services to the Customer that include 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 licence 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;
 - (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; and
 - (e) if that Existing Material is an Online Service, the right to use and access that Existing Material on the terms and conditions under the relevant Module.
- 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 to perform its obligations under the Customer Contract.
- 13.9** Unless expressly agreed otherwise in the General Order Form, the licenses granted under clauses 13.6(c), 13.6(d), 13.7 and 13.8 are perpetual and irrevocable to the extent required for the Customer to receive the benefit of the Products and the Services in accordance with the terms and conditions of the Customer Contract.
- 13.10** The Contractor may charge for any licence to use any of its Existing Material, such fees to be stated in Item 34 of the General Order Form.

CUSTOMER OWNED NEW MATERIAL

- 13.11** 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 13.13 to 13.15, upon the AAD of the relevant Deliverable that incorporates the New Material:
- (a) any Intellectual Property Rights in the New Material vest in, or are hereby transferred or assigned by the Contractor to, the Customer; and

- (b) the Customer may, in its sole discretion and only if stated in the General Order Form, grant the Contractor a :
 - (i) non-exclusive, perpetual irrevocable, royalty free, transferable licence in respect of the Intellectual Property Rights in the New Material to use, copy, adapt, translate, manufacture and in any other way exploit the Intellectual Property Rights in the New Material; or
 - (ii) licence in respect of the Intellectual Property Rights in the New Material on such terms as are specified in the General Order Form.

CUSTOMER MATERIAL

13.12 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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13.13 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, methodologies, processes, technologies, algorithms, 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

13.14 The Contractor must not, without the prior written consent of the Customer:

- (a) develop or enhance any Deliverable using Open Source Software; or
- (b) insert any Open Source Software into any Deliverable.

13.15 Where the Customer provides its consent in relation to the use of any Open Source Software under clause 13.14(a) the Contractor will ensure that the use of that Open Source Software will not:

- (a) result in an obligation to disclose, license or otherwise make available any part of the Customer's environment, data or Confidential Information to any third party; or
- (b) diminish the Contractor's obligations under this Customer Contract.

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) Secretary, New South Wales Department of Customer Service and to that Department's 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;
- (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 in circumstances where such persons have a need to know (and only to the extent that each has a need to know and has been directed and agrees to keep confidential the Confidential Information on terms not inconsistent with this Customer Contract); 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 when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under this Customer Contract:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with the Customer Contract only for the purposes of performing its obligations under this Customer Contract;
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (c) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Customer, would be a breach of any Privacy Laws;
- (d) not disclose Personal Information to any other person without the prior written consent of the Customer or as expressly required by Statutory Requirements;
- (e) 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, and comply with any reasonable direction from the Customer with respect to remedying that breach;
- (f) 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;
- (g) 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 or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably within the Contractor's

power to protect the Personal Information from misuse, interference and loss and from unauthorised access or use, modification or disclosure;

- (h) not allow, or permit access to, or transfer any Personal Information that belongs to the Customer, has been provided by the Customer or has been collected, accessed or used by the Contractor with the consent of the Customer, outside of Australia, unless it has first obtained the Customer's approval in writing or as specified in Item 25B of the General Order Form;
- (i) 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
- (j) 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 substantially 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 consent of the Contract Authority and the Secretary, New South Wales Department of Customer Service to be exempt from 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** Where it is 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, damage or expense arising from, or in connection with, such failure by the Contractor, the Customer may deduct its loss, damage or expense (in so far as those losses, damages and expenses 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, damage or expense 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; or
- (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 3.12, 3.13, and 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;
 - (iii) a Recurring Service other than a Short Term Recurring Service;
 - (A) if the claim arose after the Recurring Service 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; or
 - (iv) a System, two times the Contract Value for the Non-Recurring Service or Product comprising the System.

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 loss, damage or expense 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 loss, damage or expense, 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, damage or expense 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 an IP Claim is caused by:
- (a) any open source software that forms part of the Deliverable;
 - (b) the combination, operation or use of a Deliverable with any other product, equipment business method, software or data (unless such combination, operation or use is approved by the Contractor or in accordance with the Contract Specifications);
 - (c) any modification of a Deliverable by any person other than the Contractor or its Personnel unless such modification is approved by the Contractor;
 - (d) the Contractor following the designs, specifications or instructions provided by the Customer or other person on the Customer's behalf; or
 - (e) the continued use of a 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 clause 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 19.9, the Contractor may terminate the Customer Contract on 30 days' Notice in Writing and will be liable for all loss, damage or expense suffered by the Customer in connection with 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) clause 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 For the purposes of clause 19.1(c) an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), sections 96 and 100 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the *Circuit Layouts Act 1989 (Cth)*, 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

- 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, during the Contract Period, comply with the NSW Government policy known as the “Small and Medium Enterprises (‘SME’) Policy Framework” in respect of such competitive quote. 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 New South Wales Department of Customer Service Statement of Business Ethics (<https://www.finance.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 IN CONTROL

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

RECORD KEEPING AND AUDIT

- 23.4** The Contractor must keep financial records and other information relevant to the performance of the Customer Contract including as are required to allow the Customer to determine the Contractor's compliance with this Customer Contract and the accuracy of its invoices.
- 23.5** Subject to clause 23.11, no more than once in any calendar year, the Customer may conduct an audit to enable the Customer to confirm the Contractor's compliance with this Customer Contract by giving the Contractor at least 5 Business Days' prior written notice. Clauses 23.6 to 23.8 apply to an audit conducted by the Customer.
- 23.6** The Contractor must give the Customer and its Personnel (including internal and external auditors and advisers) full access at all reasonable times and on reasonable notice:

(a) to data in the possession or control of the Contractor or any of its Subcontractors (other than any data or information containing the Contractor's or its Subcontractor's costs and margins or of a financially sensitive nature); and

(b) to the Contractor's Personnel,

for the purposes of obtaining information in connection with an audit under clauses 23.5 and 23.6.

- 23.7** For the purpose of complying with clause 23.6, the Contractor must promptly and efficiently give the Customer and their Personnel any assistance they reasonably require.
- 23.8** The Customer and its Personnel must comply with the Contractor's reasonable security requirements.
- 23.9** Without limiting the rights of the Customer, if an audit shows that the Contractor has breached or is in breach of this Customer Contract, the Contractor must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Customer.
- 23.10** If an audit shows that the Contractor has overcharged the Customer in any invoice, the Contractor must promptly refund any amounts that the Contractor has overcharged the Customer, and adjust all of the current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount.
- 23.11** The Contractor and Customer may agree an alternative audit mechanism to that provided in clauses 23.5 to 23.8, such mechanism to be specified in Item 40A of the General Order Form or otherwise as agreed in writing. Any alternate audit mechanism agreed to under this clause 23.11 must address compliance with the Contractor's Customer Data, security and privacy obligations and such other of the Contractor's obligations required by the Customer and reasonably agreed by the Contractor.

NOTICES

- 23.12** 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 of such Party.
- 23.13** Any Notice in Writing is regarded as given and received:
- (a) if sent by mail; 3 Business Days after it is posted;
 - (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; and
 - (c) if sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

24. Dispute Resolution

- 24.1** The Parties agree to resolve any dispute between them that arises 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 Customer Contract 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 the dispute .
- 24.11** Unless the Parties otherwise agree in writing, clauses 24.7 to 24.8 do not apply to any dispute:
- (a) for which either Party's claim exceeds \$250,000 or the amount stated in Item 41 of the General Order Form;(b) that involves a party claiming that a statutory guarantee under the CCA is involved in the dispute; or
 - (c) which 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 totalling 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 New South Wales Department of Customer Service (DCS) Statement of Business Ethics (<https://www.finance.nsw.gov.au/about-us/business-ethics>) including failure to:
 - (i) comply with applicable NSW Government Code of Practice and DCS'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 becomes aware of the conflict,
 - (iv) act ethically, fairly and honestly in all dealings with DCS, the Contract Authority or the Customer,
 - (v) take all reasonable measures to prevent the disclosure of Confidential Information of DCS, the Contract Authority and the Customer,

- (vi) assist DCS, 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 DCS, 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) if Item 42 of the General Order Form does not state an amount that is payable on termination, indemnify the Contractor against any losses, damages or expenses, which are reasonably and properly incurred by the Contractor to the extent that those losses, damages or expenses were incurred as a direct result of the termination of the Customer Contract in accordance with clause 25.3; or
- (b) pay any amount that is stated in 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 Deliverables in which case the Contractor shall, subject to clause 18, be liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Deliverable and the similar alternative) or suffered 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.

25.9 On termination of this Customer Contract for any reason:

- (a) subject to any obligations arising out of any applicable State security classification or Statutory Requirements or specified in the Order Documents, a Party may retain for quality assurance and risk management purposes any notes and other records created or received in providing the Product or performing the Service provided that any retained notes or records are subject to the confidentiality obligations in accordance with clause 14;
- (b) at the Customer's request made within 60 days following termination, the Contractor must provide the Customer with a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by the Contractor. Where it is specifically agreed that the Contractor may satisfy this clause by providing access to a copy of the data, the Contractor must first

advise the Customer by 30 days' notice in writing to both the Agency Head and Chief Information Officer of the Customer that such data will be available for download for a specified period (being no less than 60 days in duration) and on expiry of such period, such data will then be deleted;

- (c) the Contractor must delete Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification that the Customer Data has been deleted;
- (d) the Contractor must cease providing the Products and Services; and
- (e) the Contractor must comply with any other reasonable direction issued by the Customer where permitted by the Customer Contract.

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 required under directions and policies issued by the Board from time to time, the Customer must obtain the written approval of the Secretary, New South Wales Department of Customer Service prior to agreeing to a variation of any term or condition of the Procure IT Framework, 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 such 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 an 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.

FORCE MAJEURE EVENTS

- 26.9** A Party is excused from performing its obligations to the extent it is prevented by a Force Majeure Event, except a Force Majeure Event which requires a Party to take steps pursuant to a Business Contingency Plan. The Contractor must immediately notify the Customer of the occurrence of the Force Majeure 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 Force Majeure Event. If the affected Party is prevented from performing its obligations under the Customer Contract by the Force Majeure 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.

GOVERNMENT INFORMATION

- 26.12** The Contractor acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Customer Contract on its nominated website established for GIPA Act disclosures. The Contractor irrevocably consents to the Customer acting in accordance with this clause.
- 26.13** To the extent that section 121 of the GIPA Act applies, the Contractor must, upon receipt of a written request by the Customer, provide the Customer with immediate access to the following information contained in records held by the Contractor:
- (a) information that relates directly to the performance of Services by the Contractor;
 - (b) information collected by the Contractor from members of the public to whom it provides, or offers to supply, Services; and
 - (c) information received by the Contractor from the Customer to enable it to provide Services.
- 26.14** For the purposes of clause 26.13, information does not include:
- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - (b) information that the Contractor is prohibited from disclosing to the Customer by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (c) information that, if disclosed to the Customer, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Customer, whether at present or in the future.

26.15 The Contractor will provide copies of any of the information in clause 26.13, as requested by the Customer, at the Contractor's own expense and in such medium as the Customer may reasonably require.

26.16 Without limiting or otherwise restricting clauses 26.12 to 26.15, the Contractor:

- (a) authorises the Customer to make information concerning the Contractor available to other Government Agencies. Such information may include any information provided by the Contractor to the Customer and any information relating to the Contractor's performance under this Customer Contract;
- (b) acknowledges that information about the Contractor from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any Officers of the Contractor or a Related Company may be taken into account by Government Agencies considering whether to offer the Contractor future opportunities for working with Government Agencies;
- (c) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
- (d) releases and indemnifies the Customer and the State of New South Wales from and against any claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

SEVERABILITY

26.17 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

26.18 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

26.19 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

26.20 The provisions of clauses 3.11 to 3.13, 6.42 to 6.44, 8.1 to 8.4, 13.4 to 13.8, 13.9, 13.11, 13.13, 13.15, 14.1 to 14.3, 15, 16.3, 18, 19, 25.7, 25.8, 26.20 and 26.22, 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

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

APPLICABLE LAW

26.22 The laws of 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], ABN [insert ABN]

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

Signature of Customer representative

[Signature area]

[Signature area]

Date

In the presence of:

Signature of Customer's witness

[Signature area]

[Signature area]

Print Name

[Print Name area]

Date

Signed by [#Insert the company name of the Contractor], ABN [insert ABN] in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of director/company secretary

Signature of director

Print name

Print name

Date

PROCURE IT FRAMEWORK

VERSION 3.2

PART 3: DICTIONARY

DICTIONARY

1. AGREED TERMS & INTERPRETATION

AGREED TERMS

- 1.1 Acceptance Criteria** means the criteria to be applied in the performance of any Acceptance Test.
- 1.2 Acceptance Test Notification Period** means a period of 3 Business Days from the end of the Acceptance Test Period, or such other period stated in Item 32 of the General Order Form or agreed in writing, within which the Party conducting an Acceptance Test must provide the other Party with written notice of the results of the Acceptance Test.
- 1.3 Acceptance Test Data** means the data that is provided by the Customer, and agreed by the Contractor in Item 32 of the General Order Form, that reflects the data the Customer will use in the relevant Deliverable, that is to be used for Acceptance Testing.
- 1.4 Acceptance Test Period** means the period for the performance of any Acceptance Tests for any Deliverable which is a period of 10 Business Days from the delivery of the Deliverable to the Customer, or such other period stated in Item 32 of the General Order Form or agreed between the Parties in writing.
- 1.5 Acceptance Tests** means any acceptance tests stated in Item 32 of the General Order Form or agreed in writing.
- 1.6 Actual Acceptance Date or AAD** means the actual acceptance date for a Deliverable, being the date calculated in accordance with clause 10.1 of the Customer Contract.
- 1.7 Additional Conditions** means any terms or conditions which vary, or are additional to, the terms and conditions set out in the Customer Contract, which are stated in Item 43 of the General Order Form and which, subject to directions and policies issued by the Board from time to time, require the prior written approval of the Secretary, New South Wales Department of Finance, Services and Innovation as set out in clause 3.2(b) of the Customer Contract.
- 1.8 Agency** means:
- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, State or Territory legislation, or an instrument made under that legislation (including a local authority);
 - (b) a body established by the Governor-General, a State Governor, or by a Minister of state of the Commonwealth, a State or a Territory; or
 - (c) an incorporated company over which the Commonwealth, a State or a Territory exercises control.
- 1.9 Agreement Documents** means the documentation listed in Schedule 2 to the Customer Contract.
- 1.10 Annexure** means a document that is incorporated into, and forms part of, the Head Agreement.
- 1.11 Approved Agent** means any entity that is authorised in writing by the Contractor to act as the Contractor's legal agent for the purpose of supplying Products and/or Services to the Customer under a Customer Contract, and whose identity is:

- (a) stated in the Head Agreement Details or otherwise approved by the Contract Authority; or
 - (b) where there is no Head Agreement, approved by the Customer,
- but excludes the directors, officers or employees of the Approved Agent.
- 1.12 Authorised Representative** means a person who has authority to act on behalf of a Party in accordance with the Head Agreement (Part 1) or the Customer Contract (as applicable).
- 1.13 Bespoke User Documentation** means documents created for the Customer as a Deliverable under a Customer Contract that describe the features and functions of a Product or Service that has been created, modified or adapted for the Customer under a Customer Contract, in a hard copy, electronic or online format as stated in the Contract Specifications.
- 1.14 Board** means the New South Wales Procurement Board established under section 164 of the PWP Act.
- 1.15 Business Contingency Plan** means a plan detailing the nature and scope of the business contingency services to be provided by the Contractor to overcome interruptions 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 requirement, as stated in Item 24 of the General Order Form.
- 1.16 Business Day** means any day that is not Saturday, Sunday or a public holiday in New South Wales.
- 1.17 Business Hours** means 9.00am to 5.00pm on a Business Day.
- 1.18 CCA** means the Competition and Consumer Act 2010 (Cth).
- 1.19 Change in Control** means a circumstance in which control is or may be exercised over the Contractor:
- (a) by virtue of the change of a direct holding of at least fifteen percent of the voting shares in the Contractor or a holding company of the Contractor; or
 - (b) by any other means whatsoever.
- 1.20 Change Request** means a change requested by either Party which, if signed by the Parties, will result in a variation to any part of the Customer Contract.
- 1.21 Commencement Date** means:
- (a) the Commencement Date stated in Item 10 of the General Order Form; or
 - (b) if no Commencement Date is stated in the General Order Form, the date the Customer Contract is signed by the Customer and the Contractor.
- 1.22 Confidential Information** means information that:
- (a) is by its nature confidential;
 - (b) is communicated by the disclosing party to the confidant as confidential;
 - (c) the confidant knows or ought to know is confidential; or
 - (d) relates to:

- (i) the Customer Data;
- (ii) the Products and Services;
- (iii) the financial, corporate and commercial information of any Party;
- (iv) the affairs of a third party (provided the information is non-public); or
- (v) the strategies, practices and procedures of the State and any information in the Contractor's possession relating to a Government Agency,

but excludes any information which the confidant can establish was:

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

1.23 Conflict of Interest means the Contractor engaging in any activity, or obtaining any interest, whether pecuniary or non-pecuniary, which is likely to, has the potential to, or could be perceived to, restrict the Contractor from performing its obligations under the relevant Part in an objective manner.

1.24 Consequential Loss means any loss, damage or expense recoverable at law:

- (a) other than a loss, damage or expense that would be suffered or incurred by any person in a similar situation to the person suffering or incurring the loss, damage or expense; or
- (b) which is a loss of:
 - (i) opportunity or goodwill;
 - (ii) profits, anticipated savings or business;
 - (iii) data; or
 - (iv) value of any equipment,

and any costs or expenses incurred in connection with the foregoing.

1.25 Contract Authority means the head of a Government Agency which may procure goods and services for that Government Agency or for other Government Agencies consistent with any applicable policies and directions of the Board and the terms of its accreditation (if any) by the Board, and described in Item 2 of the Head Agreement Details.

1.26 Contract Period means the period of the Customer Contract stated in Item 10 of the General Order Form, including any period or periods of extension of the Customer Contract made in accordance with clause 2.4 of the Customer Contract.

1.27 Contract Price means the total of all Prices payable by the Customer to the Contractor for the Deliverables supplied under the Customer Contract as stated in Item 11 of the General Order Form.

- 1.28 Contract Specifications** means the totality of any technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable provided by the Contractor under the Customer Contract being only:
- (a) any specifications stated in the Customer Contract in Item 13 of the General Order Form; or
 - (b) if no specifications are set out in the Customer Contract, the User Documentation.
- 1.29 Contract Value** means:
- (a) the amount that is the maximum amount that the Customer is legally required to pay to the Contractor for the relevant:
 - (i) Non-Recurring Service and/or Product; or
 - (ii) Short Term Recurring Service,under the Customer Contract, calculated at the Commencement Date; or
 - (b) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is an Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the greater of:
 - (i) the Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service; or
 - (ii) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
 - (c) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is no Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the aggregate of:
 - (i) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
 - (ii) the average amount paid by the Customer in each month of the Contract Period for the relevant Non-Recurring Service or Product or Short Term Recurring Service prior to the date on which the claim first arises multiplied by the number of remaining months of the Contract Period during which the relevant Non-Recurring Service and/or Product or the Short Term Recurring Services were to be provided, as set out in the Order Documents.
- 1.30 Contract Variation** means a variation to the terms and conditions of the Customer Contract that requires the consent of the Secretary, New South Wales Department of Finance, Services and Innovation in accordance with clause 26.2 of the Customer Contract.
- 1.31 Contractor** means the person or body corporate named in Item 3 of the Head Agreement Details and/or Item 4 of the General Order Form that enters into the relevant Part. For the purpose of a Customer Contract, Contractor includes any Approved Agent who enters into the Customer Contract. Contractor does not include any of the Contractor's Personnel (other than an Approved Agent).
- 1.32 Contractor Information** means information relating to:

- (a) the Head Agreement and any Customer Contract formed under the Head Agreement subject to the exclusions stated in Item 5 of the Head Agreement Details;
- (b) the Contractor's performance under the Head Agreement or a Customer Contract;
- (c) the financial position or reputation of the Contractor; and/or
- (d) the shareholdings in the Contractor, or the corporate structure, directorship or shareholdings of the Contractor,

but excluding any of the Contractor's Confidential Information or Intellectual Property Rights.

1.33 Correctly Rendered Invoice means an invoice that is rendered in the form of a Tax Invoice where:

- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
- (b) the invoice is set out as an itemised account which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
- (c) the invoice is accompanied by documentary evidence that signifies that acceptance (where appropriate) has occurred in accordance with the Customer Contract; and
- (d) the invoice is addressed to the officer stated in Item 6 of the General Order Form to receive invoices.

1.34 Customer means the person or body corporate named in Item 1 of the General Order Form that enters into a Customer Contract with the Contractor. Customer does not include any of the Customer's Personnel.

1.35 Customer Contract means those Parts, terms and conditions and other documents listed in clause 3.8 of Part 2.

1.36 Customer Data means all data and information relating to the Customer or any other Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any other Government Agency, including Personal Information, in whatever form that information may exist and whether entered into, stored in, generated by, retrieved, printed, processed or produced as part of any Services.

1.37 Customer Supplied Item or **CSI** means the items set out in Item 22 of the General Order Form to be supplied by the Customer under a Customer Contract.

1.38 Cyberterrorism means an assault on any electronic communications network.

1.39 Defect means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet the Contract Specifications and other requirements under the Customer Contract.

1.40 Defects List means a written notice stating details of the actual results of any Acceptance Test, and for any alleged Defect(s) a statement as to whether the alleged Defect is Minor. The Defects List is not required to include the cause of the Defect.

1.41 Deliverable means any Product, Service or output from any Service that is required to be provided to the Customer under the Customer Contract, and if applicable, includes the System.

- 1.42 Designated Environment** means the hardware platform / operating system combination of the Customer as described in the relevant Module Order Form.
- 1.43 Document** includes:
- (a) any paper or other material on which there is writing;
 - (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and/or
 - (d) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software.
- 1.44 Due Date** means the date by which an LD Obligation must be met, as stated in Item 21 of the General Order Form.
- 1.45 Eligible Customer** means any Government Agency or Eligible non-Government Body.
- 1.46 Eligible non-Government Body** means a public body being eligible to buy under a specific Head Agreement, including the following bodies (as identified under the Public Works and Procurement Regulation 2014 clause 6:
- (a) a private hospital;
 - (b) a local council or other local authority;
 - (c) a charity or other community non-profit organisation;
 - (d) a private school or a college;
 - (e) a university;
 - (f) a public authority of the Commonwealth, any other State or Territory;
 - (g) a public authority or of any other jurisdiction (but only if it carries on activities in this State); or
 - (h) any contractor to a public authority (but only in respect of things done as such a contractor).
- 1.47 Escrow Agreement** means an agreement under which an independent third party receives the source code or object code of certain software from the Contractor for delivery to the Customer or the Contractor upon the fulfilment of pre-specified conditions and is substantially in the form of Schedule 5 to the Customer Contract unless otherwise agreed by the Parties.
- 1.48 Escrow Materials** means:
- (a) the source code, object code of any software Deliverable and all other relevant software programs owned by the Contractor;
 - (b) documentation;
 - (c) drawings and plans; and
 - (d) a list of any relevant third party software programs,

sufficient to enable a competent programmer skilled in the use of the software included in the Deliverable (and any necessary development tools used to create the Deliverable) to keep the Deliverables in good order and repair, that are stated in Item 23 of the General Order Form.

- 1.49 Estimated Contract Price** means the Parties' estimate of the amount payable under the Customer Contract for the relevant:
- (a) Non-Recurring Service or Product; or
 - (b) Short Term Recurring Service,
- as stated in Item 39 of the General Order Form.
- 1.50 Existing Material** means any Licensed Software or any other Material that is developed:
- (a) prior to the Commencement Date; or
 - (b) independently of the Customer Contract,
- and that is incorporated into a Deliverable under the Customer Contract.
- 1.51 Financial Security** means the security in Item 38 of the General Order Form which is in substantially the form of Schedule 10 to the Customer Contract.
- 1.52 Force Majeure Event** means a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time and includes:
- (a) natural events like fire, flood, or earthquake;
 - (b) national emergency;
 - (c) terrorist acts (including Cyberterrorism) and acts of vandalism; or
 - (d) war.
- 1.53 Fundamental Breach** means a breach of the Customer Contract by the Customer which prevents the Contractor from carrying out its obligations under the Customer Contract.
- 1.54 General Order Form** means Schedule 1 to the Customer Contract and includes the Order Details that are relevant to that Customer Contract.
- 1.55 GIPA Act** means the Government Information (Public Access) Act 2009 (NSW).
- 1.56 Government Agency** means any of the following:
- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013 (NSW)*);
 - (b) a NSW Government agency;
 - (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation); or
 - (d) any State owned corporation prescribed by regulations under the PWP Act.
- 1.57 GST** has the same meaning as in the GST Law.

- 1.58 GST Law** means any law imposing or relating to a GST and includes the *A New Tax System (Goods & Service Tax) Act 1999* (Cth) and any regulation pursuant to such Act.
- 1.59 Hardware** means the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices.
- 1.60 Head Agreement** means an agreement between the Contract Authority and the Contractor, comprising those Parts, terms and conditions and other documents listed in clause 4.2 of Part 1.
- 1.61 Head Agreement Details** means those details stated in Annexure 1 to Part 1.
- 1.62 Head Agreement Documents** means the documentation listed in Annexure 2 to Part 1.
- 1.63 Insolvency Event** means where a Party:
- (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 entitled to, or 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.
- 1.64 Install** means to set up Hardware so that the manufacturer's installation tests can be completed successfully.
- 1.65 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 names 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 paragraph (a),
- but does not include the right to keep confidential information confidential, Moral Rights, business names, company names or domain names.

- 1.66 LD Obligation** means an obligation that is stated in Item 21 of the General Order Form as being an obligation for which the late completion by the Contractor may require the payment of liquidated damages in accordance with clauses 6.28 to 6.35 of the Customer Contract.
- 1.67 Licensed Software** means 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 Customer Contract.
- 1.68 Material** means any Document or other thing in which Intellectual Property Rights subsist.
- 1.69 Material Adverse Event** means any matter that:
- (a) substantially and adversely affects the Contractor's ability to perform any of its material obligations under the relevant Part, which may result from:
 - (i) any material litigation or proceeding against the Contractor;
 - (ii) the existence of any material breach or default of any agreement, or of any order or award that is binding on the Contractor;
 - (iii) matters relating to the commercial, technical or financial capacity of the Contractor or in the knowledge of the Contractor, any Approved Agent, Subcontractor or subcontractor proposed to be engaged in respect of this agreement; or
 - (iv) any obligation under another contract the compliance with which may place the Contractor in material breach of the relevant Part; or
 - (b) the Contractor knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Contract Authority or the Customer as a result of the Contract Authority and/or the Customer's association with the Contractor or Subcontractor.
- 1.70 Milestone** means the groups of tasks relating to and including the provision of Deliverables to be performed or provided by the Contractor under the Customer Contract.
- 1.71 Minor** means, unless otherwise agreed in the Order Documents:
- (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 insubstantial inconvenience to users of the Deliverable, provided that the Defect does not compromise security; and
 - (b) in respect of a Deliverable that is a Document, errors that are limited to errors in formatting, style, spelling or grammar or minor errors of fact or interpretation that do not detract from the usefulness or intent of the document.
- 1.72 Module** means a document that describes the additional terms and conditions that are specific to a particular Product or Service or method of acquisition of a Product or Service. The Modules applicable to the Customer Contract are stated in item 8 of the General Order Form and contained in Part 4.
- 1.73 Module Order Form** means a document that includes the Order Details that are relevant to a particular Module. The Module Order Forms are contained in Part 5.
- 1.74 Moral Rights** means a person's moral rights as defined in the *Copyright Act 1968* (Cth).
- 1.75 New Material** means any Material that is:

- (a) newly created by or on behalf of the Contractor during the performance of its obligations under the Customer Contract;
- (b) incorporated into a Deliverable; and
- (c) delivered to the Customer in accordance with the requirements of the Customer Contract,

except for any Material that is Existing Material or any adaptation, translation or derivative of that Existing Material.

1.76 Nominee Purchaser means a contractor to a Customer that is authorised to enter into the Customer Contract as the Customer's agent.

1.77 Non-Panel Arrangement has the meaning given to such term in clause 1.7(b).

1.78 Non-Recurring Services means Services which are provided by the Contractor under any of the following Modules:

- (a) Module 4 – Development Services; and
- (b) Module 13 – Systems Integration Services; and
- (c) Module 9 – Data Migration

and, if agreed by the Parties in Item 39 of the General Order Form:

- (d) Module 6 – Contractor Services;
- (e) Module 7 – Professional Services; and
- (f) Module 8 - Training Services.

1.79 Notice in Writing means a notice signed by a Party's authorised representative or his/her delegate or agent which must not be an email or a document scanned and sent by email.

1.80 Officer has the same meaning as detailed in section 9 of the *Corporations Act 2001 (Cth)*.

1.81 Online Service means cloud computing services and related Products and Services as described in the Module 10 (As a Service) Order Form and further defined in the Contract Specifications.

1.82 Open Source Software means software available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>.

1.83 Order Details means the details of the Customer Contract specific to the transaction contemplated by the Customer Contract which are included in the Order Documents and agreed by the Customer and the Contractor.

1.84 Order Documents means the General Order Form and the documents that are stated on the General Order Form as being incorporated into the Customer Contract, which may include:

- (a) any Schedule to the Customer Contract;
- (b) any document referred to in, or based on, any Schedule to the Customer Contract; and

- (c) one or more Modules and their relevant Module Order Forms.
- 1.85 Panel Arrangement** has the meaning given to such term in clause 1.7(a).
- 1.86 Part** means each pro forma document that is designated as a Part of the Procure IT Framework, being:
- (a) Part 1: the Head Agreement, including its Annexures;
 - (b) Part 2: the Customer Contract, including its Schedules;
 - (c) Part 3: the Dictionary;
 - (d) Part 4: the Modules; and
 - (e) Part 5: the Module Order Forms.
- 1.87 Parties** means:
- (a) in relation to the Head Agreement: the Contract Authority and the Contractor; and
 - (b) in relation to the Customer Contract: the Customer and the Contractor.
- 1.88 Performance Criteria** means the criteria applicable to the performance of the Contractor including the:
- (a) quality of Products or Services offered or delivered;
 - (b) competitiveness of the Products or Services and pricing;
 - (c) Contractor's sales and marketing performance;
 - (d) Contractor's financial stability;
 - (e) Contractor's management and suitability of its Personnel;
 - (f) Contractor's administration of the Head Agreement, any Customer Contracts and risk;
 - (g) Contractor's management of environmental issues;
 - (h) Contractor's Occupational, Health, Safety and Rehabilitation (OHS&R) Management;
 - (i) Contractor's industrial relations performance; and
 - (j) claims on insurance and other financial assurances made in respect of the Contractor's business or the Head Agreement and any Customer Contracts.
- 1.89 Performance Guarantee** means a document substantially in the form of Annexure 5 to the Head Agreement or Schedule 9 to the Customer Contract (as applicable).
- 1.90 Personal Information** means information or an opinion about an identified individual (ie. a natural person), or an individual who is reasonably identifiable:
- (a) whether the information or opinion is true or not; and
 - (b) whether the information or opinion is recorded in a material form or not.
- 1.91 Personnel** means an entity's directors, officers, employees, agents and subcontractors, and:

- (a) for the Contractor, includes its Approved Agents and their Personnel; and
- (b) for the Customer, includes any Nominee Purchaser and its Personnel, but excludes the Contractor and its Personnel.

1.92 Prescribed Use is limited to the use of a Product or Service in a business environment where the direct result of a failure of the Product or Service being supplied results in a serious risk of significant loss of life or personal injury or substantial damage to buildings or other tangible property in the following business environment:

- (a) planning, construction, maintenance or operation of an air traffic control system;
- (b) planning, construction, maintenance or operation of a mass transit system (e.g. aircraft/trains/ferries/roads);
- (c) planning, construction, maintenance or operation of a nuclear facility; or
- (d) planning, construction, maintenance or operation of facilities or programs in respect of biological or chemical environments, including quarantine.

1.93 Price means an itemised Price (including a rate for a unit), payable in Australian dollars by a Customer for a Product or Service under the Customer Contract in Item 11 of the General Order Form. Price includes GST and any other Tax.

1.94 Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the Customer or the Contractor or any other recipient of Personal Information) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that the Customer or any Personal Information or the Contractor is subject to the laws of that jurisdiction),
 affecting privacy or Personal Information, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

1.95 Procure IT Framework means the suite of pro forma documents issued by the New South Wales Department of Finance, Services and Innovation that provide the framework for the procurement of information and communications technology related goods and services by Government Agencies.

1.96 Product means Hardware and Licensed Software only.

1.97 Project Implementation and Payment Plan or PIPP means a document that includes Order Details relating to the implementation of a project and associated payment arrangements

which is included in a Customer Contract if stated in Item 20 of the General Order Form. An example template of a PIPP is set out in Schedule 12 to the Customer Contract.

1.98 Protected Clauses means the following clauses of the Customer Contract:

- (a) Additional Conditions (clause 3.2 (b));
- (b) Formation (part of clause) and Compliance with Consumer Laws (clauses 3.7 to 3.11);
- (c) Product Safety (clauses 5.9 to 5.10);
- (d) Intellectual Property Rights (clause 13);
- (e) Privacy (clause 15);
- (f) Insurance (clause 16)
- (g) Liability (clause 18);
- (h) Indemnities (clause 19);
- (i) Conflict of Interest (clause 20);
- (j) Notice of Change in Control (clause 23.3);
- (k) Dispute Resolution (clause 24 and Schedule 11 – Dispute Resolution Procedures);
- (l) Termination (clause 25);
- (m) Assignment and Novation (clauses 26.3 to 26.6); and
- (n) Applicable Law (clause 26.22).

1.99 PWP Act means the Public Works and Procurement Act 1912 (NSW).

1.100 Recurring Services means Services which are provided by the Contractor under any of the following Modules:

- (a) Module 2 – Hardware Maintenance and Support Services;
- (b) Module 5 – Software Support Services;
- (c) Module 11– Telecommunications as a Service;
- (d) Module 12– Managed Services; and
- (e) Module 10 - As a Service,

and, unless agreed otherwise by the Parties in Item 39 of the General Order Form:

- (f) Module 6 – Contractor Services;
- (g) Module 7 – Professional Services; and
- (h) Module 8 - Training Services.

1.101 Related Company means an entity owned by, controlling, controlled by, or under common control with, directly or indirectly, a Party. For this purpose, one entity “controls” another entity

if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract). A Related Company includes a “related body corporate” as that expression is defined in the *Corporations Act 2001* (Cth).

1.102 Reseller means any entity which provides Products or Services but is not:

- (a) the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service; or
- (b) a Related Company of the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service.

1.103 Schedule means a schedule to the Customer Contract.

1.104 Service means any item or thing to be provided under a Customer Contract that is not a Product.

1.105 Service Address means:

- (a) in the case of the Contract Authority, the address set out in the Head Agreement;
- (b) in the case of the Contractor:
 - (i) the address set out in the Head Agreement or such other address of which the Contractor gives Notice in Writing to the Contract Authority; or
 - (ii) in relation to a Customer Contract at its address set out in Item 5 of the General Order Form or such other address of which the Contractor gives Notice in Writing to the Customer; or
- (c) in the case of the Customer: the address set out in Item 2 of the General Order Form or the address of which the Customer gives Notice in Writing to the Contractor.

1.106 Service Credit means the service credits awarded against the Contractor for a failure to meet the Service Levels, as specified in a Service Level Agreement.

1.107 Service Level Agreement or **SLA** means the document or clauses that set out the performance expectations of the Parties and defines the benchmarks for measuring the performance of the Services. An example template of an SLA is set out in Schedule 3 to the Customer Contract.

1.108 Service Levels means the minimum performance levels to be achieved by the Deliverable, as specified in a Service Level Agreement.

1.109 Short Term Recurring Services means Recurring Services that are stated to be provided for a period of 12 months or less in the Order Documents.

1.110 Site means the Customer’s offices or other Customer-controlled locations stated in Item 18 of the General Order Form to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.

1.111 Site Specification means the document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverable(s).

- 1.112 Specified Personnel** means the key personnel of the Contractor who are required to undertake the provision of the Deliverables or part of the work constituting the Deliverables, as stated in Item 27 of the General Order Form.
- 1.113 Stage** means one or more Milestones that are identified as a stage in the PIPP.
- 1.114 State** means the State of New South Wales.
- 1.115 State Record** has the meaning given in section 3 of the *State Records Act 1998* (NSW).
- 1.116 Statutory Requirements** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction relating to the performance of the Party's obligations under the relevant Part and includes industry codes of conduct, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales.
- 1.117 Subcontractor** means a third party to which the Contractor has subcontracted the performance or supply of any Services.
- 1.118 Substantial Breach** means:
- (a) a breach of the Customer Contract by the Contractor which deprives the Customer of substantially all of the benefit of the Customer Contract; or
 - (b) the following breaches by the Contractor of the Customer Contract:
 - (i) a delay by the Contractor in performing its obligations under the Customer Contract which continues beyond the extension of time granted under clauses 6.26 and 6.27;
 - (ii) failing to provide suitable replacement personnel as required under clause 8.9 where such failure prevents the Contractor from performing fundamental obligations under the Customer Contract;
 - (iii) breaching any warranty under clause 9.1;
 - (iv) where Acceptance Tests are required in order for the Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to pass Acceptance Tests which results in rejection of the Deliverable by the Customer under clause 10.12(e);
 - (v) where Acceptance Tests are not required in order for a Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to deliver the Deliverable by the date required in the Customer Contract;
 - (vi) failing to effect and maintain insurance policies as required under clauses 16.1, 16.2, 16.3 or 16.7 (other than to the extent that the Contractor received an exemption under clause 16.8);
 - (vii) failing to provide a Performance Guarantee as required under clause 17.2;
 - (viii) failing to provide a Financial Security as required under clause 17.4; or
 - (ix) the existence of a Conflict of Interest which in the Customer's reasonable opinion prevents the full and proper performance of the Contract by the

Contractor and the Contractor has not complied with clause 20.1(b) within a reasonable period.

- 1.119 System** means the system described in the Contract Specifications, comprising the Products and Services procured by the Customer pursuant to the Customer Contract.
- 1.120 Tax** means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in connection with the Contractor's performance of its obligations under the relevant Part, but excludes GST and any tax based on the net income of the Contractor.
- 1.121 Tax Invoice** has the same meaning as provided for in the GST Law.
- 1.122 Taxable Supply** has the same meaning as provided for in the GST Law.
- 1.123 Term** means the term of the Head Agreement, set out in Item 6 of the Head Agreement Details and any extension of the Term in accordance with clause 2.1 of the Head Agreement.
- 1.124 User Documentation** means the Contractor's standard off the shelf documents that describe the features and functions of a Product or Service, in a hard copy, electronic or online format that are provided by the Contractor to the Customer. User Documentation excludes any Document that is designed by the Contractor to be training materials.
- 1.125 Virus** means a computer program, code, device, product or component that is designed to or may in the ordinary course of its operation, prevent, inhibit or impair the performance of a Deliverable in accordance with the relevant Contract Specifications, but does not include any code, mechanism or device that is included in software by the Contractor for the purpose of managing the licensed use of software.
- 1.126 Warranty Period** means:
- (a) in relation to Hardware, 365 days from AAD;
 - (b) in relation to Licensed Software, 90 days from AAD; and
 - (c) in relation to Services where there is an Acceptance Test process, 30 days from AAD.
- 1.127 Workaround** means a fix or alternative procedure to temporarily address a Defect.

INTERPRETATION

- 1.128** The following rules also apply in interpreting any Part, except where the context makes it clear that a rule is not intended to apply.
- (a) A reference to:
 - (i) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) monetary references are references to Australian currency;
 - (iii) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as varied, assigned or novated;
 - (iv) a reference to a "Part [number]" is a reference to that specific Part only; e.g. "Part 3" is a reference to Part 3 only. A reference to "Part" without a number is

a reference to the Part in which the reference to that Part appears e.g. if the phrase “clause 3 in this Part” appears in a clause in the Customer Contract , then this is a reference to clause 3 in the Customer Contract only;

- (v) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
 - (b) 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.
 - (c) If an agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.
 - (d) A singular word includes the plural, and vice versa.
 - (e) The words “include(s)” and “including” are not words of limitation.
 - (f) When a Party exercises its “discretion”, the party may exercise its discretion in any way it chooses, provided only that it acts in good faith. There is no obligation to act reasonably where the word “discretion” is used.
 - (g) Where there is an obligation that requires the completion of a particular Order Document, including a PIPP or Service Level Agreement, but the particular Order Document is not incorporated into the Customer Contract because it is not stated in the General Order Form that the particular Order Document is included in the Customer Contract, then that obligation does not form part of the relevant Customer Contract.
 - (h) The Parties may undertake business by the electronic exchange of information and the provisions of each Part will be interpreted to give effect to undertaking business in this manner. To the extent permitted by law, any Part or any Order Document, including the General Order Form may be in electronic format.
 - (i) Where there is a shortened version of the General Order Form, Module Order Form or other Order Document, and the Order Details (details placed under an Item number) have been numbered differently in the shortened version of the Order Document to the Item numbering in the pro forma template of the relevant Order Document, then the references to the Item number in the relevant Part of the Procure IT Framework shall be interpreted as a reference to the relevant Item in the shortened version of the relevant Order Document notwithstanding the actual Item number used in the shortened version of relevant Order Document, e.g. if in a shortened General Order Form the Order Details relating to Credit/Debit Cards are included under Item number 16 in the shortened General Order Form, then the reference to “Item 33” in clause 11.3 of the Customer Contract shall be interpreted as a reference to Item number 16 in the shortened General Order Form.
- 1.129** Headings are for the purpose of convenient reference only, and do not affect interpretation of the document in which they appear.

Schedule 1: General Order Form

TOLL COMPLIANCE MANAGEMENT AGREEMENT

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:	Transport for NSW ABN 18 804 239 602

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:	20-44 Ennis Road, Milsons Point, NSW, 2061 or such other address as notified by the Customer to the Contractor from time to time

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, Tolling Branch or such other person as notified by the Customer to the Contractor from time to time. The Contractor must address all enquiries and correspondence to the Customer's Authorised Representative. The Customer is not bound by any authorisations, representations and statements not made in writing or made by any person other than Contractor'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:	Fuji Xerox BusinessForce Pty. Limited ABN 94 137 933 905 Of Level 5, 26 College Street, Sydney, NSW, 2000

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:	Building 4 1 Moorebank Avenue, Moorebank, NSW, 2170

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:	[Redacted] Client Relationship Manager The Contractor may not change the Contractor's Authorised Representative without the prior written consent of the Customer (which must not be unreasonably withheld).

Item 7 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 as a Service	<input type="checkbox"/>
Module 2 – Hardware Maintenance and Support Services	<input type="checkbox"/>	Module 12 – Managed Services	<input checked="" type="checkbox"/>
Module 3 – Licensed Software	<input type="checkbox"/>	Module 13 – Systems Integration	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 13A – Major Project Systems Integration Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input type="checkbox"/>		
Module 6 – Contractor Services	<input type="checkbox"/>		
Module 7 – Professional Services	<input checked="" type="checkbox"/>		
Module 8 – Training Services	<input type="checkbox"/>		
Module 9 – Data Migration	<input type="checkbox"/>		
Module 10 – 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 checked="" type="checkbox"/>	Schedule 8 – Deed of Confidentiality	<input type="checkbox"/>
Schedule 3 – Service Level Agreement	<input checked="" type="checkbox"/>	Schedule 9 – Performance Guarantee	<input type="checkbox"/>
Schedule 4 – Variation Procedures	<input checked="" type="checkbox"/>	Schedule 10 – Financial Security	<input checked="" type="checkbox"/>
Schedule 5 – Escrow Deed	<input 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 ("PIPP")	<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:	<p>The date when both parties sign this Schedule 1: General Order Form.</p> <p>The Customer and the Contractor are parties to an existing Toll Compliance Management Agreement originally dated 9 September 2004 (as updated, extended and restated from time to time) (the Existing Agreement).</p> <p>The Parties agree that once this Schedule 1: General Order Form is executed by both Parties, from and including the Commencement Date, this Customer Contract replaces and supersedes the Existing Agreement which is then terminated. Termination of the Existing Agreement is without prejudice to any accrued rights of either Party under the Existing Agreement prior to the Commencement Date.</p>
Specify the end of the Contract Period:	The Customer Contract will last for a period of 24 months, unless extended or lawfully terminated earlier in accordance with its terms.
Specify any period of extension of the Contract Period in days/weeks/years:	One extension period of 12 months.

Item 11 Common Details

Formation (clause 3.4)	Product and/or Service	Price per Unit	Quantity	Extended Price
As set out in Annexure C Charges to this Schedule 1: General Order Form.				

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:	As set out in a PIPP or a SLA.
Specify any delivery instructions:	As set out in a PIPP or a SLA.
Specify the hours during which delivery may be made to the Site:	As set out in a PIPP or a SLA.

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</p>	<p>The Contract Specifications consist of:</p> <p>a) any requirements for the Deliverables set out in Part 2 of the Customer Contract;</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
other documents, list those documents in order of priority:	<p>b) the requirements for the Deliverables set out in the relevant Modules forming part of the Customer Contract and the corresponding Module Order Forms;</p> <p>c) the requirements for Deliverables and Services set out in the SLA and/or a PIPP (and any documentation referred to in a SLA and/or a PIPP);</p> <p>d) any further requirements for the Deliverables set out in this Schedule 1: General Order Form or any annexure to this Schedule 1: General Order Form;</p> <p>e) any further requirements for the Deliverables set out in any other Order Documents, schedules or attachments forming part of the Customer Contract;</p> <p>f) any further requirements for the Deliverables set out in any other documents included and/or referenced in Schedule 2 (Agreement Documents);</p> <p>g) any other requirement or specification agreed between the Parties in writing, including in any procedures or user manual provided by the Contractor; and</p> <p>h) any documents incorporated by reference, developed under or referred to in any of the documents detailed above (not already referred to above).</p> <p>In the event of any inconsistency, the document listed in the order above will prevail.</p>
System (clauses 5.11 and 9.3)	
Specify whether the Products and Services comprise a System.	Not applicable.

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 (clauses 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	Transport Shared Services Accounts Payable
Specify address to which invoices should be sent:	<p>All invoices are to be sent to Transport Shared Services, Accounts Payable via email to: tss.invoices@transport.nsw.gov.au</p> <p>with a copy of each invoice and supporting information for each invoice to be sent to Toll Compliance via email to: TCS_Management@rta.nsw.gov.au</p> <p>Invoices will be provided monthly.</p> <p>The Contractor must ensure that invoices meet the below criteria to ensure they are paid in a timely manner:</p> <p>a) a single invoice in PDF format must sent to Transport Shared Services at the above email address;</p> <p>b) the invoice in PDF format together with 1 consolidated invoice detail txt file and 1 detail csv file must be sent to Toll</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>Compliance at the above email address so that Toll Compliance can reconcile the invoice using the supporting documents; and</p> <p>c) a valid contract number, Purchase Order number and business contact name <i>must</i> be quoted on all invoices.</p> <p>If the Contractor transacts with the Customer via the Ariba Network, then invoices must be submitted by the Contractor to Customer via the Ariba Network.</p>
<p>Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment.</p> <p>If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.</p>	<p>The Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.</p> <p>Payment will be deemed to have been received by the Contractor when the Customer receives an electronic confirmation from its bank that the payment has been transferred to the Contractor's nominated account.</p>
<p>Specify when the Contract Price must be paid:</p> <p>E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery".</p> <p>If payment is to be made on more than one occasion then consider using a PIPP under Item 20.</p>	<p>As set out in Annexure C Charges to this Schedule 1: General Order Form.</p>
<p>Specify whether the Contract Price is fixed:</p> <p>E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:</p>	[Redacted]

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))	
<p>Specify the Price of any additional copies of the User Documentation:</p>	<p>The Contractor must provide the Customer with digital copies of all Contract Specifications (where applicable) and User Documentation [redacted].</p>

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)	
<p>List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:</p>	[Redacted]
Management Committee (clause 6.6)	
<p>Specify the function to be performed by the management committee:</p>	<p>In addition to the requirements of clause 6.6 of Part 2 of the Customer Contract and any requirements set out in a PIPP:</p> <p>a) the Management Committee is responsible for the operational co-ordination and management between the parties of the provision of the Services including the approval</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>of all Change Requests; and</p> <p>b) the Contractor's Management Committee must attend (in person or by telephone or video conference) meetings with the Customer's Authorised Representative at places and times to be notified to the Contractor by the Customer to:</p> <p>(i) review the performance of the Contractor in relation to the Deliverables and Services, and the Prices incurred by the Customer, up to that date;</p> <p>(ii) discuss any relevant technology changes;</p> <p>(iii) discuss and review the status of Change Requests;</p> <p>(iv) discuss and review any potential reduction in Prices having regard to changes in technology or the Customer's requirements or Change Requests;</p> <p>(v) consider workload forecasts and any potential amendments to the Deliverables, Services or Service Levels; and</p> <p>(c) discuss any other matter the Customer may require.</p> <p>These meetings will take place monthly or otherwise as required by the Customer.</p> <p>The Customer's Authorised Representative and the Contractor's Management Committee may delegate part of their operational responsibilities to other representatives in order to operate more efficiently and effectively.</p>
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	[Redacted] or such other persons as notified by the Customer to the Contractor from time to time.
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 required by clause 6.8 of Part 2 of the Customer Contract and any relevant Order Document.
Specify any other details:	As required by clause 6.8 of Part 2 of the Customer Contract and any relevant Order Document.

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
Specify any specific time intervals for service and performance reviews:	As stated in the Order Documents.

Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
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Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Site Specifications (clause 6.12)	
Specify: Item 19 Site location; and Item 20 whether a Site Specification is required.	No, a Site Specification is not required.
Access to Customer's Site (clause 7.1(b))	
Specify any other requirements in relation to the Site access:	Access to any TfNSW Site and TfNSW Environment is as set out in the SLA or any PIPP agreed between the Parties from time to time.
Specify any requirements for the preparation and maintenance of the Site:	Not applicable

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 (clauses 6.14 to 6.16)	
Specify if the Contractor must provide an implementation planning study:	Not Applicable
Specify the implementation planning study objectives and time for provision of study:	Not Applicable
Date for delivery of the implementation planning study to the Customer:	Not Applicable
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	Not Applicable

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 an initial 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.	The Parties may enter into project statements of work from time to time in accordance with the process set out in the Module 7 Order Form for the provision of new Deliverables (including new Products and Services) in connection with this Customer Contract. Each new project statement of work is a PIPP for the purposes of this Customer Contract. Any reference in this Customer Contract to 'PIPP' shall be deemed to include each project statement of work entered into between the Parties from time to time.
Staged Implementation (clause 6.20)	
Specify if there is to be Staged Implementation:	If staged implementation is applicable, this will be set out in the relevant PIPP.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
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 (clauses 6.28 to 6.34)	
Specify if Liquidated Damages (LDs) will apply:	To specify in a PIPP as agreed by the Parties.
Specify the Milestones which are LD Obligations:	To specify in a PIPP as agreed by the Parties.
Specify the Due Date for completion of each LD Obligation:	To specify in a PIPP as agreed by the Parties.
Specify the calculation and amount of LDs for each LD obligation:	To specify in a PIPP as agreed by the Parties.
Specify the maximum number of days LDs are to be paid for each LD obligation:	To specify in a PIPP as agreed by the Parties.

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)	
Specify each CSI to be provided by the Customer: CSI may be: <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). [Note: details of any Customer Personnel should be specified in Item 26].	As specified in a PIPP agreed between the Parties from time to time.
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:	As specified in a PIPP agreed between the Parties from time to time.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the times when each CSI is to be provided:	As specified in a PIPP agreed between the Parties from time to time.
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	As specified in a PIPP agreed between the Parties from time to time.
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	As specified in a PIPP agreed between the Parties from time to time.
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 corresponding data entry process; a list of Customer and Contractor nominee/s for responsibility to undertake verification checks: 	As specified in a PIPP agreed between the Parties from time to time.
Specify any amount payable by the Contractor to the Customer for any item of CSI:	As specified in a PIPP agreed between the Parties from time to time.
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:	As specified in a PIPP agreed between the Parties from time to time.

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:	No, an escrow arrangement is not required.
Specify the parties to the escrow arrangement:	Not applicable
Specify the time for the escrow arrangement to endure:	Not applicable

Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Contingency (clauses 6.45 to 6.47)	
Specify if a Business Contingency Plan is required:	Yes, a Business Contingency Plan is required.
Specify when the Business Contingency Plan is required:	<p>Business Contingency Plan</p> <p>The Contractor must prepare a Business Contingency Plan for the approval of the Customer within 30 days of the Commencement Date or such other period agreed by the Customer in writing.</p> <p>The draft Business Contingency Plan must detail how the Contractor would continue to provide the Services to the Customer if a Disaster Recovery Event occurs.</p> <p>The Customer will provide a reasonable level of assistance to the Contractor to assist with the development of a Business Contingency Plan.</p> <p>The Contractor must provide the Customer with a copy of the then-current Business Contingency Plan following any update and where so requested by the Customer from time to time.</p> <p>On the occurrence of a Disaster Recovery Event, the Contractor must immediately implement the Business Contingency Plan.</p> <p>The Contractor must continue to provide the Services to the relevant Service Levels unless otherwise specified or allowed for in the approved Business Contingency Plan.</p> <p>Contractor's own plans</p> <p>During the Contract Period, the Contractor must develop, maintain, regularly test and update its own business continuity and disaster recovery plans and procedures to ensure at all times the Contractor is able to provide the Services to the Customer in accordance with the Service Levels and otherwise perform all its obligations under this Customer Contract.</p> <p>The Customer may require the Contractor to make available to the Customer at the Contractor's premises the current business continuity and disaster recovery plans and procedures from time to time, but not more than once in any six-month period.</p>
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	<p>The Business Contingency Plan must, at a minimum:</p> <ul style="list-style-type: none"> a) enable the Services to be provided in accordance with the Service Levels (except as specifically agreed by the Customer); b) reflects Industry Best Practice in relation to the planned continued provision of the Services to the Customer where there is a Disaster Recovery Event; c) include strategies, plans and procedures that will limit downtime of the TCM System; d) define relevant Disaster Recovery Events; and e) [Redacted] <p>The Contractor must make such amendments to the Business Contingency Plan as may be reasonably requested by the Customer from time to time that relate to the provision of Deliverables or Services or the performance of the</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	Contractor's obligations under the Customer Contract. For the purposes of this Customer Contract, ' Disaster Recovery Event ' means an event or disaster (including industrial action) outside the Contractor's control, interrupting the Contractor's provision of the Services to the Customer as further defined in the Business Contingency Plan.
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	Annually, on each anniversary of the Commencement Date. The Contractor must also review and update the Business Contingency Plan promptly following any change to the Deliverables or the scope of the Services, and as otherwise required so as to ensure that the Business Contingency Plan remains up-to-date, operational and current.
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	Annually, on each anniversary of the Commencement Date. The Contractor must: a) also test the Business Contingency Plan promptly following any change to the Deliverables or the scope of the Services; b) liaise and co-operate with the Customer over the extent and timing of those tests; c) involve Subcontractors in any tests as is required; and d) send to the Customer a written report summarising the results of each test and must promptly implement any actions or remedial measures required following each test or which the Customer reasonably considers to be necessary as a result of a test.

Item 25A Transfer of Records outside NSW - Customer Data

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Data (clause 7.5)	
<p>Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract.</p> <p>If yes, Customer to state whether consent is provided to transfer State Records outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ul style="list-style-type: none"> the jurisdiction(s) for which consent is granted the conditions on which such consent is granted. <p>[Note: Clause 7.5 of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	<p>State Records will be transferred to the Contractor's possession.</p> <p>The Contractor is permitted to transfer State Records to the State of Victoria in Australia for the sole purpose of business contingency and disaster recovery planning.</p> <p>Except as set out in this Item 25A:</p> <p>a) the Customer's consent is not provided to the transfer of State Records outside the jurisdiction of New South Wales; and</p> <p>b) the Contractor must host any State Records within, and must ensure that all of the Contractor's computing system, hardware and software used to store, host, process and access State Records (including production, test and backup environments) will be based in, the jurisdiction of New South Wales.</p> <p>The Contractor must comply with, and must not act or omit to act in any way that would cause or be likely to cause the Customer to be in breach of, the State Records Act 1998 (NSW) (as updated from time to time) when performing its obligations under the Customer Contract.</p>

Item 25B Transfer of Records outside NSW – Personal Information

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Privacy (clause 15)	
<p>Customer to specify whether consent is provided to transfer Personal Information outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ul style="list-style-type: none"> the jurisdiction(s) for which consent is granted the conditions on which such consent is granted. <p>[Note: Clause 15.1(h) of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	<p>Yes, Personal Information will be transferred to the Contractor's possession under the Customer Contract.</p> <p>The Contractor is permitted to transfer Personal Information to the State of Victoria in Australia for the sole purpose of business contingency and disaster recovery planning.</p> <p>Except as set out in this Item 25B:</p> <p>a) the Customer's consent is not provided to the transfer of Personal Information outside the jurisdiction of New South Wales; and</p> <p>b) the Contractor must host any Personal Information within, and must ensure that all of the Contractor's computing system, hardware and software used to store, host, process and access Personal Information (including production, test and backup environments) will be based in the jurisdiction of New South Wales.</p> <p>The Contractor must at all times comply with, and must not act or omit to act in any way that would cause or be likely to cause the Customer to be in breach of, any relevant Privacy Laws (as updated from time to time) when performing its obligations under the Customer Contract.</p>

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 7.11)	
<p>Specify any secrecy or security requirements that the Contractor and its Personnel must comply with:</p> <p>E.g. insert a reference to any document that includes a security requirement.</p>	<p>The Contractor must:</p> <p>a) prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to, copying or transmitting Customer Supplied Items or Customer Data in accordance with this Customer Contract and Customer Policies provided or notified to the Contractor on or before the Commencement Date;</p> <p>b) without limiting any other provision in the Customer Contract, seek the Customer's consent before permitting any Contractor Personnel to access Customer Supplied Items which contain any confidential financial data or information which may be relevant to legal proceedings or potential legal proceedings involving the Customer of which the Contractor is notified; and</p> <p>c) keep itself informed of, and comply with, Industry Best Practice in respect of secrecy or security requirements when performing its obligations under the Customer Contract.</p> <p>The Contractor must comply with the NSW Government Digital Information Security Policy (in place as at the Commencement Date).</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>The Contractor must also comply with the following Customer guidelines, codes and policies relating to secrecy and security requirements (in place as at the Commencement Date):</p> <ul style="list-style-type: none"> a) Transport for NSW Information Security Policy and Standard; b) Transport for NSW Privacy Policy; c) Transport for NSW Data and Information Asset Management Policy; and d) the following Customer Policies: <ul style="list-style-type: none"> (i) RMS Information Security Policy No 255; and (ii) RMS maintaining an Information Security Management System (ISMS) compliance with ISO27001:2013. <p>To the extent relevant to products or services being supplied by a Subcontractor as part of any subcontracting arrangement, the Contractor must ensure that all its Subcontractors and Contractor Personnel comply with the requirements of this Item 25.</p>
<p>Timeframes for response to a Security Issue</p>	
<p>Specify whether Customer agrees to any alternate timeframe for:</p> <ul style="list-style-type: none"> • Notification of actual, alleged or suspected security breach (clause 7.12(a)) <p>[Note: default is immediate notification]</p> <ul style="list-style-type: none"> • Investigation of Security Issue (clause 7.12(b)) <p>[Note: default is within 48 hours from notification]</p> <ul style="list-style-type: none"> • Remedy the Security Breach (clause 7.12(c)). <p>[Note: the default is within 24 hours from conclusion of investigation].</p> <p>Any alternate timeframes agreed to in this General Order Form must:</p> <ul style="list-style-type: none"> • be approved by the Customer's Chief Information Officer; and • comply with the NSW Government Digital Information Security Policy, NSW Government Information Security Event Reporting Protocol, NSW Government Cloud Policy and all other applicable NSW Government policies; • comply with applicable security standards; and • comply with the Customer's Information Security Management System and other Customer security and policy requirements. 	<p>The Customer does not agree to any alternate timeframe. The timeframes set out in Part 2 of the Customer Contract apply.</p>

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:	Personnel as nominated by the Customer and notified by the Customer to the Contractor from time to time.

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:	[Redacted]

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 - Subcontractor, substantially in the form of Schedule 7:	A Statutory Declaration is not required from Subcontractors. [Redacted]

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:	The Contractor must maintain accreditation that is compliant with the following relevant Australian, international and industry standards, specifications, guidelines and classification schemes (currently in place and as amended or replaced from time to time): a) The NSW Government Quality Management Systems Guidelines; b) ISO 27001 Information technology – Security techniques – information security management systems; c) ISO 27002 Information technology - Security techniques – Code of practice for information management; d) AS ISO/IEC 27003:2017 - Information technology - Security techniques - Information security management systems – Guidance; e) ISO 9001:2015 - Quality management systems –

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>Requirements;</p> <p>f) AS ISO 10007:2017 - Quality management - Guidelines for configuration management;</p> <p>g) any standards, specifications, guidelines and classification schemes specified in any Order Document; and</p> <p>h) any other standards, specifications, guidelines and classification schemes as are reasonably notified to the Contractor by the Customer from time to time and mutually agreed by the Parties in writing.</p> <p>The Contractor must ensure that its Personnel and its Subcontractors comply with the requirements of this Item 29.</p>

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))	
<p>Specify any laws (other than Statutory Requirements) the Contractor is to comply with:</p>	<p>In addition to the requirements set out in the Customer Contract, the Contractor, its Personnel and its Subcontractors must comply and perform its obligations in accordance with the following, in each case to the extent applicable to the Contractor's performance of the Services and obligations under the Customer Contract:</p> <p>a) all Statutory Requirements in each case applicable to the performance of the Services or the Deliverables under the Customer Contract, including:</p> <p>(i) all Privacy Laws;</p> <p>(ii) Copyright Act 1968 (Cth); and</p> <p>(iii) <i>Spam Act 2003</i> (Cth);</p> <p>b) all Statutory Requirements in relation to worker's compensation insurance, payroll tax, income tax (including provisional tax), fringe benefits tax, group tax, superannuation, remuneration, annual leave, long service leave and sick leave, and the Contractor acknowledges that the Contractor, its Personnel and its Subcontractors (as applicable) are solely responsible for these obligations; and</p> <p>c) to the extent that the Customer Contract is performed outside the State of New South Wales, the Contractor must also comply with all Statutory Requirements applicable in the location where the Customer Contract is being performed, in each case applicable to the performance of the Services or the Deliverables under the Customer Contract performed in that location.</p> <p>To the extent the Contractor is required to comply with laws under the Customer Contract and this Item 30, the Contractor and its Personnel and its Subcontractors must comply with those laws.</p>
<p>Specify any codes, policies, guidelines or standards the Contractor is to comply with:</p>	<p>In addition to the requirements set out in the Customer Contract, the Contractor, its Personnel and its</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>Subcontractors must comply and perform its obligations in accordance with the following:</p> <p>a) the Customer's Code of Conduct and Ethics that appear on the following websites: https://www.rms.nsw.gov.au/documents/about/careers/code-of-conduct-transport.pdf; and https://www.rms.nsw.gov.au/documents/about/access-to-information/business-ethics-statement.pdf, and any updates must be notified to the Contractor;</p> <p>b) the Customer's business ethics, anti-bribery and anti-corruption policies as notified to the Contractor;</p> <p>c) the sections of the Toll Road Operators Memorandum of Understanding (referred to in Schedule 2 (Agreement Documents)) that are relevant to the provision of Deliverables and Services by the Contractor under this Customer Contract);</p> <p>d) any other policies, codes and standards in any Order Document; and</p> <p>e) any other policies, codes and standards that are notified to the Contractor by the Customer from time to time and mutually agreed by the Parties in writing.</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 9.4(h))	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	Not applicable
Specify any codes, policies, guidelines or standards the Customer is to comply with:	Not applicable

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 1.5)	
<p>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:</p>	As set out in a PIPP.
<p>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:</p>	As set out in a PIPP.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Acceptance Test Period is the period for the performance of any Acceptance Tests for any Deliverable.</p> <p>Specify this period:</p> <p>If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.</p>	As set out in a PIPP.
Acceptance (clause 10.1)	
<p>For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing:</p> <p>If not, the Deliverable will be Accepted under clause 10.1(a)</p>	As set out in a PIPP.
<p>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 for a Deliverable occurs:</p> <p>If no period is specified, then the period is 2 Business Days.</p>	As set out in a PIPP.
Conducting Acceptance Tests (clause 10.3)	
<p>For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:</p>	As set out in a PIPP.
<p>Specify the identification of the Deliverables or part of the Deliverables to be tested:</p>	As set out in a PIPP.
<p>Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:</p>	As set out in a PIPP.
<p>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:</p>	As set out in a PIPP.
<p>Specify the methodology and process for conducting Acceptance Tests:</p>	As set out in a PIPP.
<p>Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:</p>	As set out in a PIPP.
<p>Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:</p>	As set out in a PIPP.
<p>Specify the Acceptance Test Data required:</p>	As set out in a PIPP.
<p>If an Acceptance Test document has been created that addresses the above points it</p>	If applicable, this will be a PIPP, or a document referred to in or developed pursuant to the PIPP related to acceptance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
can be attached to the General Order Form by identifying the document here:	testing of any Deliverable.

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:	Not applicable
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, 13.9 and 13.10)	
Specify any terms and condition applicable for granting a licence for Existing Material owned by a third party:	Please see the terms and conditions of the licence to Existing Material set out below which applies also to Supplier Existing Material.
<p>If a perpetual and irrevocable licence to use certain Existing Material cannot be provided (for example because it is licensed under subscription for a defined period), specify:</p> <ul style="list-style-type: none"> the duration of the licence to use that Existing Material and/or the terms on which the licence may be revoked. 	<p>Notwithstanding clause 13.6 of the Customer Contract, the Parties agree that Existing Material of the Contractor is licensed to the Customer on the terms set out in this Item 34.</p> <p>Licence Rights [Redacted]</p> <p>In this Customer Contract: 'Use' means [Redacted]</p> <p>'TCM System' has the meaning given in clause 7 of the Additional Conditions at Annexure A to this Schedule 1: General Order Form.</p> <p>Moral Rights The Contractor warrants that it will ensure that to the extent legally permissible, it obtains from all Personnel, Subcontractors or third parties consents and/or waivers in respect of all Moral Rights which may arise in the Existing Materials and New Materials provided to the Customer under this Customer Contract. The consents and/or waivers will allow the Customer to Use any material supplied by the Contractor without infringing any person's Moral Rights.</p> <p>Continuous licence</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>The Contractor must ensure that itself, any Subcontractor, and the Customer have at all times correct and valid licences to use third party software and third party Intellectual Property Rights.</p> <p>Know-how use</p> <p>The parties agree that subject to:</p> <p>a) clause 14 (Confidentiality), clause 15 (Privacy), and all other obligations in respect of confidentiality and privacy in the Customer Contract; and</p> <p>b) clause 13 (Intellectual Property Rights) of Part 2 of the Customer Contract and other paragraphs of this Item 34, the Customer, the Contractor and any Subcontractor will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how, methodologies and techniques related to the scope of the Services or this Customer Contract.</p>
Specify any fees to be charged for any licence to use any of Contractor's Existing Materials:	No additional fees apply. This is already covered by the Prices in the Customer Contract.
Customer Owned New Material (clause 13.11)	
<p>Specify whether clause 13.11 applies ie. whether the Customer owns any New Material.</p> <p>If so, specify:</p> <ul style="list-style-type: none"> • which items of New Material are Customer Owned New Material; and • whether the Contractor is granted any licence by the Customer to use the Customer Owned New Material, and if so, what licence terms apply to the Contractor's use of the Customer Owned New Material. <p>If clause 13.11 does not apply, state "Not applicable".</p>	[Redacted]

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.4)	
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:	<p>A separate Deed of Confidentiality is not required.</p> <p>However, the Contractor must ensure that each subcontractor with a Subcontractor includes adequate and sufficient confidentiality undertakings so as to enable and ensure the Contractor complies with the confidentiality undertakings and obligations in this Customer Contract.</p>

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)	[Redacted]
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:]	As set out in the SLA.
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:]	As set out in the SLA.
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:]	As set out in the SLA.
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:	As set out in the SLA.

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:	Not applicable
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.	Not applicable

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	Yes, Financial Security is required in the amount of [Redacted] The Financial Security must be in the form set out in

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Security:	<p>Schedule 10 (Financial Security) or in such other form of cash, bank cheque, bank guarantee or an unconditional undertaking approved by the Customer and given by a financial institution or insurance company approved by the Customer.</p> <p>[Redacted]</p>
<p>Specify the date by which the Financial Security must be provided to the Customer:</p> <p>If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.</p>	<p>A legally binding Financial Security must be delivered to the Customer on or before the Commencement Date.</p> <p>If, 60 days after the Customer Contract is terminated or expires, the Customer reasonably believes that all the Contractor's obligations and liabilities at that time have been discharged, the Customer will return the Financial Security to the Contractor. Return of the Financial Security does not waive any rights the Customer has at the time of return or subsequent to it.</p>

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>[Redacted]</p>
<p>If Services are being provided under any of the following Modules:</p> <ul style="list-style-type: none"> • Module 6 – Contractor Services; • Module 7 – Professional Services; or • Module 8 – Training Services, <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>[Redacted]</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):	[Redacted]

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 the Order Documents.

Item 40A Audit

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Alternative Audit Mechanism (clause 23.11)	
<p>If the default audit provisions of clause 23.5-23.8 are to apply, state "Not Applicable".</p> <p>If an alternative audit mechanism is agreed by the Customer and Contractor, specify the terms of such alternate audit including the Contractor's obligations to be audited.</p> <p>Note: Any alternate audit mechanism must address compliance with the Contractor's Customer Data, security and privacy obligations and such other obligations required by the Customer and reasonably agreed by the Contractor.</p>	<p>The default audit provisions of clause 23.5-23.8 of Part 2 of the Customer Contract apply.</p> <p>The Customer may appoint an external third party to perform an audit. Any external third-party auditor appointed by the Customer will not be a competitor of the Contractor.</p> <p>The Customer (or its appointed third-party auditor) will comply with any reasonable policies and directions of the Contractor related to work health and safety, security and confidentiality when attending any Contractor premises.</p>

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)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7-24.8.	[Redacted]
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	Not applicable

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	[Redacted]

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
convenience under clause 25.3, and if so, specify that amount:	

Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Specify any Additional Conditions:</p> <p>Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the consent of the Contract Authority and the Secretary of the New South Wales Department of Finance, Services and Innovation where an Additional Condition varies any term or condition of the Procure IT Framework including a Protected Clause.</p>	<p>Yes. The Additional Conditions are:</p> <p>a) the Additional Conditions set out in Annexure A to this Schedule 1: General Order Form; and</p> <p>b) those provisions of this Schedule 1: General Order Form that vary and/or are in addition to the terms of Part 2 of the Customer Contract.</p>

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 as if repeated in full in this General Order Form.

SIGNED AS AN AGREEMENT

Signed for and on behalf of **Transport for NSW (ABN 18 804 239 602)**

[Redacted signature area]

By the Customer's authorised delegate but not so as to incur personal liability

[Redacted signature area]

In the presence of: *[insert name of witness]*

[Redacted signature area]

[Redacted signature area]

Signature of Customer

[Redacted signature area]

Signature of Witness

[Redacted signature area]

Print name

[Redacted signature area]

Print name

[Redacted signature area]

Date

[Redacted signature area]

Date

Signed by Fuji Xerox BusinessForce Pty. Limited in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of director/company secretary

Signature of director

Print name

Print name

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
Toll Road Operators Memorandum of Understanding	

Schedule 3: Service Level Agreement

The Service Level Agreement, including details of certain Services, related Service Levels and the performance expectations and benchmarks for measuring the performance of Services, are set out in the Statement of Work attached at Annexure B to this Schedule 1: General Order Form.

Any reference in this Customer Contract to 'Service Level Agreement' or "SLA" shall be construed as a reference to this Statement of Work.

Schedule 4: Variation Procedures

PROPOSING A CHANGE

- 1.1 If either party wishes to propose a change to the Services, SLA, PIPP, Deliverables or any other provision of the Customer Contract (a Proposed Change) then it must send a request to the other party's Authorised Representative, specifying in as much detail as is reasonably practicable, the nature of the Proposed Change sought.

THE CONTRACTOR'S PROPOSAL

- 1.2 As soon as reasonably practicable after sending or receiving a request under clause 1.1 (Proposing a change), and in any event within 10 Business Days (unless otherwise agreed), the Contractor will provide to the Customer a written proposal in relation to the relevant Proposed Change including:
- (a) a statement of the cost of investigating and preparing a detailed proposal in respect of the Proposed Change, which will as far as practicable be calculated in accordance with Annexure C Charges to this Schedule 1: General Order Form and the pricing principles set out in that document;
 - (b) brief details of the likely impact, if any, of the Change Request on any existing Services, SLA, PIPP or Deliverables; and
 - (c) an estimate of the cost of implementation and on-going operation of the relevant Proposed Change, including any alteration of the Price or additional Price payable for the proposed Change Request or additional investment in the TCM System or other infrastructure required.

CHANGE REQUEST

- 1.3 If following receipt of the proposal under clause 1.2 (The Contractor's proposal), the Customer wishes to proceed with the Proposed Change it must notify the Contractor, who will as soon as reasonably practicable after receiving that notice, and in any event within 10 Business Days (unless otherwise agreed), provide the Customer with a detailed draft of the Change Request (in a form substantially similar to the Change Request form attached to this Schedule 4) which must include:
- (a) full details of the Proposed Change including any specifications, special conditions and any variations to the Customer Contract required;
 - (b) a statement of the cost of implementation and on-going operation of the relevant Proposed Change, including any alteration of the Price or additional Price payable for the Proposed Change;
 - (c) a timetable for the implementation, together with any proposals for Acceptance Tests, of the Proposed Change; and
 - (d) details of any impact of the Proposed Change on any existing Services, Deliverables, SLA and/or PIPP.

If the Contractor believes that there is more than 1 Business Day's work involved in investigating or preparing a Change Request, then prior to commencing work on investigating or preparing a Change Request the Contractor may request that the Customer pays for the work involved to investigate and prepare the draft Change Request. The Customer may then either revise the requirements for the Change Request to require less than 1 Business Day's work to investigate and prepare it, or agree to pay for the Contractor's work to evaluate and prepare the Change Request in an amount agreed by the parties.

COST

- 1.4 All costs in relation to any Proposed Change, including any alteration of the Price or additional Price payable for the Proposed Change, must be based on the Price set out in Annexure C Charges to this Schedule 1: General Order Form and the pricing principles set out in that document, including using any agreed rates for particular types of Services or predefined tasks. In any case costs in relation to any Proposed Change must be no more than the costs charged to other customers of the Contractor for similar services.

CONSIDERING CHANGE REQUESTS

- 1.5 The Customer will review the Change Request as soon as reasonably practicable after receiving that Change Request (but in any event within 10 Business Days unless otherwise agreed) and will either accept or reject the Change Request. Both parties must act reasonably in relation to Change Requests, and the Customer will not unreasonably withhold or delay any consent in relation to them. If the parties cannot reach agreement on any Change Request, either party may escalate the matter for resolution in accordance with clause 24 (Dispute Resolution) of Part 2 of the Customer Contract.

EMERGENCY CHANGES

- 1.6 Notwithstanding the procedure in clauses 1.1 (Proposing a change) to 1.5 (Considering Change Request) above, if any Proposed Change is necessary to respond to an emergency that will materially affect the provision of the Services or Deliverables, and it is not reasonably practical to agree a Change Request in advance in accordance with those provisions, then:
- (a) the affected party must notify the other party of the need for an urgent Proposed Change;
 - (b) the Contractor must immediately or as soon as practicable make that Proposed Change;
 - (c) the Contractor must document the Proposed Change in a Change Request as soon as is reasonably possible; and
 - (d) the parties will use reasonable efforts to agree the relevant proposed Change Request as soon as reasonably possible.

If the parties cannot agree that Change Request within 10 Business Days after it is submitted by the Contractor, either party may escalate the matter for resolution in accordance with clause 24 (Dispute Resolution) of Part 2 of the Customer Contract.

COMMENCING WORK

- 1.7 Except as set out in clause 1.6 (Emergency changes), neither party is obliged or permitted to commence work in connection with any Proposed Change until the relevant Change Request is agreed and signed by duly authorised representatives of both parties.

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 terms and conditions of the Procure IT Framework including the Protected Clauses require the Customer to obtain the prior written approval of the Contract Authority and the Secretary, New South Wales Department of Finance, Services and Innovation approval in accordance with directions and policies issued by the Board from time to time. (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

Not used.

Schedule 6: Deed Poll – Approved Agents

Not used.

Schedule 7: Statutory Declaration – Subcontractor

Not used.

Schedule 8: Deed of Confidentiality

Not used.

Schedule 9: Performance Guarantee

Not used.

Schedule 10: Financial Security

Deed Poll dated the

day of

20

In favour of Transport for NSW (ABN 18 804 239 602) (**Customer**)

20-44 Ennis Road, Milsons Point, NSW, 2061

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

[insert address]

BY THIS DEED POLL:

1. Fuji Xerox BusinessForce Pty. Limited (ABN 94 137 933 905) (**Contractor**) has agreed to supply certain products and services to the Customer under a contract dated *[insert]* between the Contractor and the Customer (**Customer Contract**).
2. The Guarantor irrevocably and unconditionally undertakes to pay to the Customer on their first demand in writing 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. Any demand has to be accompanied by the Customer's written notice that the demand has been made in accordance with Clause 9 of this Financial Security.
4. The Guarantor's liability under this Financial Security is a continuing liability until the sooner of:
 - (a) the date payment is made up to the maximum aggregate sum;
 - (b) the date the Customer and Contractor agree in writing to release this Financial Security; or
 - (c) the date the Customer notifies the Guarantor that this Financial Security is no longer required.
5. 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.
6. The Guarantor may at any time, without being required to do so, pay the Customer the maximum aggregate sum or, after having made a part payment of the maximum aggregate sum, the balance outstanding or any lesser amount that the Customer may require and thereupon this Financial Security expires.
7. The Guarantor will deal with this Financial Security in accordance with any applicable anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations.
8. The Guarantor acknowledges and agrees that this Deed Poll may be relied upon and enforced by the Customer in accordance with its terms even though the Customer is not a party to it.
9. This Financial Security is irrevocable and may only be terminated if the Customer and the Guarantor agree in writing.

10. The laws of New South Wales govern this Financial Security and the parties submit to the exclusive jurisdiction of the courts of New South Wales.
11. A demand, notice or any other communication by the Customer to the Guarantor is properly given or served if it is in writing and duly signed for and on behalf of the Customer and received in original by hand, registered post or courier service, in a letter addressed to the Guarantor, at its below address. Any notice to the Customer is properly given or served if it is in writing signed by or on behalf the Guarantor and is sent by registered post or courier service in a letter addressed to Customer at its below address.
12. The address for services of notice for a party is, in the case of the:

Guarantor

Physical address *[insert]*

Postal address *[insert]*

Customer

Postal address: 20-44 Ennis Road, Milsons Point, NSW, 2061

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

Executed as a deed poll

[Insert execution block for Guarantor.]

[By single attorney]

Signed sealed and delivered for **[insert name of Guarantor]** by their attorney

sign here ► _____

Attorney

print name _____

in the presence of

sign here ► _____

Witness

print name _____

print address _____

[By multiple attorneys]

Signed sealed and delivered for **[insert name of Guarantor]** by their attorneys

sign here ► _____

Attorney

Attorney

print name _____

in the presence of

sign here ► _____

Witness

Witness

print name _____

print address _____

[By common seal]

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

[Empty rectangular box for common seal]

was affixed by [authority of the Board of Directors]

[Empty rectangular box for authority]

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

[Empty rectangular box for name]

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

[Empty rectangular box for name]

[Empty rectangular box for signature]

Signature of Director/Secretary

[Empty rectangular box for signature]

Print name

[Empty rectangular box for print name]

Date

[Empty rectangular box for signature]

Signature of Director/Secretary

[Empty rectangular box for signature]

Print name

[Empty rectangular box for print name]

Schedule 11: Dispute Resolution Procedures

1. Expert Determination

- 1.1 If a Referral Notice is submitted under clause 24.7 of Part 2 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 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 may be; 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 specialist 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 paragraphs (a) and (b) above:

- (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 the 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 an 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: Project Implementation and Payment Plan (PIPP)

The Parties may enter into Project Statement of Works from time to time in accordance with the terms of the Customer Contract. Each Project Statement of Work is a PIPP for the purposes of this Customer Contract.

Module 7 – Professional Services

Version 3.2

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[Use Guidelines

This Module should be used when the Customer is buying the services of personnel with IT related skills where the Contractor's services are not subject to day to day supervision by the Customer.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.]

1. Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 7** form part of the Customer Contract when the Parties state that the Professional Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 7.
- 1.2 **Professional Services** means the Services that are set out on the Module Order Form that are to be supplied by the Contractor to the Customer under this Module, which may include any information, communications or technology related service, including:
- (a) strategy advice;
 - (b) development, enhancement or support of software (not otherwise provided for under Modules 4 or 5);
 - (c) writing reports;
 - (d) reviews or quality assurance activities;
 - (e) change management services;
 - (f) project management services;
 - (g) knowledge transfer services; and
 - (h) other information, communications or technology related services agreed by the Parties which are provided under the direction and control of the Customer.

The term Professional Services does not include services provided under the direction, control and supervision of the Customer. These services are Contractor Services and are subject to Module 6 Contractor Services.

The term Professional Services does not include training services. These services are subject to Module 8 Training Services.

INTERPRETATION

- 1.3 Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

2. Professional Services Period

- 2.1 Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Professional Services must be provided for the Contract Period unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2 If no Contract Period is specified in the Order Documents and the Professional Services are provided on a time and materials basis, then the Professional Services will be provided from

the Commencement Date until either Party cancels the Professional Services by providing 30 days prior Notice in Writing to the other.

3. Scope of Professional Services

SCOPE

- 3.1 The Parties will set out in the Module Order Form or a PIPP the details of the Professional Services which may include:
- (a) the Contract Period;
 - (b) the details of the Professional Services that the Contractor is to provide;
 - (c) the details of any Specified Personnel;
 - (d) the details of any Deliverables and their Contract Specifications;
 - (e) the location of where the Professional Services are to be provided;
 - (f) whether any Deliverable must undergo Acceptance Tests;
 - (g) the Price, expenses and any other charges that apply in respect of the Professional Services; and
 - (h) how the Prices, expenses and charges will be paid, including any payment Milestones and whether the Professional Services are provided on a time and materials basis, fixed price or some other basis.

PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 3.2 If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, and it is stated on the Module Order Form that a PIPP is required, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the Professional Services. Within 5 Business Days of receipt of the draft PIPP the Customer must:
- (a) approve the PIPP; or
 - (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.
- 3.3 Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

REPORTING

- 3.4 The Contractor must monitor the progress of the Professional Services and provide the Customer with status reports at monthly intervals, or such other intervals as is agreed by the Parties which, at a minimum, include the following issues:
- (a) the issues and risks that the Contractor recommends be pro-actively addressed to avoid delays;
 - (b) any actions that the Parties need to take, or decisions that need to be made, to ensure the provision of the Professional Services in accordance with the requirements of the Customer Contract, including any PIPP;
 - (c) the progress of the work against any project plan;

- (d) the amounts charged, and amount of work in progress against the budget;
- (e) whether it is anticipated that the budget is likely to be exceeded, and if so the reasons; and
- (f) any other issues that the Parties agree should be included in the reports.

CUSTOMER DIRECTIONS

- 3.5 The Contractor must comply with all reasonable directions of the Customer as may be given to the Contractor from time to time in respect of the delivery of the Professional Services, provided that such directions are consistent with the requirements of the Customer Contract. Where such direction:
- (a) causes the Contractor's costs to increase, the Customer must pay for any increase in the Contractor's costs at the Contractor's time and materials rates (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) plus any expenses; and
 - (b) causes the Contractor not to be able to meet any timetable for delivery, then the timetable must be extended to the extent that it is reasonable given the nature of the direction and the impact on the Professional Services.
- 3.6 Nothing in clause 3.5 affects the Contractor's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the Customer's reasonable directions or otherwise to comply with the Contractor's obligations under the Customer Contract.
- 3.7 Subject to otherwise complying with its obligations under the Customer Contract, the Contractor must exercise its independent discretion as to the most appropriate and efficient manner of providing the Professional Services and satisfying the Contractor's obligations under this Customer Contract.

EMPLOYEE RELATIONSHIP

- 3.8 The Contractor undertakes to comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement.
- 3.9 The Contractor acknowledges and agrees that:
- (a) it is solely responsible for the obligations in clause 3.8; and
 - (b) neither it, nor its Personnel have, pursuant to this Customer Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

4. Acceptance Tests and Use

- 4.1 Where the Professional Services are for the creation of a specific Deliverable for which the Parties have agreed that the Deliverable is to undergo Acceptance Tests then:
- (a) the Customer must not use any part of the Deliverable for its business purposes and/or in a production environment without first undertaking Acceptance Tests in accordance with clause 10 of the Customer Contract; and
 - (b) it is acknowledged and agreed by the Customer that if the Customer uses the Deliverable for its business purposes and/or in a production environment before the Deliverable has passed its Acceptance Tests in accordance with clause 10.9 of the

Customer Contract (as opposed to where the Deliverable is merely deemed to have passed its Acceptance Tests under clause 10.13 of the Customer Contract) the Customer is taking a significant risk in using untested Deliverables, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Deliverable.

5. Restraint

- 5.1 The Customer must not, without the prior written consent of the Contractor, whether on its own behalf or on behalf of any other person and in any capacity:
- (a) encourage any of individual who has performed any Professional Services to:
 - (i) stop working for or providing services to the Contractor; or
 - (ii) work for or provide services to the Customer, any Agency or Department or any other person; or
 - (b) employ, contract, or enter into any arrangement, to receive the benefit of the services of the individual who has performed any Professional Services,
- for the following restraint periods:
- (c) during the period that the individual performed the Professional Services and a period of 12 months thereafter;
 - (d) during the period that the individual performed the Professional Services and a period of 9 months thereafter;
 - (e) during the period that the individual performed the Professional Services and a period of 6 months thereafter;
 - (f) during the period that the individual performed the Professional Services and a period of 3 months thereafter; and
 - (g) during the period that the individual performed the Professional Services.
- 5.2 Clause 5.1 is to be construed and have effect as the number of separate restraints that arise by separately combining each of the subclauses in 5.1(a) and (b) above with the restraint periods listed in each of the subclauses in (c) to (g) above. Each of the covenants that result from a combination of the restraints in subclauses 5.1(a) and (b) with the restraint periods in subclauses (c) to (g), constitute and are to be construed as having effect as separate, distinct, severable and independent provisions from the other covenants, but cumulative in overall effect. If any of the covenants or parts of the covenants resulting from the operation of this clause, are unenforceable they will be severed from the remaining enforceable covenant or part thereof.
- 5.3 The Customer agrees that the remedy of damages may be inadequate to protect the interests of the Contractor from a breach of the Customer's obligations under this clause 5 and the Contractor is entitled to seek and obtain injunctive relief, or any other remedy, in any court.
- 5.4 A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 5.1.
- 5.5 The Parties agree that the restrictions in clauses 5.1 to 5.4 are necessary to protect the legitimate interests of the Contractor.

6. Specific Warranties

SCOPE

- 6.1 Where the Professional Services are provided on a fixed price basis:
- (a) the Contractor warrants that any Deliverable (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects during the Warranty Period, subject to the Exceptions; and
 - (b) if an unmodified version of the Deliverable (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor may, at its option, promptly remedy those Defects, implement a Workaround, or replace the relevant part of the Deliverable, at its own expense, or refund the Price payable for the deficient Deliverable. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.
- 6.2 Owing to the nature of the subject matter, but subject to clauses 6.1, 6.3, 6.4 and 7, the Contractor expressly excludes any warranty that:
- (c) any Deliverable will be error free;
 - (d) any Deliverable will operate without interruption;
 - (e) it will correct all program errors;
 - (f) any Deliverable will be compatible with any Hardware, software or data not supplied by the Contractor (except as specified in the Contract Specification); and
 - (g) any Deliverable will meet the Customer's requirements.
- 6.3 The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect, including installing patches and Workarounds.
- 6.4 The Contractor warrants that, subject to the Exceptions, from the Commencement Date until the end of the Warranty Period in relation to the Professional Services that the Contractor will provide the Professional Services in accordance with the requirements of the Contract Specifications in all material respects and with due care and skill.

7. Exceptions

- 7.1 The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
 - (b) modifications to any Deliverable that were effected or attempted by a person other than the Contractor or its authorised representative, other than where such modifications were recommended by the Contractor;
 - (c) any act, error, fault, neglect, misuse or omission of the Customer;
 - (d) damage caused by the operation of the Deliverable other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the original Intellectual Property Rights owner, authorised distributor or the Contractor;

- (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
 - (f) improper use or mismanagement by the Customer; or
 - (g) a Force Majeure Event.
- 7.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and 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 identifying and attempting to remedy that item.

PROCURE IT VERSION 3.2
MODULE ORDER FORM
MODULE 7 – PROFESSIONAL SERVICES

Box 1 Details of Professional Services

Details to be included from Module 7	Order Details agreed by the Contractor and the Customer
Scope (clause 3.1)	
<p>Specify the Professional Services (other than Training Services) which are to be provided, including:</p> <ul style="list-style-type: none"> (a) the Contract Period; (b) the details of the Professional Services that the Contractor is to provide; (c) the details of any Specified Personnel; (d) the details of any Deliverables and their Contract Specifications; (e) the location of where the Professional Services are to be provided; (f) whether any Deliverable must undergo Acceptance Tests; (g) the Price, expenses and any other charges that apply in respect of the Professional Services; and (h) how the Prices, expenses and charges will be paid, including any payment Milestones and whether the Professional Services are provided on a time and materials basis or some other basis. <p>[Note: These details can be put on a PIPP instead of being including on this Module Order Form. If the details are put on a PIPP, insert “Details of the Professional Services (other than Training Services) are set out in the PIPP”.]</p>	<ul style="list-style-type: none"> a) See Item 10 Contract Period of Schedule 1: General Order Form. b) As set out in a PIPP. c) As set out in Schedule 1: General Order Form or a PIPP. d) As set out in a PIPP, and further described in Item 13 (Contract Specifications) of Schedule 1: General Order Form. e) As set out in Schedule 1: General Order Form or a PIPP. f) All Deliverables provided under this Module 7 must undergo Acceptance Tests. Acceptance Tests will be carried out in accordance with the terms of the Customer Contract and a PIPP. After a Deliverable is accepted by the Customer, that Deliverable will form part of the Managed Services provided under Module 12 (Managed Services) of this Customer Contract when the Customer notifies the Contractor that it requires that Deliverable as part of the Managed Services. g) As set out in Annexure C Charges to this Schedule 1: General Order Form or in a PIPP. Notwithstanding anything to the contrary, the Customer is not required to make any payment for any Deliverable provided under this Module 7 until it has been accepted by the Customer in accordance with paragraph (f) above. h) As set out in Annexure C Charges to this Schedule 1: General Order Form or a PIPP.

Box 2 Requirement for a PIPP

Details to be included from Module 7	Order Details agreed by the Contractor and the Customer
<p>Project Implementation and payment Plan (PIPP) (clause 3.2)</p>	
<p>Specify if the Contractor is required to provide a PIPP, if no PIPP is attached to this Customer Contract at the Commencement Date.</p> <p>[If this Box is not completed, the Contractor is not required to provide a PIPP.]</p>	<p>Clauses 3.2 and 3.3 of Module 7 do not apply. Each Project Statement of Work entered into between the Parties from time to time is a PIPP for the purposes of this Customer Contract.</p> <p>Project Statement of Work</p> <p>(a) The Customer may from time to time during the Contract Period request that the Contractor provide new Products or Services by providing the Contractor with a Request for Works in the form set out at Appendix A (Template Request for Works and Project Statement of Work) to this Module 7 Order Form (a Request for Works).</p> <p>(b) Within 5 Business Days (or such other period as agreed between the Parties) of receipt of the Request for Works, the Contractor must provide to the Customer a completed Project Statement of Work in the form set out in Appendix A (Template Request for Works and Project Statement of Work) to this Module 7 Order Form (or such other form as agreed by the Customer) in draft.</p> <p>(c) The Customer may then indicate whether: (i) it wishes to discuss the draft Project Statement of Work in which case the Parties will discuss and seek to finalise the Project Statement of Work; or (ii) the Contractor can issue the Project Statement of Work in final form.</p> <p>(d) Following the finalisation of a Project Statement of Work in accordance with paragraph (c) above, the Contractor must issue to the Customer a final Project Statement of Work signed by the Contractor. If the final Project Statement of Work is in order, the Customer will then confirm in writing that the Project Statement of Work is acceptable and sign the Project Statement of Work, in which case the Project Statement of Work will then form part of the Customer Contract. The Contractor must not commence any works under a finalised Project Statement of Work until the Project Statement of Work is signed by the Customer.</p> <p>(e) Each Project Statement of Work will set out</p>

	<p>the relevant Products and Services applicable to that Project Statement of Work and may, in addition to the required information included in the template form set out in Appendix A (Template Request for Works and Project Statement of Work) to this Module 7 Order Form, include any other information as required by the Customer.</p> <p>(f) The Contractor must bear its own costs in preparing, submitting and negotiating a Project Statement of Work.</p> <p>(g) The pricing submitted by the Contractor in a Project Statement of Work must be prepared on principles that correspond to the existing pricing principles in the Customer Contract using any rates or prices which appear in the Customer Contract (including any agreed rate card in Annexure C Charges to this Schedule 1: General Order Form) to the extent they are applicable to, or it is reasonable to use them for valuing the Project Statement of Work.</p>
--	--

APPENDIX A

Template Request for Works and Project Statement of Work

Request for Works for Professional Services (Module 7)

For completion by the Customer – Request for Works

Customer Identification #	
Background	
Customer Requirements for Services and Deliverables	
Timeframe for supply of the Services and Deliverables	
Customer Contact for this Request for Project Work	

Project Statement of Work

For completion by the Contractor

This Project Statement of Work by and between **Transport for NSW** and **Fuji Xerox BusinessForce Pty. Limited** is developed in accordance with the documented requirements of Module 7 Professional Services of the Customer Contract entered into between the parties dated [insert date].

A capitalised term used in this Project Statement of Work has the meaning given to that term in the Customer Contract, unless otherwise defined in this Project Statement of Work.

This Project Statement of Work constitutes a PIPP for the purposes of the Customer Contract.

Customer Identification #	
Details of Services to be provided and their Contract Specifications	
Details of Deliverables to be provided and their Contract Specifications	
Project Commencement Date	
Period for provision of Services and Deliverables	
Details of any approved Subcontractors	
Contractor Specified Personnel	
Location where Services will be provided (including whether they will be onsite or offsite)	
Details of any Acceptance Tests requirement for Deliverables	

Price, expenses and charges that apply	
How Prices, expenses and charges will be paid, including any payment milestones	
Details of equipment, software or other materials that are required	
LD Obligations (if any) and related due dates	
Liquidated Damages	
Service Levels	
Warranty Period	
Other relevant information (if any)	

IN WITNESS WHEREOF, the undersigned, acting through their authorised representatives, have signed this Project Statement of Work to be effective as of the Project Commencement Date.

Signed for and on behalf of

Transport for NSW

By its authorised delegate but not so as to incur personal liability

Signature of Customer Representative

Print name

Date

Signed for and on behalf of

Fuji Xerox BusinessForce Pty. Limited

[Redacted Signature Area]

Signature of Authorised Signatory

[Redacted Signature Area]

Print name

[Redacted Name Area]

Date

Module 12 – Managed Services

Version 3.2

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[Use Guidelines

This Module should be used when the Customer is outsourcing day to day management responsibilities for databases and information services such as data recovery, storage, security, monitoring, network management, user management, data management, and systems management but does not include SaaS, IaaS and PaaS for which there is a separate module.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.]

1 Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 12** form part of the Customer Contract when the Parties state that the Managed Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Additional Items** means the additional items stated in the Order Documents which are to be acquired by the Contractor under the Customer Contract.
- 1.2 **Additional Services** means the provision of additional Managed Services in respect of additional in-scope items (e.g. where the Customer Environment increases as Additional Items of in-scope equipment or services are added by the Customer).
- 1.3 **Assets** means the assets stated in the Order Documents which are to be acquired by the Contractor under the Customer Contract.
- 1.4 **Assumptions** means the assumptions on which the Parties agree the Contractor has based the performance of the Managed Services and the Price, as set out in the Order Documents.
- 1.5 **Client Contracts** means contracts between the Customer and purchasers of the Customer's products and services which are listed in the Module Order Form.
- 1.6 **Consolidation Period** means the first month of the Managed Services (commencing on the Services Commencement Date of the relevant Managed Service), or such other period stated on the Module Order Form.
- 1.7 **Contractor Services Data** means any data relating to the Environment (including statistical data, configuration information, technical architecture, process or procedures data, and any other such data necessary for administrative, corporate governance, operations, facilities management and related purposes) relating to the Contractor's provision of the Managed Services in accordance with this Customer Contract, which is generated by the Contractor, or its software, systems or equipment, and any reproduction, adaptation, translation or derivative of any of them.
- 1.8 **Customer Managed Services Data** means data supplied by the Customer to the Contractor to be processed using the Managed Services.
- 1.9 **Environment** means the technology environment that is in-scope for the provision of the Managed Services in the state it exists on the Commencement Date, and as may be amended by the addition or subtraction of items as varied from time to time in accordance with the Customer Contract.
- 1.10 **Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 12.
- 1.11 **Managed Services** means Services whereby the Contractor agrees to either manage the information technology in the Environment or otherwise to manage the external delivery of services to the Customer, as more particularly described in the Order Documents, including the Module Order Form and the PIPP, and as varied from time to time in accordance with the Customer Contract. The term **Managed Services** may include:
 - (a) management of Hardware, desktop Environments, server Environments or mainframes;
 - (b) management of telephony services;

- (c) management of software, databases or applications (excluding SaaS, IaaS and PaaS);
- (d) management of help desk or support services;
- (e) management of printers, copiers or print related services;
- (f) any combination of any of these; or
- (g) any other technology or environment that is agreed by the Parties.

The term Managed Services includes:

- (a) the Managed Services provided from the Services Commencement Date;
- (b) any Additional Services; and
- (c) any Transition Out Services.

The term Managed Services does not include:

- (a) Transition In Services; or
- (b) any Project Services.

- 1.12 Project Services** means specific consultancy works which are related to the Managed Services, but which form a discrete arrangement, and which will be performed under Module 7 (Professional Services).
- 1.13 Procedures Manual** means the Contractor's manual that sets out the processes and procedures for performing the Managed Services and working with the Customer and its Personnel. The Procedures Manual is the Contractor's Confidential Information and Intellectual Property Rights.
- 1.14 Services** in this Module means any of:
- (a) Transition In Services;
 - (b) Managed Services; and
 - (c) Project Services.
- 1.15 Services Commencement Date** means the date that the Contractor states it is ready to commence the Managed Services under clause 3.32, or such date that the Parties agree that the Contractor must commence the Managed Services under clause 3.33.
- 1.16 System** means the Contractor's information technology facilities, described in the Order Documents, including the Module Order Form or the PIPP, which is dedicated to the provision of the Managed Services to the Customer.
- 1.17 Third Party Contract** means a contract between the Customer and a third party provider of products or services which is identified in the Module Order Form.
- 1.18 Transition In Period** means the period from the Commencement Date until the Services Commencement Date.
- 1.19 Transition In Plan** means the transition in plan that is attached to the Module Order Form.

- 1.20 Transition In Services** means the Services provided by the Contractor to the Customer during the Transition In Period, and includes the obligations described in the Order Documents.
- 1.21 Transition Out Period** means the 3 month period (or such other period stated in the Module Order Form or the Transition Out Plan) prior to the effective date of termination of the Customer Contract.
- 1.22 Transition Out Plan** means the transition out plan developed in accordance with clause 7.
- 1.23 Transition Out Services** means the Services to be provided by the Contractor to the Customer during the Transition Out Period in anticipation of the termination of the Customer Contract.

INTERPRETATION

- 1.24** Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

2 Term of Managed Services

TERM

- 2.1** The Contract Period commences on the Commencement Date and will continue:
- (a) during the Transition In Period; and
 - (b) from the Services Commencement Date of the first of the Managed Services to be commenced and throughout the period of the Managed Services, which will be three years (or such other period stated in the Module Order Form),
- unless the Customer Contract is terminated sooner in accordance with the Customer Contract.
- 2.2** The period of the Managed Services may be extended by agreement between the Parties using the procedure stated in Schedule 4 – Variation Procedures.

EXCLUSIVE PROVIDER

- 2.3** During the Contract Period, the Customer engages the Contractor to be the exclusive provider of:
- (a) the Managed Services in respect of the Environment; and
 - (b) any similar or related services in relation to the Environment which impact the Contractor's ability to meet its obligations under this Customer Contract, including any Service Levels.

3 Transition In

SCOPE

- 3.1** The Parties must perform their obligations in relation to Transition In Services in accordance with the Transition In Plan.
- 3.2** The Customer must pay the Contractor the Price for performing the Transition In Services.

DUE DILIGENCE

3.3 Unless stated otherwise on the Module Order Form, the Transition In Services will include the Contractor performing due diligence, which may include assessment and definition of the:

- (a) Customer's goals, requirements and expectations in respect of the Managed Services;
- (b) Contractor's understanding of the Customer's and/or user's experience and requirements in relation to the Managed Services;
- (c) objectives to be met by the Contractor;
- (d) nature and scope of the Managed Services, including the Environment, the Assets, Client Contracts and Third Party Contracts (and any requirement to novate or assign any of them);
- (e) end users who will be supported by the Managed Services;
- (f) necessary Assets and Additional Items and how they may need to be procured;
- (g) migration of Customer Managed Services Data;
- (h) Transition In Plan;
- (i) required Deliverables;
- (j) resources required (including any Customer Supplied Items or Customer assistance);
- (k) complexity of the project; and
- (l) any Transition Out Plan.

3.4 The due diligence must be completed within 30 days (or such other period agreed in the Order Documents). The Customer must provide such assistance, information and access to Personnel as may be reasonably required by the Contractor to assist the Contractor to perform the due diligence.

3.5 If the Contractor's due diligence determines that:

- (a) any aspect of the Services (including any of the items in clause 3.3) is different to that represented to the Contractor and/or there are items that were not known to the Contractor that will adversely affect the Contractor's ability to meet the Service Levels or other obligations under the Customer Contract; or
- (b) any Assumption is not true,

then the Contractor will provide the Customer with a formal proposal to vary the Customer Contract (**Proposed Variation**) and the Parties will negotiate in good faith to vary the Price, and/or adjust the relevant Service Level or other obligation that is affected. If the Parties agree a variation to the Customer Contract this will be documented by a Change Request and the procedures stated in Schedule 4 – Variation Procedures will apply subject to clauses 3.6 to 3.9.

3.6 Any Proposed Variation:

- (a) of the Price will, as far as possible, be calculated using the Contractor's time and materials rates (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's rates for government), or the rates for providing Additional Services; and

(b) of the Service Levels or other obligations must be done so as to provide the Customer with a level of service as close to the Service Level or obligation as set out in this Customer Contract as is practical taking into account the reason for the variation.

3.7 If the Proposed Variation provides substantially similar Service Levels and other obligations as those set out in the Customer Contract, and the varied Price is not more than 5% higher than the Price set out in the Customer Contract at the Commencement Date, then the Customer Contract will be amended to reflect this Proposed Variation.

3.8 If the Proposed Variation:

- (a) does not provide substantially similar Service Levels and other obligations as those that were set out in the Customer Contract at the Commencement Date; or
- (b) proposes to increase the Price by more than 5% as set out in the Customer Contract at the Commencement Date,

then the Customer may terminate the Customer Contract by giving the Contractor Notice In Writing to terminate the Customer Contract within 21 days of receipt of the Contractor's Proposed Variation. If no such notice is received then the Customer Contract will be amended to reflect the Proposed Variation.

3.9 If the Customer does terminate the Customer Contract under clause 3.8, then the Customer must:

- (a) pay the Contractor any amount of the Price for the Transition In Services which have been completed that has not been paid;
- (b) 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 preparing to perform the Managed Services; and
- (c) pay any amount that is stated in the Order Documents as being payable if the Customer Contract is terminated under clause 3.8.

3.10 If there is no requirement for a Proposed Variation or the Parties agree to a variation, then the Contractor must then complete the Transition In Services.

ASSETS AND ADDITIONAL ITEMS

3.11 Clauses 3.12 to 3.14 only apply where a transfer of Assets or Additional Items are required in the Module Order Form.

3.12 Prior to the date stated in the Order Documents, the Customer must conduct a stock take of the Assets and Additional Items. Upon completion of the stock take, the Customer must give written notice of the results and valuation of the Assets and Additional Items to the Contractor. The method of valuation must be agreed on the Order Documents, including the Module Order Form or the PIPP. The Contractor must agree the outcome of the stock take and the valuation, such agreement not to be unreasonably withheld, prior to being required to purchase the Assets and Additional Items.

3.13 Subject to clause 3.14, with effect on the Services Commencement Date and for the consideration calculated in accordance with the valuation agreed under clause 3.12 (or as otherwise agreed), the Customer will sell and the Contractor will purchase the Assets and Additional Items at the agreed value.

3.14 Unless agreed otherwise on the Module Order Form:

- (a) upon the Services Commencement Date, the title to the Assets and Additional Items will pass to the Contractor; and

- (b) the risk of loss of the Assets and Additional Items will pass to the Contractor on the date that the Contractor takes possession of the Assets and Additional Items.

The Customer warrants that upon title to Assets and Additional Items passing to the Contractor, the Assets and Additional Items will pass to the Contractor free and clear of all liens, mortgages, charges, pledges and other encumbrances.

CONTRACTS

- 3.15** Clauses 3.16 to 3.21 only apply where the transfer of one or more Third Party Contracts or Client Contracts is required in the Module Order Form.
- 3.16** The Customer will be responsible for obtaining the novation of the Third Party Contracts and the Client Contracts effective from the Services Commencement Date or such earlier date agreed by the Parties.
- 3.17** If a Third Party Contract or Client Contract cannot be novated by the Services Commencement Date or such earlier date agreed by the Parties:
 - (a) the Contractor must use its best efforts to procure the right to assume management responsibility on behalf of the Customer in respect of the Customer's rights and obligations under the relevant Third Party Contract or Client Contract and the Customer must provide all reasonable assistance to the Contractor in that regard;
 - (b) if the Contractor cannot procure management rights, the Parties will consult and cooperate in order to implement workarounds or other alternative solutions to enable the Contractor to provide the Managed Services; and
 - (c) the Customer must, at its own cost, promptly and fully enforce the Third Party Contract or Client Contract.
- 3.18** All costs associated with the novation of a Third Party Contract or Client Contract, the procurement of management rights for the Contractor or the performing of the obligations under clauses 3.16 and 3.17 in respect of the Third Party Contracts or Client Contracts, will be borne by the Customer, unless agreed otherwise on the Module Order Form.
- 3.19** If a Client Contract cannot be novated prior to the Services Commencement Date or such earlier date agreed by the Parties:
 - (a) the Customer may at its option terminate the Client Contract or continue to perform its obligations to its client under the Client Contract; and
 - (b) the Contractor will provide all reasonable assistance to the Customer in meeting its obligations under a Client Contract, and the Customer will reimburse the Contractor its reasonable costs in providing any such assistance.
- 3.20** If a Third Party Contract cannot be novated prior to the Services Commencement Date or such earlier date agreed by the Parties, at the Customer's option and direction, the Contractor will:
 - (a) enter into an agreement directly with the third party (or any third party provider of similar goods or services) (but only where commercially reasonable terms can be agreed) for the acquisition of the relevant goods or services to replace the Third Party Contract to enable the Contractor to provide the Managed Services; or
 - (b) implement workarounds or other alternative solutions to enable the Contractor to provide the Managed Services; and
 - (c) the Customer will reimburse the Contractor its reasonable costs in following such directions.

- 3.21** The Contractor's obligations under clauses 3.17 to 3.20 are subject to it having been provided by the Customer with a reasonable opportunity to investigate and assess all relevant commercial, financial and legal information in the Customer's possession or control regarding the Third Party Contracts and relevant Client Contracts. However, the Customer does not warrant that the third party will agree to any form of due diligence inquiry and the Customer will not be obliged to provide the Contractor with confidential data or data not reasonably accessible to the Customer.
- 3.22** If as part of the Managed Services, a Deliverable is required to which the terms or conditions of another Module relate, those Deliverables may be procured by the Contractor either:
- (a) as a Nominee Purchaser, by placing an order under the relevant Contract Authority agreement in accordance with clause 2.5 of the Customer Contract; or
 - (b) as stated in the Module Order Form.

DATA MIGRATION

- 3.23** If the Managed Services require the migration of Customer Managed Services Data to the System, the Parties will each comply with the obligations in relation to the migration of Customer Managed Services Data stated in the Order Documents.
- 3.24** The Customer will, with the assistance of the Contractor, test the migrated data in a manner to be agreed between the Parties to ensure that the migration of the Customer Managed Services Data has been successfully achieved.

PROCEDURES MANUAL

- 3.25** The Contractor must prepare a draft Procedures Manual for the approval of the Customer as part of the Transition In Services. The Procedures Manual will describe the key attributes of the Managed Services, including:
- (a) the governance arrangements between the Customer and the Contractor;
 - (b) the governance arrangements dealing with the Contractor and any third parties;
 - (c) the protocols for managing security issues between the Parties;
 - (d) the protocols for identifying and managing risks;
 - (e) how the key aspects of the Managed Services will be provided to the Customer;
 - (f) the procedures for providing Additional Services; and
 - (g) how user complaints and disputes will be managed.

The Procedures Manual is not required to document the details of how every aspect of the Managed Services is to be provided; rather it is required to describe the key attributes of the Managed Services delivery.

- 3.26** Within 14 days of receipt of the draft Procedures Manual the Customer must:
- (a) approve the Procedures Manual; or
 - (b) provide written notice of any changes to the draft Procedures Manual that it requires, and provided those changes are reasonable, the Contractor must update the Procedures Manual and re-submit it for approval by the Customer.
- 3.27** Once the Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it. The Contractor must, at no additional cost to the Customer, update the Procedures Manual if there

is a variation to the Customer Contract that impacts on any of the contents of the Procedures Manual. As the Contractor makes each update the updated version of the Procedures Manual must be approved by the Customer using the procedure in clauses 3.25(a) and 3.25(c). Once each updated Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it.

BUSINESS CONTINGENCY

- 3.28** The Parties may agree to include a Business Contingency Plan in accordance with clauses 6.45 to 6.48 of the Customer Contract.

SYSTEM

- 3.29** The Contractor must provide the Customer with written notice of the System that is to be used to provide the Managed Services as part of Transition In Services.

TRANSITION AND HANDOVER

- 3.30** As part of the Transition In Services, the Contractor must provide a document (in the form of a PIPP or otherwise) that includes the strategy for the delivery of the Managed Services that is appropriate for the Customer's needs and its user population, including:

- (a) identification of the Services to be performed;
- (b) identification and procurement of necessary Assets and Additional Items;
- (c) identification of Client Contracts and Third Party Contracts and how they are to be managed;
- (d) mechanism to determine when Transition In Services are complete and the Managed Services can commence;
- (e) allocation of responsibilities within each Party's organisation;
- (f) the payment schedule;
- (g) implementation of the Managed Services; and
- (h) how any Project Services will be identified and provided.

- 3.31** The Contractor must use its best efforts to ensure that it has completed the Transition In Services for the relevant Managed Services by the date(s) stated in the Order Documents, including the Module Order Form or the PIPP.

- 3.32** Once the Contractor has completed the relevant Transition In Services it must give written notice to the Customer stating that:

- (a) where the Parties have agreed criteria for determining that Transition In Services have been successful, that those criteria have been met; and/or
- (b) where the Parties have not agreed criteria for determining that Transition In Services have been successful, the date that the Contractor is ready to commence providing the relevant Managed Services.

- 3.33** The Contractor must commence providing the relevant Managed Services by the date stated in the written notice provided under clause 3.32, unless the Customer provides written notice within 5 days of the date of receipt of the Contractor's notice under clause 3.32, stating that:
- (a) where the Parties have agreed criteria for determining that Transition In Services have been successful, those criteria have not been met and the details of how they have not been met; or
 - (b) where the Parties have not agreed criteria for determining that Transition In Services have been successful, the details of the Customer's reasonable grounds for believing that the Contractor is not ready to provide the relevant Managed Services.
- 3.34** If the Contractor receives written notice under clause 3.32, then the Contractor must promptly remedy the Defects and give the written notice to the Customer stating the date that the Contractor is ready to commence providing the relevant Managed Services. The Contractor must commence the Managed Services by the date in that notice.
- 3.35** Where the Managed Services are to be handed over in phases, clauses 3.31 to 3.34 will apply to the relevant Managed Services that are in each of the phases that are to be handed over.

4 Services

COMMENCEMENT

- 4.1** The Contractor must provide the Managed Services from the Services Commencement Date of the relevant Managed Service.

SYSTEM REQUIREMENTS

- 4.2** The Contractor will keep the Customer informed as to proposed alterations to the System which may materially affect compliance with the Service Levels for the Managed Services. The Contractor must obtain the Customer's written consent in advance to any such proposed alterations, such consent will not be unreasonably withheld or delayed.

SYSTEM COMPONENTS

- 4.3** At any time on request by the Customer, the Contractor must provide the Customer with:
- (a) a list of the key System's components relevant to the provision of the Managed Services;
 - (b) a brief description of the functionality of each such component; and
 - (c) any other relevant information reasonably requested by the Customer to enable the Customer to be informed as to the key components of the System.

CUSTOMER MANAGED SERVICES DATA

- 4.4** The Contractor must not place any lien, charge or other encumbrance over the Customer Managed Services Data.
- 4.5** The Contractor will, to the extent specified in the PIPP:
- (a) make backup copies of the Customer Managed Services Data; and
 - (b) store and retain backup copies.
- 4.6** The Contractor will provide such security measures in accordance with best practice industry standards in relation to the Customer Managed Services Data as specified in the Order Documents.

- 4.7** The Contractor will ensure the Customer has access to the Customer Managed Services Data at all reasonable times, in any reasonable manner and at no additional charge, whilst the Customer Managed Services Data is in the possession or under the control of the Contractor.
- 4.8** The Contractor will use commercially available products to protect the Customer Managed Services Data from unauthorised access by third parties. The Contractor may permit access to the Customer Managed Services Data by Contractor's Personnel who require access to perform the Managed Services, or any third parties connected with any Third Party Contract or Client Contract that permits such access. Any such access must be subject to any of the Customer's security requirements stated in the Order Documents.
- 4.9** The Contractor may store, hold, process or otherwise deal with any Customer Managed Services Data and/or any Personal Information in any country in the world, provided that the Contractor provides the Customer with prior written notice of the countries in which such activities may occur and the Customer agrees to the nominated countries.
- 4.10** In respect of Customer Personal Information, the Contractor agrees that it:
- (a) shall comply with all applicable Privacy Laws as may be enforced from time to time which regulate the collection, storage, use or disclosure of or access to that information;
 - (b) shall comply with any Customer directions that are consistent with such laws; and
 - (c) shall ensure that before permitting any Customer Personal Information to be collected or stored by, or disclosed to, any person outside Australia, the Contractor will inform the Customer and provide such assurances the Customer reasonably requires, including as to the Contractor's security system and that the data protection interests of relevant individuals will not be materially different than would have been the case had the Customer Personal Information remained solely in Australia. Where the applicable Privacy Laws contain requirements applying to Customer Personal Information collected or stored by, or disclosed to, any person outside Australia, then this clause 4.10(c) shall not apply.

THIRD PARTY SERVICE PROVIDERS

- 4.11** If the Customer retains a third party to perform services that interact with any of the Managed Services or otherwise connect with the Environment, the Contractor will co-operate with the third party to assist the Customer to manage its third parties' responsibilities and so that they are carried out in a coordinated, effective and timely manner by:
- (a) providing access to the Contractor's facilities and resources as reasonably required by the third party;
 - (b) providing any information regarding the operating environment, protocols, interfaces, architecture and other operating parameters reasonably required by the third party;
 - (c) providing any assistance reasonably required by the third party in relation to the connection or interfacing of any equipment; and
 - (d) following reasonable directions by the Customer as to the division of responsibilities in relation to the discharge by the Contractor and a third party of their respective obligations.
- 4.12** The Customer must, at its own cost, promptly and fully enforce any contract with a third party whose products or services interact with any of the Managed Services or otherwise connect with the Environment.

SUPPLEMENTARY PROCESSES

- 4.13** The Order Documents or the Procedures Manual may specify supplementary processes and terms that apply to the provision of the Managed Services. If so, the Parties will comply with any such supplementary processes and terms, provided that the terms in this Module and the Agreement prevail over any such supplementary processes and terms if there is an inconsistency.

5 Service Levels

- 5.1** During the Consolidation Period the Contractor will use its best efforts (but will not be liable for any failure) to meet or exceed the Service Levels.
- 5.2** At the end of the Consolidation Period, the Contractor will provide the Customer with a report setting out how the Managed Services are operating under the provisions of the Customer Contract. Within 14 days of the end of the Consolidation Period, the Parties must meet and formally review the Managed Services and consider any changes that may be needed to meet the Customer's ongoing requirements. Any changes will be implemented via a Change Request and the procedures in Schedule 4 – Variation Procedures will apply.
- 5.3** From the day after the Consolidation Period the Contractor must meet or exceed the Service Levels, subject to any:
- (a) Force Majeure Event;
 - (b) act or omission of the Customer or its Personnel;
 - (c) 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) Exception.
- 5.4** Without limiting its obligations under the Service Level Agreement, the Contractor will, to the extent required by the Customer Contract:
- (a) consult as necessary with the Customer in order to provide the Customer with such information relevant to the Managed Services as the Customer reasonably requires concerning the current and anticipated future performance of the Managed Services;
 - (b) cooperate with all procedures reasonably implemented by the Customer in relation to the Managed Services; and
 - (c) implement such recommendations as may be reasonably made by the Customer in order to ensure the Managed Services continue to comply with the requirements of the Customer Contract.
- 5.5** If, at any time between the end of the Consolidation Period and the beginning of any Transition Out Services, the Contractor fails to meet a Service Level in a material way, it will promptly:
- (a) investigate the underlying cause of the failure;
 - (b) prepare and supply to the Customer a report on the failure;
 - (c) take whatever action is reasonably necessary to minimise the impact of the failure;
 - (d) correct the failure as soon as practicable; and

- (e) keep the Customer advised as to the progress being made in rectifying any circumstances which caused the failure.

5.6 Where a Service Level is not met by reason of the Contractor's failure to meet its obligations under this Customer Contract, the reports and work provided under clause 5.5 will be completed at no cost to the Customer. In all other cases the Customer must pay the Contractor's reasonable costs at its time and materials rates (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current rates for government), for such reports and work.

6 Change Control

6.1 The Parties agree that:

- (a) where the Customer wishes to make a change to the Environment;
- (b) the Contractor recommends to the Customer that changes should be made to the Environment;
- (c) the volume of any Service increases beyond the volumes set out in the Order Documents and Additional Services are required;
- (d) there is a change to the Customer's policies, procedures or a change in law; or
- (e) either Party wishes to make a change to the Services or the Customer Contract,

then the Parties shall comply with the process in this clause 6.

ADDITIONAL SERVICES

6.2 Where the requested change is for an Additional Service then the Customer must request Additional Services by providing the Contractor with a Change Request. Unless agreed otherwise in writing, any Additional Services shall be charged at the rates set out in the Order Documents, or if no rates are set out in the Order Documents, the Additional Services shall be charged at the Contractor's then current rates for government. The Contractor is not required to provide any Additional Services until a Change Request has been signed by the Parties.

PROJECT SERVICE

6.3 If the Customer requires a Project Service, the Customer must request that Project Service by providing the Contractor with a Change Request and the procedures in Schedule 4 – Variation Procedures will apply. The Change Request must include the details required in Module Order Form 7 as the Project Services are also subject to the provisions of Module 7.

PROCESS

6.4 The details of any new, changed or Additional Services, including the scope of the Services and the Prices that are payable for them, must be set out in a Change Request and the procedures in Schedule 4 – Variation Procedures will apply.

DISPUTES

6.5 For clarity, if there is any dispute arising out of or in connection with this Customer Contract, including as to whether a service or item is within the scope of the Managed Services, whether a service is an Additional Service, a Project Service or a new service, there is any other issue relating to the nature, scope or Price of any service or item or the scope of a Party's responsibilities, that dispute will be dealt with in accordance with clause 24 of the Customer Contract.

7 Transition Out

- 7.1** If stated in the Module Order Form, the Contractor must, within 6 months, or such other date agreed by the parties, after the Services Commencement Date, develop a comprehensive Transition Out Plan which will form part of the PIPP. The Transition Out Plan must include:
- (a) the Price that is payable to the Contractor for performing the Transition Out Services;
 - (b) any costs associated with selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services;
 - (c) any costs associated with winding down or stranded assets; and
 - (d) how and when that Price and any other sums are due and payable.
- 7.2** The Transition Out Services may include:
- (a) selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services and the amount payable to the Contractor for such items;
 - (b) providing reasonable assistance in procuring novations or assignments of the Client Contracts and Third Party Contracts to a new services provider or to the Customer;
 - (c) returning or, if requested by the Customer, destroying documents or materials containing the Customer's Confidential Information together with any reproduction of those documents or materials;
 - (d) transitioning the Managed Services to a new service provider or to the Customer; and
 - (e) if requested by the Customer, granting or assisting the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is the same as that being used in the System, and any software owned by the Contractor which is integral to the ongoing provision of the Managed Services, subject to payment of licence fees by the Customer (or new service provider).
- 7.3** The Parties will review the Transition Out Plan annually or at such other period agreed by the Parties in the Transition Out Plan, and the Contractor must implement any agreed changes.
- 7.4** The Customer must pay the Contractor for the work necessary to provide the Transition Out Plan, and any work necessary to change or review the Transition Out Plan on a time and materials basis (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates).
- 7.5** Subject to clause 7.7, if the Customer requires the Contractor to perform the Transition Out Services, it must provide the Contractor with Notice In Writing of its requirement at least 30 days prior to the date that would allow the Transition Out Services to be performed in full prior to the last day of the Contract Period (i.e. If the Transition Out Services are to last 90 days then the Customer must provide the Contractor Notice in Writing that it requires the Contractor to perform the Transition Out Services at least 120 days prior to the last day of the Contract Period).
- 7.6** If the Contractor receives Notice in Writing under clause 7.5, the Contractor must provide the Transition Out Services to the Customer during the Transition Out Period, and the Customer must pay the Contractor:
- (a) the Price for the Transition Out Services;
 - (b) any costs associated with winding down or stranded Assets; and

- (c) any costs associated with selling, transferring, assigning or relocating Assets that are exclusively used in the provision of the Managed Services.

7.7 Notwithstanding clauses 7.5 and 7.6, the Contractor has no obligation to provide Transition Out Services where the Contractor has terminated the Customer Contract under clause 25.6 of the Customer Contract.

7.8 In the course of providing any Transition Out Services, the Contractor must, in consultation with the Customer and as stated in the Transition Out Plan, (as may be applicable to the relevant type of Managed Service):

- (a) return any Customer Supplied Item;
- (b) freeze non-critical software changes in any of the Customer's software that is being supported as part of the Managed Services;
- (c) provide all reasonable transition assistance for the delivery of Customer Managed Services Data to the new service provider or to the Customer and the reloading of the production databases;
- (d) provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties);
- (e) provide a list of the outstanding issues that are detailed on any issues register;
- (f) answer questions and provide such other information as may be reasonably sought by the new service provider or by the Customer to assist it in the transition process; and
- (g) surrender any remaining Customer owned reports and documents still in the Contractor's possession.

7.9 During the Transition Out Period:

- (a) the Contractor ceases to become liable to perform any part of the Managed Services as it is transitioned to a new service provider or to the Customer;
- (b) the Contractor's obligations to meet the Service Levels is reduced to a 'best efforts' obligation only and the Contractor is not liable for failing to meet the Service Levels; and
- (c) the Customer must continue to pay the full Managed Services Price until the last day of the Contract Period, notwithstanding that some or all of the Managed Services may have been transitioned to a new service provider or to the Customer.

8 Payment

8.1 The Customer must pay the Contractor for the Transition In Services, in accordance with the payment details on the Module Order Form.

8.2 The Customer must pay the Contractor for:

- (a) the Managed Services;
- (b) any Additional Services;
- (c) any Project Services;
- (d) any Transition Out Services;

- (e) any amounts due under clause 7.6; and
- (f) any other amounts due under this Customer Contract,

monthly in arrears, unless otherwise agreed on the Module Order Form, PIPP or Change Request. The Contractor must send the Customer a Correctly Rendered Invoice for each payment after the relevant amount is due.

- 8.3** Where the Price is based on the number and/or type of items in the Environment, the Contractor must provide documentation supporting the Price payable for the Managed Services with the Correctly Rendered Invoice.
- 8.4** Unless agreed otherwise on the Module Order Form, the Contractor must pay the Customer the purchase price for the Assets and Additional Items specified in clause 3.12 within 30 days of receipt of a Correctly Rendered Invoice, such invoice to be provided on or after the Services Commencement Date.
- 8.5** The Customer must pay the Contractor any amount agreed for the transfer of assets or other items under clause 7.2(a) on the last day of the Transition Out Services.

9 Intellectual Property and Ownership of Data

- 9.1** For the purposes of this Module 12, it is agreed by the Parties that clauses 13.1 to 13.11 of the Customer Contract are subject to this clause 9.
- 9.2** For the purposes of this clause 9 the definitions of Customer Managed Services Data and Contractor Services Data are not included within the definitions of Existing Material and New Material stated in the Dictionary of the Procure IT Framework.

CUSTOMER OWNED DATA

- 9.3** All Intellectual Property Rights in any Customer Managed Services Data remain vested in the Customer.
- 9.4** 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 Managed Services Data to the extent necessary for the Contractor to perform its obligations under the Customer Contract. For clarity clause 13.11 of the Customer Contract does not apply to Customer Managed Services Data.

CONTRACTOR OWNED DATA AND PROCEDURES MANUAL

- 9.5** All Intellectual Property Rights in any Contractor Services Data and Procedures Manual remain vested in, or are hereby transferred or assigned immediately upon creation to, the Contractor.
- 9.6** Where the Contractor provides any Contractor Services Data to the Customer, the Contractor grants the Customer a non-exclusive licence to use that Contractor Services Data during the Contract Period solely for the purposes of receiving the benefit of the Managed Services under the Customer Contract or assisting the Contractor to perform its obligations under the Customer Contract.
- 9.7** Where the Contractor provides the Procedures Manual to the Customer, the Contractor grants the Customer a non-exclusive licence to use that Procedures Manual during the Contract Period solely for the purposes of receiving the benefit of the Managed Services under the Customer Contract or assisting the Contractor to perform its obligations under the Customer Contract. For clarity clause 13.6(d) of the Customer Contract does not apply to the Procedures Manual provided under this Module 12.

- 9.8** The Contractor may charge for any licence to use any Contractor Services Data, such fees to be stated in the Module Order Form.

CONTRACTOR INFRASTRUCTURE

- 9.9** Nothing in this Customer Contract grants the Customer any right to any Intellectual Property Rights in any physical infrastructure (including any telecommunications equipment, Hardware, software or network) that is used to provide the Managed Services.

DISCLOSURE

- 9.10** Nothing in clauses 4.10 or 7.2(a) to (d) requires the Contractor to disclose to the Customer or any other person any of the Contractor's Confidentiality Information or any of its proprietary information, methodologies, software tools or other items.

10 Customer Responsibilities for Use

- 10.1** The Customer must not, and must ensure that its users do not:
- (a) process, or require the Contractor to process, any Customer Managed Service Data for any illegal, unlawful or fraudulent purposes; or
 - (b) use the Managed Services:
 - (i) for any illegal, fraudulent or defamatory purposes;
 - (ii) to engage in the bulk transmission of unsolicited electronic mail;
 - (iii) to send or cause to be sent any computer worms, Viruses or other similar programs;
 - (iv) to make unauthorised access to any other computer accessible via the internet or network;
 - (v) to send any harassing, obscene, indecent, offensive or threatening electronic communication; or
 - (vi) to reproduce, distribute, transmit, publish, copy or exploit any material that constitutes an infringement or breach of any Intellectual Property Right, privacy right or right of confidentiality of any person.

11 Specific Warranties

SCOPE

- 11.1** The Contractor warrants that, subject to the Exceptions, the Contractor will provide:
- (a) the Transition In Services;
 - (b) the Managed Services; and
 - (c) any Project Services,
- in accordance with:
- (d) the requirements of the Contract Specifications in all material respects; and
 - (e) due care and skill.

12 Exceptions

12.1 The Contractor is not liable for any breach of the Customer Contract which arises as the result of:

- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
- (b) modifications to any Deliverables that were effected or attempted by a person other than the Contractor or its authorised representative;
- (c) any act, error, fault, neglect, misuse or omission of the Customer;
- (d) damage caused by the operation of any part of the Environment other than in accordance with recommended operating procedures, Procedures Manual or otherwise than in accordance with the directions or recommendations of the original Intellectual Property Rights owner, authorised distributor or the Contractor;
- (e) any Virus, denial of service attack or other malicious act that adversely affects the Services, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
- (f) improper use or mismanagement by the Customer; or
- (g) a Force Majeure Event.

12.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and 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 identifying and attempting to remedy that item.

PROCURE IT VERSION 3.2
MODULE ORDER FORM
MODULE 12 – MANAGED SERVICES

Box 1 Managed Services

Details to be included from Module 12	Order Details agreed by the Contractor and the Customer
Service Description (clause 1.11)	
Specify the Managed Services to be provided, such as management of: <ul style="list-style-type: none"> a. Hardware, desktop Environments, server Environments or mainframes; b. telephony services; c. software, databases or applications (excluding SaaS, IaaS and PaaS); d. help desk or support services; e. printers, copiers or print related services; f. any combination of the above; or g. any other technology or Environment that is agreed by the Parties. 	The Managed Services are the Services set out in: <ul style="list-style-type: none"> a) Module 12 (Managed Services); b) the SLA; and c) any other relevant Services set out in any other Order Document. <p>The Managed Services also include the Deliverables accepted by the Customer under Module 7 (Professional Services), from the point in time the Customer notifies the Contractor that it requires such Deliverables as part of the Managed Services.</p>
Contract Period (clause 2.1)	
Specify the Commencement Date	See Item 10 Contract Period of Schedule 1: General Order Form.
Specify the Contract Period (if different from default period) <i>Note: default period under Module 12 is three years</i>	See Item 10 Contract Period of Schedule 1: General Order Form.
Specify the Consolidation Period <i>Note: the default Consolidation Period is the first month of the Managed Services</i>	Not applicable.
Performance and Pricing Assumptions (clause 1.4)	
Assumptions as agreed between the Parties regarding performance of the Managed Services and Price	Not applicable.
Supplementary Processes (clause 4.13)	
Specify any supplementary processes and terms that apply to the Managed Services	As set out in the SLA and in Item 13 (Contract Specifications) of Schedule 1: General Order Form.
System (clause 1.16)	
Specify the Contractor's information technology facilities dedicated to the provision of the Managed Services (unless set out in the PIPP)	As set out in the SLA and in Item 13 (Contract Specifications) of Schedule 1: General Order Form, and includes the TCM System.

Box 2 Transition In Plan

Details to be included from Module 12	Order Details agreed by the Contractor and the Customer
<p>Completion Date (clause 3.31)</p> <p>Specify the completion date for Transition In Services</p> <p><i>Note: the Transition In Plan is to be annexed to this Order Form. The completion date may be set out in the PIPP</i></p>	<p>Not applicable. As at the Commencement Date transition in is complete.</p>
<p>Specification of Transition In Services (clause 3.3)</p> <p>Specify whether the Contractor is required to perform due diligence</p> <p><i>Note: ‘due diligence’ may include assessment and definition of the:</i></p> <ul style="list-style-type: none"> a. <i>Customer’s goals, requirements and expectations in respect of the Managed Services;</i> b. <i>Contractor’s understanding of the Customer’s and/or user’s experience and requirements in relation to the Managed Services;</i> c. <i>objectives to be met by the Contractor;</i> d. <i>nature and scope of the Managed Services, including Environment, the Assets, Client Contracts and Third Party Contracts (and any requirement to novate or assign any of them);</i> e. <i>end users who will be supported by the Managed Services;</i> f. <i>necessary Assets and Additional Items and how they may need to be procured;</i> g. <i>migration of Customer Managed Services Data;</i> h. <i>Transition In Plan;</i> i. <i>required Deliverables;</i> j. <i>resources required (including any Customer Supplied Items or Customer assistance);</i> k. <i>complexity of the project; and</i> l. <i>any Transition Out Plan.</i> 	<p>Not applicable.</p>
<p>Additional Assets or Additional Items to be acquired by the Contractor? (Clause 3.11)</p>	<p>Not applicable.</p>
<p>Valuation of Assets and Additional Items (clause 3.12)</p>	
<p>Specify the method of valuation for the Assets and Additional Items (unless set out in the</p>	<p>Not applicable.</p>

Details to be included from Module 12	Order Details agreed by the Contractor and the Customer
PIPP)	
Title and Risk to Assets and Additional Items (clause 3.14)	
Specify when Title to the Assets and Additional Items passes to the Contractor <i>Note: the default position is that Title passes on the Services Commencement Date</i>	Not applicable.
Specify when Risk to the Assets and Additional Items passes to the Contractor <i>Note: the default position is that Risk passes on the date the Contractor takes possession of the Assets and Additional Items</i>	Not applicable.
Client and Third Party Contracts (clause 3.15)	
Client Contracts or Third Party Contracts transferred to the Contractor?	Not applicable.
Party who bears the costs associated with novation of a Client Contract/Third Party Contract, procurement of management rights or the performing of obligations under clauses 3.16 and 3.17 <i>Note: the default position is Customer bears the associated costs</i>	Not applicable.
Data migration (clause 3.23)	
Specify if the Managed Services require migration of the Customer Managed Services Data	Not applicable.
Payment (clause 8.1)	
Specify the payment details for the Transition In Services	None.

Box 3 Transition Out

Details to be included from Module 12	Order Details agreed by the Contractor and the Customer
Specification of Transition Out Plan (clause 7.1)	
Specify if the Contractor must develop a Transition Out Plan <i>Note: the Transition Out Plan must include</i> <i>a. Price payable for Transition Out Services;</i> <i>b. costs associated with selling, transferring,</i>	The Transition Out Plan must be delivered to the Customer within 90 days of the Commencement Date. The Parties agree that the scope of any disengagement/transition assistance set

<p><i>assigning or relocating assets exclusively used in the provision of the Managed Services;</i></p> <p>c. <i>costs associated with winding down or stranded assets; and</i></p> <p>d. <i>how and when the Price and any other sums are due and payable.</i></p>	<p>out in a Transition Out Plan must be clearly specified and must not extend to handing over the Contractor’s intellectual property (in circumstances where the Customer is not entitled to access or use such intellectual property post termination or expiry) or training of a new service provider unless required under the Customer Contract or agreed as part of a Transition Out Plan.</p> <p>The Customer will provide to the Contractor details of its requirements for disengagement in order to assist the Contractor to complete the Transition Out Plan.</p> <p>The Parties will work in good faith to discuss and agree the Price to be included in the Transition Out Plan that is payable to the Contractor for performing the Transition Out Services</p>
<p>Specify the Transition Out Services provided by the Contractor</p> <p><i>Note: Transition Out Services may include:</i></p> <p>a. <i>selling, transferring, assigning or relocating assets exclusively used in the provision of the Managed Services and the amount payable to the Contractor for such items;</i></p> <p>b. <i>providing reasonable assistance in procuring novations or assignments of the Client Contracts/Third Party Contracts to a new services provider or to the Customer;</i></p> <p>c. <i>returning or destroying documents or materials containing the Customer’s Confidential Information together with any reproduction of those documents or materials;</i></p> <p>d. <i>transitioning the Managed Services to a new service provider or to the Customer; and</i></p> <p>e. <i>granting or assisting the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is the same as that being used in the System and any software owned by the Contractor which is integral to the ongoing provision of the Managed Services, subject to payment of licence fees by the Customer (or new service provider).</i></p>	<p>Transition Out Services must include all services, activities and obligations of the Contractor:</p> <p>a) described in clause 7 of Module 12 (Managed Services), including those identified in clauses 7.2 and 7.8 which the Parties hereby agree the Contractor must provide as part of the Transition Out Services;</p> <p>b) set out in the final agreed Transition Out Plan;</p> <p>c) described in the SLA, a PIPP and any other Order Documents related to the transition and handover of the Services on termination or expiry of the Customer Contract; and</p> <p>d) set out in the clause 22.5 (Consequences of Termination) of the Additional Conditions at Annexure A to Schedule 1: General Order Form.</p>
<p>Specify the Transition Out Period (if different from the default period of 3 months)</p>	<p>Notwithstanding anything to the contrary, the Transition Out Period will commence on the date set out in a Notice in Writing under</p>

	clause 7.5 of Module 12 (Managed Services) and will continue until the date on which the Customer notifies the Contractor that the Transition Out Services are complete.
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Box 4 Services

Details to be included from Module 12	Order Details agreed by the Contractor and the Customer
Security measures (clause 4.6)	
Specify the level of security and encryption required for the Customer Managed Services Data <i>Note: Contractor should provide security measures that are in line with best practice industry standards. Any access to the Customer Managed Services Data is subject to these measures</i>	As set out in the Order Documents, including the SLA and Item 13 (Contract Specifications) of Schedule 1: General Order Form.
Additional Services (clause 6.2)	
Specify the rates at which any Additional Services will be charged <i>Note: if there is no rate specified, Additional Services will be charged as the Contractor's then current rates for government</i>	As set out in Annexure C Charges to this Schedule 1: General Order Form.

Box 5 Service Levels

Details to be included from Module 12	Order Details agreed by the Contractor and the Customer
Personnel (clause 5.3)	
Specify any person/s who is/are organised by, or under the direction of the Customer	Not applicable.

Box 6 Payment

Details to be included from Module 12	Order Details agreed by the Contractor and the Customer
Payment for Services (clause 8.2)	
Specify how the Customer will pay the Contractor <i>Note: default position is Customer pays monthly in arrears</i>	As set out in Annexure C Charges to this Schedule 1: General Order Form.
Payment for Assets and Additional Items (clause 8.4)	
Specify the period in which the Contractor must pay the Customer the purchase price for the Assets and Additional Items	Not applicable.

<i>Note: default position is within 30 days of receipt of a tax invoice, such invoice to be provided on or after the Services Commencement Date</i>	
Licence fees for Contractor Services Data (clause 9.8)	
Specify any licence fees that must be paid by the Customer to the Contractor for the Contractor's Services Data	Not applicable.

ANNEXURE A TO THE GENERAL ORDER FORM

ADDITIONAL CONDITIONS

PART A: SPECIFIC VARIATIONS TO PROCUREIT

1. Specific Variations to Part 2 of ProcureIT: Customer Contract

- 1.1 On and from the Commencement Date, Part 2 of ProcureIT Version 3.2 'Customer Contract' is varied as follows:
- (a) in clause 3.3 the words 'the Parties' are deleted from 3.3(a) and put after '... is created upon';
 - (b) clause 3.8 is deleted and replaced with the following:

3.8. The Customer Contract comprises:

 - (a) clauses 1 to 26 as modified by the Additional Conditions in Annexure A to Schedule 1: General Order Form;
 - (b) the other provisions of Schedule 1: General Order Form;
 - (c) 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;
 - (d) any other Schedules or Annexures or Attachments thereto 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; and
 - (e) Part 3, the Dictionary;
 - (f) any PIPP agreed by the Parties from time to time and any documents forming part of a PIPP or incorporated into a PIPP by reference;
 - (g) any Service Level Agreement (which includes the Annexure B to Schedule 1 General Order Form – Statement of Work);
 - (h) all other Order Documents;
 - (i) Annexure 3 to the Head Agreement (if applicable); and
 - (j) the Agreement Documents (if any).';
 - (c) in clause 5, a new clause 5.3A is added as follows:

5.3A Except as expressly provided in this Customer Contract, the Contractor is responsible for providing all Contractor Personnel and any other facilities, systems, information, knowledge, rights, expertise and all other resources

necessary to provide the Deliverables and perform its obligations under the Customer Contract.'

- (d) in clause 5.7, the following words are added at the end of the clause: *'For the avoidance of doubt, nothing in this clause 5.7 shall limit the Customer's right to use the Bespoke User Documentation, which rights to use shall only be limited by clause 5.8 below.'*;
- (e) in clause 5.8, the following words are added at the end of the clause: *'For clarity this clause does not limit how the Customer may use a Deliverable for any purpose anticipated by this Customer Contract.'*;
- (f) in clause 6.26(a), the following words are added at the end of the clause: *'including any failure or delay in performing the Regulated Functions'*;
- (g) [Redacted]
- (h) in clause 6.27, *'or any other timeframe as agreed by the Parties'* is inserted after *'5 Business Days'*, the following words are added to the end of the clause:

'Any Change Request submitted in accordance with this clause 6.27 for any incremental costs payable by the Customer is conditional on the Contractor providing timesheets, invoices or other evidence of any additional costs to the Customer in a form reasonably satisfactory to the Customer.';
- (i) clause 6.37 is deleted and replaced with *'Not used.'*;
- (j) in clause 6.38:
 - (i) in paragraph (f), the 'and' at the end of the clause is deleted;
 - (ii) paragraph '(g)' is renumbered '(i)'; and
 - (iii) new subparagraphs '(g)' to '(h)' are added as follows:
 - (g) *comply with the terms of all contracts with a third party relating to Customer Supplied Items (each a **CSI Contract**) that have been notified to the Contractor by the Customer in writing and in the manner and scope applicable to the provision for the Services to be provided, as mutually agreed to by the Parties in writing in advance;*
 - (h) *not do, or fail to do, anything that would cause the Customer (or any other Government Agency) to breach the terms of a CSI Contract, or otherwise incur any liability under, a CSI Contract notified to the*

Contractor by the Customer in writing and where the Contractor has agreed in writing to comply with any terms of any CSI Contract; and;

- (k) in clause 6.39, the words *'in the same condition it was in when it was originally provided to the Contractor (other than ordinary wear and tear)'* are inserted in between *'to the Customer'* and *'or destroyed at the Customer's request'*;
- (l) in clause 6.40, the reference to *'clause 6.38(f)'* is deleted and replaced with *'clause 6.38(i)'*;
- (m) in clause 8.16, the following additional sub-clauses are added:
 - '(d) provide the Customer with details of the part of the Services to be subcontracted;*
 - '(e) ensure that the subcontract includes and is consistent with all relevant terms of this Customer Contract (including those relating to Customer*

Data, a prohibition on further subcontracting, confidentiality and intellectual property); and

- (f) [Redacted]
- (n) in sub clause 9.1(d), the words '*as at the Commencement Date*' are deleted and replaced with the words '*during the Contract Period*';
- (o) in sub clause 9.1(f), the words '*to the best of its knowledge and belief are removed,*';
- (p) in sub clauses 9.1(g) and 9.1(i), the words "*during the Contract Period*" are inserted at the start of the clause;
- (q) in clause 10.10, the '.' at the end of sub clause 10.10(c) is deleted and replaced with a ',' and a new sub section (d) is added as follows:
 - (d) *rejects the Deliverable, in which case clause 10.12(e) shall apply as if the Defect was more than a Minor Defect.*;
- (r) in sub clause 10.13(a), the following is added to the end of the clause:
 - and does not remedy that failure within 14 days after receiving a notice from the Contractor specifying:*
 - (i) *the Customer's failure to notify and the Deliverables to which it relates; and*
 - (ii) *that the Deliverable will be deemed to be accepted if the Customer fails to notify the Contractor that the Deliverable is rejected or conditionally accepted by the end of the 14-day period specified in the Contractor's notice;*
- (s) sub clause 10.13(e) is deleted and replaced with '*Not used.*';
- (t) clause 10.14 is deleted and replaced with '*Not used.*';
- (u) [Redacted]
- (v) in clause 13.4, the words '*On the AAD of a*' are deleted and replaced with '*For each*';
- (w) in clause 13.6, the words '*On the AAD of a*' are deleted and replaced with '*For each*';
- (x) in sub clause 13.6(b), the reference to '*13.7(a)*' is deleted and replaced with '*13.6(a)*';
- (y) in sub clause 13.6(c), the reference to '*13.7(a) or 13.7(b)*' is deleted and replaced with '*13.6(a) and 13.6(b)*';
- (z) in clause 13.7, the words '*On the AAD of a*' are deleted and replaced with '*For each*' in clause 13.11, the word '*AAD*' is deleted and replaced with '*creation*';
- (aa) [Redacted]
- (bb) a new clause 14.5 is inserted as follows:
 - '14.5** *Notwithstanding anything to the contrary in this Customer Contract, the Customer may disclose Confidential Information of the Contractor:*

- (a) to any department or office of the State of New South Wales or other Government Agencies;
- (b) to any prospective assignee under clause 26.5 and 26.6;
- (c) to any third party service provider or prospective supplier to the Customer who provides services to the Customer in connection with the operation of this Customer Contract, provided they are not a competitor of the Contractor and the Customer must not disclose commercially sensitive information or the Proprietary Intellectual Property of the Contractor; and
- (d) as necessary to comply with any law regulation or NSW Government policy,

provided in respect of paragraphs (b) and (c) above that party has provided a confidentiality undertaking to the Customer on the same or similar terms as the confidentiality undertakings of the Customer under this Customer Contract.;

(cc) [Redacted]

(dd) [Redacted]

(ee) [Redacted]

(ff) [Redacted]

(gg) [Redacted]

(hh) in clause 23.4, the words *'until the date which is the later of 7 years following termination or expiry or termination of this Customer Contract or as required by any applicable Statutory Requirement'* are added at the end of the clause.

(ii) in clause 25.2, the first sentence is deleted and replaced with the following:

'25.2 *The Customer may immediately terminate the Customer Contract in its entirety or to the extent it relates to one or more Deliverables by giving the Contractor a Termination Notice if:*;

(jj) in clause 25.2(b), the word *'and'* is deleted and replaced with *'which is not capable of being rectified, or where capable of being rectified'* before the words *'the Contractor'* in the first line;

(kk) in clause 25.3, the first sentence is deleted and replaced with the following:

'25.3 *The Customer may immediately terminate the Customer Contract in its entirety or to the extent it relates to one or more Deliverables for convenience at any time by giving the Contractor a Termination Notice.*;

(ll) a new clause 25.5A (Partial Termination) is inserted as follows:

'25.5A *Where the Customer is entitled to terminate this Customer Contract for any reason, the Customer may terminate any part of the Services (including any service tower or cross-functional service) which can be terminated without having a material overall impact on the ability of the Contractor to continue to provide the remaining Services (in the reasonable opinion of the Customer). The Contractor must continue to perform the remaining Services. Any partial termination will lead to a pro-rata reduction in the Prices for the remaining Services and the parties will agree in good faith all required consequential*

amendments. Where the parties fail to reach agreement on any pro-rata reduction, the matter will be referred to the dispute resolution process under clause 24. Subject to any consequential amendments required to this Customer Contract as a result of the partial termination, the parties will be subject to the same rights and obligations as existed before the partial termination.’;

(mm) a new clause 25.5B (Wrongful Termination) is inserted as follows:

‘25.5B *If the Customer terminates or purports to terminate this Customer Contract other than under clause 25.3, and it is subsequently found by any court or arbitrator that the action was wrongful:*

- (a) *that action will be deemed to have been a termination in accordance with clause 25.3; and*
- (b) *to the extent permitted by law, the Contractor’s sole rights in those circumstances will be as set out in clause 25.4. For the avoidance of doubt, this does not limit in any way the Contractor’s accrued rights or remedies under this Customer Contract, other than in relation to termination.*

(nn) clause 25.6 is deleted in its entirety and replaced with the following:

‘25.6 *The Contractor may give the Customer a Termination Notice for the Customer Contract in its entirety if the Customer suffered an Insolvency Event (except in circumstances where clause 11 (Business Change) of the Additional Conditions applies).’;*

(oo) a new clause 25.6A is inserted as follows:

‘25.6A *If a Termination Notice is given pursuant to clauses 25.2, 25.3, or 25.6 above, the termination will be effective on, and the component of the Customer Contract the subject of the Termination Notice will terminate on, the date on which the Transition Out Period ends.’*

(pp) in the preamble in clause 25.9 the words *'or expiry'* are inserted after the words *'On termination'*;

(qq) in clause 25.9(c), the words *'(other than a State Record)'* are inserted after the first reference to the words *'Customer Data'*;

(rr) clause 26.5 is deleted and replaced with the following:

‘26.5 *The Customer may assign any of its rights under this Customer Contract, or may novate its rights and obligations under this Customer Contract:*

- (a) *without the consent of the Contractor:*
 - (i) *to any Eligible Customer; or*
 - (ii) *to any department, to any other body created by or under a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of Customer or to any public sector agency within the meaning given to that term in regulation 18 of the Public Sector Management (Goods and Services) Regulation 2000; or*
- (b) *with the consent of the Contractor, which must not be unreasonably*

withheld or delayed, to any other person.

The Contractor must execute all documents necessary to give effect to any novation or assignment permitted under this Customer Contract. If as part of the assignment or novation the Customer requests changes to the scope of the obligations or Deliverables to be provided by the Contractor under the Customer Contract, the parties will (acting in good faith) discuss and agree a Change Request to give effect to any required changes to the Customer Contract

(including any variation to the SLA or the Price).'; and

(ss) clause 26.6 is deleted and replaced with 'Not used'.

2. Specific Variations to Part 3 of ProcureIT: Dictionary

2.1 On and from the Commencement Date, Part 3 of ProcureIT Version 3.2 'Dictionary' is varied as follows:

(a) in clause 1.22(d)(ii) and the definition of '**Confidential Information**', the words "*including the Contractor's Prices and Intellectual Property Rights in the Products and Services*" are added after "Services";

(b) in clause 1.30 and the definition of '**Contract Variation**', the words "*that requires the consent of the Secretary, New South Wales Department of Finance, Services and Innovation*" are deleted;

(c) in clause 1.33 and in the definition of '**Correctly Rendered Invoice**', a new subparagraph (e) is added as follows:

'(e) the invoice is set out in a manner that enables the Customer to ascertain which item the invoice covers including to which Motorway Operator it relates.';

(d) in clause 1.39 and in the definition of '**Defect**', the words '*or prevents the Contractor from being able to provide the Services in accordance with this Customer Contract*' are added to the end of this clause;

(e) in Part 3 (Dictionary), clause 1.104 is deleted and replaced with the following:
'1.104 Service means:

(a) the services, functions and tasks described in the Customer Contract, including:

(i) the Services set out in:

(A) Module 7 (Professional Services) and Module 7 Order Form;

(B) Module 12 (Managed Services) and Module 12 Order Form; and

(C) any Schedule, Annexure to a Schedule or Appendix to an Annexure; and

(ii) such other services as are required from time to time in accordance with the Customer Contract;

(b) any other services, functions or duties are identified by either Party after the Commencement Date and:

(i) those services are not specifically referred to in this Customer Contract but are not specifically excluded from the Services; and

(ii) those services are incidental to the Services and are necessary for the proper performance and provision of the Services.

(f) a new clause 1.123A is added as follows:

'1.123A Termination Notice means a Notice in Writing given in accordance with the Customer Contract or pursuant to a common law or statutory right terminating the

*Customer Contract in its entirety or to the extent it relates to one or more Deliverables.’;
and*

(g) a new clause 1.128(j) is added as follows:

‘(j) A reference to RMS, Roads and Maritime Services, RTA or Roads and Traffic Authority will be deemed to be a reference to Transport for NSW, unless the context requires otherwise.’

3. Specific Variations to Module 7 – Professional Services

3.1 On and from the Commencement Date, Module 7 of ProcureIT Version 3.2 ‘Professional Services’ is varied as follows:

(a) in clause 2.2, the words *‘until either Party cancels the Professional Services by providing 30 days prior Notice in Writing to the other’* are deleted and replaced with the following:

‘until either: (i) the Customer cancels the Professional Services by providing 90 days’ Notice in Writing to the Contractor; or (ii) the Customer Contract expires or is terminated early in accordance with its terms’;

(b) in clause 3.5, the sentence beginning with the words *‘Where such direction:...’* is deleted (including paragraphs (a) and (b) of that sentence) and replaced with the following:

‘Such direction is deemed to be a reason under clause 6.26 of the Customer Contract for which the Contractor may be entitled to a reasonable extension of time and to claim any loss damage or expense suffered. The Contractor must submit a Change Request to the Customer in respect of the relevant extension of time or change to any amount payable to the Customer resulting from a direction under this clause in accordance with clause 6.27 of the Customer Contract.’;

(c) clause 4 is deleted and replaced with *‘Not used’*;

(d) in sub clause 5.1(a) the word *‘of’* is deleted;

(e) [Redacted]

(f) [Redacted]

(g) [Redacted]

(h) [Redacted]

(i) [Redacted]

(j) [Redacted]

(k) [Redacted]

4. Specific Variations to Module 12 – Managed Services

4.1 On and from the Commencement Date, Module 12 of Procure IT Version 3.2 ‘Managed

Services' is amended as follows:

- (a) [Redacted]
- (b) in clause 1.7 the words '*but does not include the Customer Data*' are added to the end of this clause;
- (c) clause 1.8 is deleted and replaced with the following:

'1.8 Customer Managed Services Data means Customer Data and any other data provided by the Customer to the Contractor in connection with the Managed Services.'
- (d) in clause 1.11, the words '*and the Service Level Agreement (as applicable)*' are added after the word '*PIPP*';
- (e) in clause 1.13 the sentence '*The Procedures Manual is the Contractor's Confidential Information and Intellectual Property Rights*' is deleted;
- (f) in clause 1.16, the word '*System*' is deleted and replaced with '*TCM System*', and all references to the defined term '*System*' in Module 12 and in the Module 12 Order Form shall be amended to read '*TCM System*';
- (g) clause 2 is deleted and replaced with '*Not used*';
- (h) clause 3 is deleted and replaced with '*Not used*';
- (i) in clause 4.5, after the words '*to the extent specified in the PIPP*' the words '*and in any SLA*' are added;
- (j) in clause 4.6:
 - (i) the words '*Without limiting the Contractor's obligations under the Customer Contract*' are added to the start of this clause; and
 - (ii) after the words '*Customer Managed Services Data*' the words '*and provide such security measures*' are added;
- (k) in clause 4.8, the words '*use commercially available products to*' are deleted;
- (l) in clause 4.10, words '*Without limiting the Contractor's obligations under the Customer Contract*' are added to the start of this clause;
- (m) in sub clause 4.10(c), the words '*inform the Customer*' shall be deleted and replaced with the wording '*obtain the Customer's prior written consent*';
- (n) a new sub clause 4.11(e) is inserted as follows:

'(e) without limiting the foregoing, providing any written requirements, standards, and procedures for any Customer systems maintained by the Contractor or the Services provided to the Customer by the Contractor that the Customer may reasonably request.'
- (o) [Redacted]
- (p) clause 5 is deleted and replaced with '*Not used*';
- (q) in clause 6.2 the words '*and the procedures in Schedule 4 – Variation Procedures will*

apply' are added after the words '*Change Request*' in the first sentence of this clause;

(r) clause 7.4 is deleted and replaced with '*Not used*';

(s) clause 7.5 is deleted and replaced with the following:

'7.5 If the Customer requires the Contractor to provide Transition Out Services, it will provide the Contractor with Notice In Writing of its requirement and notify the Contractor in writing of the date the Transition Out Services are to commence.';

(t) [Redacted]

(u) [Redacted]

(v) [Redacted]

(w) clause 9 is deleted and replaced with '*Not used*';

(x) in clause 10(b)(vi), the following wording is added to the end of that clause: '*provided that nothing in this sub-clause 10.1(b)(vi) limits or restricts the Customer's right to Use or exploit any of the Deliverables, any New Materials or any Existing Materials as permitted by this Customer Contract*';

(y) [Redacted]

(z) [Redacted]

(aa) [Redacted]

(bb) [Redacted]

PART B: OTHER ADDITIONAL CONDITIONS

5. Definitions

5.1 The following terms have the following meaning when used in the Customer Contract and in the Additional Conditions in this Part B:

- (a) **Acquisition** means any acquisition by the Customer of the business or other assets of another entity, in whatever form.
- (b) **Business Change** means any Divestiture, Acquisition or Restructure of the Customer, or any consolidation (including the performance of common functions) of the Customer or any part of the Customer with any other entity, including a State-owned corporation.
- (c) **Contractor Premises** means any premises controlled by the Contractor or any Subcontractor from which the Services are performed or the TCM System is located, including any premises of the Customer leased or licensed by the Contractor or any Subcontractor.
- (d) **Control** of a person includes the direct or indirect power to directly or indirectly:
 - (i) influence the management or policies of the person; or
 - (ii) control the membership of the board of directors,whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that party or otherwise.
- (e) **Customer Authorised Officers** means officers of the Customer authorised by the customer to perform Regulated Functions.
- (f) **Customer Environment** means the Customer's technology environment (including software, Hardware and systems).
- (g) **Customer Policies** means any policies and standards identified or referred to in the Customer Contract, including the Contract Specifications or other Order Documents.
- (h) **Divestiture** means any sale or divestiture of all or part of the Customer, its business or other assets, in whatever form (including by way of an initial public offering of shares).
- (i) **Document Approval Process** means the approval of documents process and procedure set out in clause 14 of these Additional Conditions.
- (j) **DRIVES** means the Customer's Driver Licensing and Registration System.
- (k) **Harmful Code** means any computer code that is intended or known to be harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised disclosure or destruction or corruption of data including viruses, worms, spyware, adware, keyloggers, trojans, and any new types of programmed threats that may be classified, and includes a Virus.
- (l) [Redacted]
- (m) **Industry Best Practice** means the degree of skill and practice required to achieve a high overall standard for the provisions of the Deliverables and Services and which could reasonably be considered as necessary for a highly skilled and experienced

expert (engaged in a similar undertaking to the Contractor under similar circumstances) to perform its obligations under the Customer Contract.

- (n) **Industry Evolution** means change in a Process used to deliver the Deliverables or a change in the Deliverables themselves which embodies:
- (i) in the case of changes to technology, proven technology advancements (being technology which is commercially available and is being used by 2 or more IT service providers in Australia);
 - (ii) in the case of changes to a Process, improvements in Processes that have been implemented by 2 or more IT service providers in Australia; and
 - (iii) in the case of other changes to the Deliverables, improvements that have been implemented by 2 or more IT service providers in Australia.
- (o) **Instructions** means the instructions provided by Motorway Operators to the Contractor in a data file containing information regarding actions on Unpaid Toll Incidents.
- (p) **Modern Slavery Laws** means any anti-slavery and human trafficking Statutory Requirement in Australia, including:
- (i) the Modern Slavery Act 2018 (*Cth*);
 - (ii) Division 270 and 271 of the *Criminal Code Act 1995* (*Cth*);
 - (iii) Sections 80D, 80E, 91G(1) – (3), 91h and 91HAA of the *Crimes Act 1900* (*NSW*); and
 - (iv) where the location of the Services or Deliverables provided is outside of NSW, Statutory Requirements equivalent to any of the Statutory Requirements referred to in paragraphs (ii) and (iii) in each of the Australian states and territories.
- (q) **Motorway Operators** means owners, operators or controllers of public or private motorways in New South Wales where a toll is levied on a motorist.
- (r) [Redacted]
- (s) **Processes** means a particular combination of know-how, equipment, computer software and/or other technology used to deliver a service outcome.
- (t) **Regulated Functions** has the meaning given to that term in the Statement of Work.
- (u) **Relevant Entity** means any entity or organisation to which all or part of the Customer is sold or divested, or with which the Customer is merged or consolidated as a result of a Divestiture.
- (v) **Restructure** means any restructure, dissolution, merger, transfer of any or all of its assets, Personnel, and liabilities, in respect of all or any part of the Customer's business or operations.
- (w) **Statement of Work** means the statement of work attached at Annexure B (Statement of Work) to Schedule 1: General Order Form, which is a SLA for the purposes of this Customer Contract.
- (x) **Stock** means the window faced envelopes with return address.
- (y) **TCM System** means the hardware, firmware, equipment, software and other electronic, computer and telecommunications devices and equipment supplied and/or developed

by the Contractor and any Subcontractor for the provision of the Deliverables and Services to the Customer.

- (z) **TCM System Administrator** means the system administrator nominated by the Contractor and approved by the Customer to manage the TCM System.
- (aa) **Unpaid Toll Incident** means the event of a vehicle passing a tolling point without payment of the relevant toll being recognised.
- (bb) **Warehouse Storage Fees** means the fees payable for warehouse storage set out in Annexure C (Charges) to Schedule 1: General Order Form.

6. Government Agencies

BENEFIT TO GOVERNMENT AGENCIES

6.1 The Contractor acknowledges and agrees that:

- (a) the Deliverables and Services supplied under the Customer Contract are to be provided to and for the benefit of the Customer and the Government Agencies as required by the Customer from time to time;
- (b) each of the Customer and each of the Government Agencies may make use of the Deliverables and Services under and in accordance with the Customer Contract from time to time;
- (c) any obligation on the Contractor under the Customer Contract to perform an act or supply any Deliverable or Service is an obligation to perform that act or supply that Deliverable or Service for the benefit of the Customer and/or any Government Agency as required by the Customer from time to time;
- (d) notwithstanding the foregoing, the Contractor must only accept instructions to supply the Deliverables or Services or to vary any of the Deliverables or Services directly from the Customer and not from any other Government Agency;
- (e) a breach of the Customer Contract or negligence by the Contractor in relation to the performance or failure to perform the Customer Contract may result in a loss being suffered by a Government Agency;
- (f) in addition to entering into the Customer Contract in its own right, the Customer is acting as the trustee of the benefits expressed to be given to each Government Agency under the Customer Contract; and
- (g) any obligation of the Customer under the Customer Contract may be performed by the Customer or any of the Government Agencies.

LIABILITY TO GOVERNMENT AGENCIES

6.2 The Contractor acknowledges and agrees that the Customer holds the benefit of the Contractor's obligations, the Customer's rights and any indemnity under the Customer Contract as principal and on trust for the Government Agencies as if the obligation, right or indemnity had been expressed to be for the benefit of them directly.

6.3 If a Government Agency or the State of New South Wales suffers or incurs any losses or liabilities as a result of one or more acts or omissions of the Contractor or any Contractor Personnel or any Subcontractor relating to the performance, non-performance or termination of the Customer Contract, the Customer will be able to recover those losses and liabilities from the

Contractor:

- (a) as if those losses and liabilities were suffered or incurred by the Customer itself; and
- (b) subject to the limitations and exclusions set out in this Customer Contract.

PIGGY-BACKING

- 6.4 The Contractor acknowledges and agrees that if any other Government Agency requests the Contractor to provide services, products, deliverables or other things to it that are the same or similar to the Services, Deliverables or other things required to be provided by the Contractor under this Customer Contract, the Contractor must enter into a separate agreement with the relevant Government Agency on terms no less favourable than the terms of this Customer Contract, having regard to any necessary changes required to reflect:
- (a) the particulars of the relevant deliverables, services or other activities that the Contractor will provide to the relevant Government Agency; and
 - (b) that the relevant deliverables, services or other activities are to be supplied by the Contractor to the relevant Government Agency.

7. Non-exclusivity and volumes

7.1 The Contractor's appointment is non-exclusive. The Customer may:

- (a) acquire similar products and services to the Products and Services (including information technology related products and services generally) from other persons (and in connection therewith, may request information, proposals, or competitive bids from third parties on the same or different terms than as provided in the Customer Contract), and may do so at any time without the Contractor's consent and without notice to the Contractor; or
- (b) provide similar products and services to the Products and Services itself,

including Deliverables or Services which have been removed from, reduced or terminated under the Customer Contract.

7.2 Nothing in the Customer Contract requires the Customer to purchase any minimum quantity or value of Products or Services from the Contractor.

SCALEABILITY AND VOLUMES

7.3 Without prejudice to any other term of the Customer Contract, the Contractor acknowledges that the advent of electronic tolling and the probability of increasing numbers of electronic tolling only toll roads may mean the volume of Services increases over time. The Contractor must have and maintain systems and business processes so that they can cope with any such increase in volumes should they occur, while still complying with the Service Levels.

7.4 The Customer makes no representations or warranties regarding the volume of Services and Instructions that will be sent to the Contractor for processing under this Customer Contract. The Customer reserves the right to reduce volumes by, for example, directing the Contractor to only

process certain Instructions and not others and the Contractor:

- (a) agrees to comply with those directions; and
- (b) acknowledges that the Prices take these fluctuations in volumes into account.

8. Service obligations and Service Levels

CUSTOMER TESTING

- 8.1 The Contractor acknowledges and agrees that, from time to time and no more than monthly, the Customer may process Instructions received from Motorway Operators on the Customer's own systems to test those systems so that, should the Contractor fail to comply with its obligations under this Customer Contract or should this Customer Contract terminate or expire, the Customer is in a better position to transition the Services in house to the Customer. This processing may involve the Customer sending unpaid toll incident letters itself without passing the relevant Instructions to the Contractor. The Contractor is not entitled to any payment or compensation in respect of Instructions processed by the Customer under this clause.

PROSECUTION ASSISTANCE

- 8.2 The Contractor acknowledges that the Services and the letters generated by the Contractor and sent to motorists form the basis for infringement processes in relation to Unpaid Toll Incidents.
- 8.3 The Contractor must provide the Customer with all assistance necessary to enable Unpaid Toll Incidents in New South Wales to be prosecuted by the appropriate authorities including the obligations of the Contractor set out in the SLA and a PIPP. The Contractor's obligations set out in this clause 8.3 survive termination or expiry of this Customer Contract in respect of Unpaid Toll Incidents that took place during the Contract Period or which were otherwise processed in part or in whole by the Contractor.
- 8.4 The Contractor acknowledges that the obligations in clause 8.3 of these Additional Conditions and set out in the SLA and a PIPP relating to the evidence process and prosecution of Unpaid Toll Incidents are fundamental requirements of the TCM System and Services. As such, the Contractor's failure to meet the obligations in clause 8.3 of these Additional Conditions or as set out in the SLA and a PIPP relating to the evidence process and prosecution of Unpaid Toll Incidents, will be a material breach of this Customer Contract and Customer will be entitled to terminate this Customer Contract immediately in accordance with clause 25.2 (Termination for cause by the Customer) of Part 2 of the Customer Contract.

STOCK

- 8.5 The Contractor and Customer acknowledge and agree that:
- (a) the Customer has the right to procure Stock from persons other than the Contractor;
 - (b) the Contractor has the right and equal opportunity to submit competitive pricing to meet the Customer requirements for Stock;
 - (c) the Contractor must, if required by the Customer, make use of Stock procured by the Customer from persons other than the Contractor in the performance of the Services, provided that the Stock procured by or on behalf of the Customer is compatible with and can be processed by the Contractor's standard equipment;
 - (d) the Customer's decision as to the choice of supplier or use of Stock shall be final and the Contractor is not entitled to make, and must not make, any claim against the Customer in connection with any such decision;
 - (e) a failure by the Contractor to provide the Services on time or in accordance with this

Customer Contract will not be a breach of this Customer Contract if caused by Stock procured by the Customer from persons other than the Contractor; and

- (f) if the Customer requires the Contractor to make use of Stock procured by the Customer from persons other than the Contractor in the performance of the Services, the Contractor may in its sole discretion, charge the Customer the Warehouse Storage Fees. For the avoidance of doubt, such fees will not apply, and may not be charged, when the Contractor procures or provides the Stock.

HEALTH AND SAFETY AND OFFICE POLICIES

- 8.6 Each party must comply, and ensure that its Personnel (and in respect of the Contractor also its Subcontractors) comply, with all health and safety policies and procedures and all other office policies and procedures (for example, non-harassment, non-discrimination policies) applicable from time to time while on any premises of the Customer or the Contractor Premises (as applicable).
- 8.7 The Contractor must ensure that all Contractor Personnel comply with:
 - (a) the Customer's code of conduct and ethics and do not engage in corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW);
 - (b) all occupational health, safety and rehabilitation laws and requirements; and
 - (c) all industrial relations laws and requirements.
- 8.8 Each party must notify the other party of any health and safety hazards (including anything which might cause death or injury to any person) of which that party becomes aware at any premises of the Customer or the Contractor Premises (as applicable). That party must draw these hazards to the attention of those members of the Contractor Personnel or Customer Personnel who are at the relevant premises, and must instruct them in connection with any necessary associated safety measures relevant to the relevant premises.

SERVICE LEVELS

- 8.9 Subject to clause 8.14 of these Additional Conditions, the Contractor must provide the Services to the Customer from the Commencement Date in a manner that meets or exceeds the Service Levels.

AMENDING THE TCM SERVICES OR SERVICE LEVELS

- 8.10 The Parties may amend the Services or Service Levels from time to time including adding new services, as agreed in a Change Request.

CONTINUOUS IMPROVEMENT

- 8.11 On an annual basis the Customer will review the Contractor's achievement of Service Levels and may request an amendment to the Service Levels to reflect the improvements in the levels of Service being provided by the Contractor, and the Parties will amend the Service Levels as agreed in a Change Request.

MEASUREMENT AND MONITORING

- 8.12 The Contractor must in respect of the Service Levels:
 - (a) use measurement and monitoring tools and procedures to measure accurately and promptly and report the Contractor's performance against Service Levels in detail as required the SLA; and
 - (b) provide Service Level reporting in the manner reasonably requested by the Customer

from time to time.

SERVICE LEVEL FAILURE

- 8.13 Where the Contractor fails to meet any Service Level, the Contractor must at no additional cost to the Customer promptly:
- (a) pay to the Customer the Service Credits in accordance with clause 8.15 of these Additional Conditions;
 - (b) use all reasonable endeavours to correct the fault which caused the failure to meet the Service Level (including conducting a root-cause analysis); and
 - (c) arrange all additional resources reasonably necessary to perform the Services in accordance with the Service Level as soon as practicable.

These remedies are without prejudice to any other right or remedy available to the Customer.

SERVICE LEVEL FAILURE DUE TO CUSTOMER DELAY

- 8.14 If the Contractor's failure to meet a Service Level is due solely to a delay on the part of the Customer Authorised Officers performing the Regulated Functions, the Contractor must notify the Customer as soon as reasonably practicable (and at least within 1 Business Day) after it becomes aware of such delay (or likely delay), and then:
- (a) the time period applicable to that Service Level will be extended by the period of the delay caused solely by the Customer Authorised Officers delay in performing the Regulated Functions (**Revised Service Level**); and
 - (b) the Contractor must perform the applicable Service so as to meet the Revised Service Level,

unless the delay results from a direction or instruction given by the Contractor in which case the Contractor is not entitled to any extension.

SERVICE CREDITS

- 8.15 Any Service Credit will be calculated in accordance with the SLA and will be payable by way of credit against the next due invoice from the Contractor. Where there is no subsequent invoice due to the expiry or termination of this Customer Contract, then the amount will be paid promptly to the Customer by the Contractor and in any event within 5 Business Days of such expiry or termination.

NOT A PENALTY

- 8.16 The Parties agree that the payment of Service Credits is not a penalty but a genuine pre-estimate of loss likely to be suffered by the Customer where the Contractor fails to meet the applicable Service Level. The payment of Service Credits is without prejudice to any other right or remedy available to the Customer.

9. Business Change

RIGHTS

- 9.1 The Contractor acknowledges and agrees that, in the event of a Business Change occurring,

the Customer may by giving notice to the Contractor:

- (a) use the Deliverables (including for the benefit of a Relevant Entity);
- (b) sublicense or permit one or more persons to use any of the Deliverables;
- (c) assign some or all of its rights under the Customer Contract to one or more persons;
- (d) novate all or part of the Customer Contract to one or more persons; or
- (e) require the Customer to supply one or more of the Deliverables directly to any other Relevant Entity,

for any one or more of the following purposes:

- (f) to transition the Products and Services to a Relevant Entity;
- (g) facilitating or implementing a Business Change; and
- (h) facilitating the provision of services:
 - (i) by the Customer to or for the benefit of one or more Relevant Entities; or
 - (ii) by one or more persons to, or for, the benefit of the Customer.

9.2 The Contractor consents to any novation or assignment notified to the Contractor in accordance with clause 9.1 of these Additional Conditions.

9.3 For the avoidance of doubt, nothing in this clause 9 of these Additional Conditions is intended to limit any other rights available to the Customer, or any of the Contractor's obligations, under the Customer Contract.

CONTRACTOR FACILITATION

9.4 The Contractor must, on request by the Customer, do all things reasonably necessary:

- (a) to facilitate a Business Change; and
- (b) to give effect to or implement any of the arrangements contemplated in clauses 9.1 and 9.2 of these Additional Conditions (including promptly executing all necessary documents and granting all necessary rights).

9.5 Where a Business Change occurs, the amounts payable by the Customer for the continued provision of Deliverables under the Customer Contract will be amended to reflect the increased or decreased volumes of Deliverables required by the Customer as a result of the Business Change. The calculation of the new amounts payable will be in accordance with the charging regime and pricing principles set out in the Customer Contract (including in the SLA or any PIPP). Any such changes will be documented using a Change Request.

DISCLOSURE

9.6 In addition to any other rights that the Customer has under the Customer Contract, the Customer may disclose the terms of the Customer Contract and any Confidential Information of the Contractor:

- (a) to any department or office of the State of New South Wales or other Government

Agency; or

- (b) to any Relevant Entity or proposed Relevant Entity.

TRANSPORT RESTRUCTURES

- 9.7 The parties acknowledge and agree that the NSW Government has announced its intention to restructure Transport for NSW and/or the Customer (the **Transport Entities** and each is a **Transport Entity**).
- 9.8 In addition to any other rights that the Customer has under the Customer Contract, the Contractor agrees:
- (a) that this Customer Contract and any assets, rights or liabilities a party holds in connection with this Customer Contract may be novated, assigned or otherwise transferred from the Transport Entity to any other entity constituted under the *Transport Administration Act 1988* (NSW) or otherwise;
 - (b) to undertake all actions reasonably requested by the relevant Transport Entity to effect such a novation, assignment or other transfer; and
 - (c) that it is not entitled to make, and the relevant Transport Entity and any novatee, assignee or transferee will not be liable upon, any claim arising from or in connection with any novation, assignment or transfer contemplated by this clause.

10. Detection Software and Harmful Code

PROTECTION AND SCANNING

- 10.1 The Contractor must, and must ensure that Contractor Personnel:
- (a) use appropriate processes and up-to-date industry standard detection software (**Virus Software**) designed:
 - (i) to prevent the introduction of Harmful Code into, and to detect and eliminate, Harmful Code from the Deliverables; and
 - (ii) to prevent the introduction of Harmful Code into:
 - (A) the TCM System (or other software or systems) used by the Contractor or any Contractor Personnel in the course of supplying the Deliverables; or
 - (B) the Customer Environment or any Customer Supplied Items by the Contractor or a member of Contractor Personnel; and
 - (C) prior to supplying a Deliverable that is susceptible to Harmful Code, scan the Deliverable using the Virus Software; and
 - (D) prior to connecting any devices (including laptops, flash drives, memory or other devices) to any software or systems used by the Customer, scan the device using the Virus Software.

GENERAL OBLIGATIONS

- 10.2 The Contractor must not, and must ensure that Contractor Personnel do not:
- (a) supply a Deliverable if Harmful Code has been detected in that Deliverable, until the

Contractor (or member of Contractor Personnel) is certain that the Harmful Code has been eliminated;

- (b) connect any device on which Harmful Code has been detected to any software or system used by the Customer, until the Contractor (or member of Contractor Personnel) is certain that the Harmful Code has been eliminated; or
- (c) insert or introduce Harmful Code into a Deliverable or any software or system used by the Customer in the course of performing any of its obligations under the Customer Contract.

10.3 Without limiting the other provisions of this clause 10 of these Additional Conditions, the Contractor must not activate any Harmful Code for the purpose of disabling or limiting the Customer's use of any Deliverables at any time, even after termination or expiry of the Customer Contract. This clause 10.3 will survive the termination or expiry of the Customer Contract.

REMEDY

10.4 In addition to any other rights the Customer may have under the Customer Contract, if Harmful Code is introduced into a Deliverable or the Customer Environment:

- (a) by the Contractor or any of Contractor Personnel;
- (b) as a result of the Contractor's or any of Contractor Personnel negligence; or
- (c) as a result of the Contractor breaching any of its obligations under this clause 10 or any other term of the Customer Contract,

the Contractor must pay the costs and expenses incurred by the Customer relating to: (i) identifying and removing the Harmful Code; and (ii) restoring any data lost, damaged or corrupted as a result of the Harmful Code to the last backed-up version of that data and otherwise remedying the impact of the Harmful Code.

11. Security

KEEP CUSTOMER DATA SEPARATE

11.1 The Contractor must ensure that:

- (a) all Customer Data on the TCM System is kept separate from other systems or equipment used by the Contractor (including by partitioning databases) and is not able to be accessed by any person other than a Customer Authorised Officer and the TCM System Administrator in the manner permitted under this Customer Contract;
- (b) access to the TCM System is password protected at appropriate levels to ensure access is restricted in accordance with this Customer Contract;
- (c) only the TCM System Administrator and the Customer Authorised Officer(s) are given the password to access the TCM System; and
- (d) all incidents of unauthorised access to Customer Data are reported to the Customer immediately and the Contractor takes such measures as the Customer may require to ensure such unauthorised access does not occur again.

NO ADVERSE IMPACT

11.2 The Contractor must not do (or omit to do) anything which has or could reasonably be expected to have, an adverse impact on the security or integrity of the Customer, its business, its

customers, the Services, the TCM System or any Customer Data or the Customer Environment.

COMPLY WITH REQUIREMENTS

- 11.3 Without limiting the Contractor's obligations under this Customer Contract, the Contractor must comply, and must ensure that its Subcontractors and Contractor Personnel comply, with:
- (a) all site-specific security requirements, including those reasonably requested by the Customer, relating to the TCM System or any Site where the Services are to be performed;
 - (b) the Contractor's own internal security standards; and
 - (c) Industry Best Practice in relation to security.

In the event of any inconsistency between these documents, they are to be interpreted in the order of priority in which they appear above.

INVESTIGATIONS

- 11.4 When requested by the Customer, the Contractor will immediately co-operate with any investigation relating to security carried out by or on behalf of the Customer or by any investigating body, including providing any information or material in the Contractor's possession or control that the Customer may reasonably request in connection with an investigation relating to security.

ACCESS TO CUSTOMER ENVIRONMENT

- 11.5 [Redacted]
- 11.6 [Redacted]
- 11.7 [Redacted]
- 11.8 [Redacted]
- 11.9 If the Contractor is provided with access to the Customer Environment, the Contractor must comply with all Customer Policies and procedures relating to systems access and any other conditions of access notified at the time of consent.
- 11.10 The Contractor must report all incidents of unauthorised access to the Customer Environment immediately and must take such measures as the Customer may require to ensure such unauthorised access does not occur again.
- 11.11 The Contractor must provide the Customer with an independent auditor's certificate on each anniversary of the Commencement Date confirming that the Contractor has complied with all of the requirements of this clause.

INFORMATION AND DATA SECURITY REQUIREMENTS

- 11.12 In addition to any other information and data security obligations in this Customer Contract, the Contractor must:
- (a) ensure all Personal Information on computer files is subject to audit trails and privacy logs and each step in the process is in compliance with the obligations relating to privacy and security in this Customer Contract; and
 - (b) ensure any data collated is in electronic format and the Contractor must be responsible for ensuring a completely secure system for the storage, usage and disposal of that

data.

SECURITY TESTING

- 11.13 The Contractor must at least annually during the Contract Period, conduct **vulnerability scanning and penetration testing** of the security of the TCM System . This may include external vulnerability and external penetration testing of the continuing suitability, adequacy and effectiveness of the security controls that the Contractor has in place to protect the TCM System and Deliverables and the data within the TCM System and Deliverables. **The Contractor will conduct vulnerability scanning and the Contractor will appoint and engage an external party to conduct penetration testing (excluding any competitor of the Contractor).** The Contractor must provide to the Customer the results of any such security and penetration tests as soon as practicable after such tests have taken place.
- 11.14 If the results of any security testing carried out under this clause 11 of the Additional Conditions reveal any security issue or breach, or show the security controls the Contractor has in place do not comply with the standards and requirements of the Customer Contract, the Contractor must at its own cost:
- (a) take such action as is necessary to promptly remedy the security issue, breach or non-compliance; and
 - (b) demonstrate to the Customer's reasonable satisfaction that such security issue, breach or non-compliance has been successfully remedied.

12. Location of performance

- 12.1 Except where specifically identified otherwise in this Customer Contract, the Contractor will supply the Services from the Contractor Premises.
- 12.2 The Contractor (including for the avoidance of doubt any of its Subcontractors) must not supply any of the Services and/or Deliverables from or at a location outside of New South Wales unless the Contractor has the prior written consent of the Customer (which the Customer may withhold or grant in its absolute discretion).
- 12.3 If the Customer provides the Contractor with consent under clause 12.2 of these Additional Conditions, the Contractor must comply with any conditions imposed by the Customer.

13. Personnel

CONTRACTOR RESPONSIBILITY

- 13.1 The Contractor must be financially responsible for, and manage, all Contractor Personnel and all Subcontractors.

CONTRACTOR PERSONNEL

- 13.2 The Contractor must use suitably qualified, experienced and competent Contractor Personnel in the provision of the Services.

CRIMINAL OFFENCES

- 13.3 The Contractor must ensure that no Contractor Personnel provides any Services under this Customer Contract if he or she has had a conviction recorded against him or her in relation to an offence in any jurisdiction which carries a possible custodial sentence of more than one year during the 10 years preceding the date he or she commenced providing the Services on behalf of the Contractor, unless the Customer has been notified of the relevant offence and has not

objected to the person notwithstanding that offence. If required by the Customer for Specified Personnel, the Contractor can provide the police check reference number for a police check performed within the last 3 years and the date that the check was performed.

SPECIFIED PERSONNEL

- 13.4 The Contractor must ensure that all Specified Personnel are committed to providing the Services to the extent reasonably necessary to fulfil that individual's role in the provision of the Services. The Contractor must ensure continuity of involvement in the Services from all Specified Personnel.

CHANGE TO SPECIFIED PERSONNEL

- 13.5 The Contractor must not change any Specified Personnel's involvement in the provision of the Services and performance of this Customer Contract unless:
- (a) they are incapacitated or unable to perform their role for any reason, or leave the Contractor's employment;
 - (b) the Services which they were performing are complete;
 - (c) the Customer gives prior written consent to the change, which will not unreasonably be withheld; or
 - (d) the Customer requires the removal under clause 13.7 of these Additional Conditions.

NOTICE OF CHANGE TO SPECIFIED PERSONNEL

- 13.6 Before any change in Specified Personnel as permitted under clause 13.5 of these Additional Conditions, the Contractor must notify the Customer in writing as soon as practicable (and, in any event, not less than five Business Days before the change) and consult with the Customer about selecting a replacement for the Specified Personnel. The Contractor must not appoint a person as a replacement if the Customer objects to the replacement.

REMOVAL OF CONTRACTOR PERSONNEL

- 13.7 The Customer may by giving notice to the Contractor require the Contractor to remove any Contractor Personnel from performing the Services if the Customer reasonably believes that person is not performing properly or effectively, has caused the Contractor to breach this Customer Contract or poses a security risk. The Customer will provide reasons for that person's removal in the notice given under this clause. The Contractor must treat such a notice as confidential. The Contractor must promptly remove any Contractor Personnel who are the subject of the notice given by the Customer under this clause.

TRANSITION AFTER REMOVAL

- 13.8 Where Contractor Personnel are removed by the Contractor under clause 13.7 of these Additional Conditions, the Contractor must ensure a seamless transition to the replacement Contractor Personnel and ensure there is no adverse impact on the Services.

CUSTOMER AUTHORISED OFFICERS AND REGULATED FUNCTIONS

- 13.9 The Contractor acknowledges and agrees that Regulated Functions may only be performed by the Customer or its Customer Authorised Officers.
- 13.10 The Contractor acknowledges and agrees that only the Customer Authorised Officer may

perform the Regulated Functions and the Contractor must not perform the Regulated Functions.

CONFIDENTIALITY UNDERTAKING

- 13.11 The Contractor must ensure that all Contractor Personnel and Subcontractors involved in the provision of the Services and all representatives, legal advisers and auditors to whom it discloses Confidential Information of the Customer enter into an adequate and sufficient confidentiality undertaking so as to enable and ensure the Contractor complies with the confidentiality undertakings and obligations in this Customer Contract.

14. Approval of Documents

APPLICATION

- 14.1 The process in this clause 14 of these Additional Conditions applies to all Deliverables that are Documents (and any other Deliverables that are agreed between the parties from time to time as being subject to the Document Approval Process, including under the Customer Contract).

SUBMISSION

- 14.2 The Contractor must submit all Deliverables which are Documents for approval in accordance with this clause 14 of these Additional Conditions by the applicable date for delivery of that Deliverable specified in the SLA, a PIPP or the other Contract Specifications.
- 14.3 The AAD for a Document will occur on the date on which that Document is approved in accordance with this clause 14 of these Additional Conditions.

APPROVAL

- 14.4 The Customer must, within 10 Business Days after a Document is submitted to the Customer (or any alternative timeframe agreed between the Parties in writing), review that Document and give the Contractor a Notice in Writing specifying that:
- (a) the Customer approves the Document; or
 - (b) in the Customer's reasonable opinion, the Document does not comply with the requirements of the Customer Contract applicable to that Document and the Customer requires amendments to the Document, in which case the Customer must specify those amendments in the Notice in Writing.
- 14.5 If the Customer does not give the Contractor a Notice in Writing as described in clause 14.4 of these Additional Conditions within 10 Business Days (or such other timeframe as is agreed) after a Document is submitted, the Contractor may give a Notice in Writing to the Customer. If the Customer still does not give a Notice in Writing as described above within a further 5 Business Days, then the Document will be deemed to have been approved by the Customer.
- 14.6 If the Customer gives the Contractor a Notice in Writing requiring amendments to a Document under 14.4(b) of these Additional Conditions, the Contractor must, within 5 Business Days (or any alternative timeframe agreed between the Parties in writing), prepare a revised version of the Document which addresses all of the amendments required by the Customer.
- 14.7 The Parties must repeat the process in this clause 14 of these Additional Conditions until the Customer approves each Document in accordance with this clause 14 of these Additional Conditions.

TERMINATION

- 14.8 If the Customer gives a Notice in Writing under clause 14.4(b) of these Additional Conditions, 2 or more times for a Document, the Customer may terminate the Customer Contract to the extent

it relates to that Deliverable and any related or dependent Deliverables supplied, or to be supplied, under the Customer Contract, with immediate or later effect, by giving the Contractor a Notice in Writing.

REFUND

- 14.9 If the Customer exercises its right under clause 14.8 of these Additional Conditions, the Contractor must, within 10 Business Days after receiving the Notice in Writing, refund to the Customer all amounts paid by the Customer in connection with the component of the Customer Contract that has been terminated.
- 14.10 For the avoidance of doubt, nothing in this clause 14 of these Additional Conditions is intended to limit any other rights available to the Customer, or any of the Contractor's obligations, under the Customer Contract.

15. Defect rectification

APPLICATION AND INTERACTION WITH OTHER PARTS OF THE CUSTOMER CONTRACT

- 15.1 This clause 15 of these Additional Conditions sets out the general warranty and Defect rectification process for the Deliverables, and is in addition to any other rights of the Customer under the Customer Contract.

DEFECTS

- 15.2 Subject to clause 15.3, without limiting any of the Customer's rights under law or the Customer Contract, if at any time during the Warranty Period for a Deliverable, the Contractor becomes aware, or the Customer advises the Contractor of a Defect in a Deliverable, the Contractor:
- (a) must do all things necessary to correct the Defect:
 - (i) in accordance with the timeframes specified in the Customer Contract; or
 - (ii) if no timeframe is specified in the Customer Contract, within 5 Business Days after the date on which the Defect was identified (or any alternative timeframe agreed between the Parties in writing); and
 - (b) warrants that the replacement or repaired Deliverable will comply with the applicable Contract Specifications and other requirements of the Customer Contract.
- 15.3 If multiple Defects are identified in a Deliverable, the Contractor must consult with the Customer to prioritise the rectification of such Defects.

REMEDIES FOR CONTRACTOR FAILURE TO CORRECT DEFECTS

- 15.4 Without limiting any of the Customer's rights under law or the Customer Contract, if the Contractor does not correct a Defect in accordance with clause 15.2, the Customer may do any one or more of the following:
- (a) require the Contractor to negotiate in good faith to agree to a Change Request to the Customer Contract to provide a reduction in the Contract Price to reflect a diminution in the value of the applicable Deliverable or the System; or
 - (b) either correct the Defect itself or by using another supplier, in which case the Contractor must pay the costs and expenses suffered or incurred by the Customer in doing so

within 30 days of a demand by the Customer to do so; or

- (c) pursue any other remedy it may have at law or under the Customer Contract.

16. Co-operation with Third Parties

- 16.1 Where any third party provides any services to the Customer which require assistance or co-operation from the Contractor, the Contractor agrees to provide all reasonable assistance and co-operation to that third party (excluding any competitor of the Contractor) to ensure that the Customer receives those services in a seamless and efficient manner. Where the Contractor requires assistance and co-operation from any third-party supplier to the Customer in respect of the Services or TCM System, the Customer will use all reasonable endeavours to obtain that assistance and co-operation.
- 16.2 The Contractor acknowledges that the Customer has direct contractual relationships with the Motorway Operators who provide Instructions to the Customer for processing. The Contractor agrees that it is not permitted to accept directions from, give directions to or act on any directions from, a Motorway Operator relating to this Customer Contract where those directions are not communicated or authorised by the Customer. The Contractor must immediately notify the Customer if it receives direction from a Motorway Operator in connection with this Customer Contract. The Contractor is not permitted to bind the Customer in way under the Customer's agreements with Motorway Operators.

17. Warranties

- 17.1 In addition to any other obligations of the Contractor under the Customer Contract, the Contractor warrants and represents that:
 - (a) during the Contract Period all Deliverables which are Services will be supplied:
 - (i) with all due care, skill, diligence expected of a professional service provider and in a proper and workmanlike manner;
 - (ii) in a safe and efficient manner;
 - (iii) in accordance with Industry Best Practice and applicable Statutory Requirements;
 - (iv) by suitably qualified, experienced and skilled personnel;
 - (b) during the Contract Period it has the necessary knowledge and resources to supply the Deliverables;
 - (c) during the Contract Period all Deliverables will comply with applicable Statutory Requirements and will be delivered and operate in a manner that enables the Customer to comply with applicable Statutory Requirements;
 - (d) it has conducted its own due diligence of the Deliverables, Services and Prices and will not seek an increase in baseline costs other than as provided in this Customer Contract;
 - (e) any materials supplied in connection with the Services (including all plans, designs, the TCM System, software, reports and other Documentation) will be fit for the purpose for which they were supplied; and
 - (f) all repairs and preventative maintenance in respect of the TCM System and the Contractor's other systems will as far as practicable be undertaken by the Contractor in accordance with the manufacturers' specifications and requirements so as not to void

any warranty offered by those manufacturers in relation to those systems.

NO ASSUMPTIONS

17.2 The Contractor warrants and represents to the Customer that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Deliverables and Services and has asked the Customer all the questions it considers to be relevant for the purposes of establishing whether it is able to provide the Deliverables and Services in accordance with the terms of the Customer Contract;
- (b) the Customer has delivered or made available to the Contractor all information and documents which the Contractor deems necessary, including all information and documents requested by the Contractor, in order for the Contractor to perform and price for the Deliverables and Services, and perform its other obligations, under this Customer Contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer pursuant to clause 17.2(b);
- (d) it has raised all relevant due diligence questions with the Customer before entering into the Customer Contract; and
- (e) it has entered into the Customer Contract in reliance of its own due diligence.

18. Continuous Improvement and knowledge assets

BENEFIT OF KNOWLEDGE ASSETS

18.1 The Contractor must do all things necessary to ensure that the Customer benefits from access to the Contractor's knowledge assets developed and captured through the Contractor's work globally, including by giving the Customer:

- (a) the opportunity to attend and participate at all of the Contractor's strategic information technology and customer forums, including the Customer's:
 - (i) customer advisory councils; and
 - (ii) research and development and other technical forums; and
- (b) access to, and an ability to comment on, the Contractor's internal technology roadmaps showing new technologies that it or its Subcontractors are developing, emerging trends in the industry and its development concepts.

CONTINUOUS IMPROVEMENT AND ACCESS TO INNOVATION

18.2 The Contractor acknowledges and agrees that if the Deliverables and the manner in which they are delivered are not continually improved during the Contract Period then this will adversely impact on the Customer's business.

18.3 Further, the Contractor must, throughout the Contract Period:

- (a) continually identify and inform the Customer of any opportunities to implement new

Processes or modify existing Processes to:

- (i) improve the Customer's business operations and/or the Deliverables; and
 - (ii) improve the Deliverables in a way which is an advance or improvement on existing Industry Best Practice;
- (b) if requested to do so by the Customer, provide a proposal to the Customer regarding the implementation in connection with the Deliverables of new Processes or changes to existing Processes identified by the Contractor and/or the Customer, for the Customer's evaluation;
- (c) ensure that the skills and knowledge of the Customer and Personnel and the technologies which it uses in its business are continually updated so as to enable the Customer to take advantage of improvements in Processes and technology relevant to the delivery of the Deliverables; and
- (d) monitor and advise the Customer in relation to new Processes and/or technologies which the Contractor is developing, or new trends or developments in the Contractor's industry which could reasonably be expected to have an impact on the Customer's business and meet with the Customer to discuss those new Processes and/or technologies.
- 18.4 The Customer may, from time to time, identify a new technology or process or Industry Evolution, or recommend enhancements or modifications to the Deliverables, which it considers, if adopted by the Contractor, would reduce the costs of supplying the Deliverables or improve the performance of the Deliverables, in which case the Contractor must as soon as practicable provide a response to the Customer in which it demonstrates to the reasonable satisfaction of the Customer either:
- (a) that the adoption of the new technology or Processes or Industry Evolution or advancement would not result in such costs savings and/or improved performance; or
 - (b) its plan for rapidly adopting the new technology or Processes or Industry Evolution in relation to the provision of the Deliverables and how, to the extent that the Contractor has not already allowed for such reduced costs as in-built cost reductions in the Prices, it must pass through to the Customer the resulting reductions in costs as reduced Prices.
- 18.5 The Customer may request that the Parties work together to identify ways to achieve reductions in the cost of service delivery and corresponding reductions in the Price to be paid by the Customer by modifying or reducing the nature or scope of the Deliverables to be performed by the Contractor, the applicable Service Levels or other requirements of the Customer Contract.
- 18.6 If requested by the Customer, and at the Customer's reasonable cost where the costs are material and substantiated to the Customer's satisfaction, the Contractor must prepare a proposal at a level of detail sufficient to permit the Customer to make an informed business decision identifying all viable means of achieving the desired reductions without adversely impacting business objectives or requirements identified by the Customer.
- 18.7 In preparing such a proposal, the Contractor must give due consideration to any means of achieving such reductions proposed by the Customer. The Contractor must negotiate in good faith with the Customer about each requested reduction in the Price and, without being obliged to disclose the actual cost of providing the Deliverables, must identify for the Customer if and to what extent the cost of service delivery may be reduced by implementing various changes in the requirements of the Customer Contract.
- 18.8 The Customer is not obliged to accept or implement any proposal that affects the terms of this

Customer Contract.

19. Benchmarking

INITIATION OF A BENCHMARK

- 19.1 The Customer may initiate a benchmark in respect of any aspect of the Prices, Service Levels and the Services (or any part thereof) at any time after the Commencement Date on 60 days' notice to the Contractor.
- 19.2 The Customer may benchmark the Prices, Service Levels and the Services not more than once annually.

SELECTION OF BENCHMARKER

- 19.3 The benchmarker will be nominated by the Customer after consultation with the Contractor. The Customer must not nominate a direct competitor of the Contractor as the benchmarker.
- 19.4 The Customer will instruct the benchmarker to conduct the benchmark in accordance with this clause 19 of these Additional Conditions.
- 19.5 The Customer may disclose the terms of the Customer Contract to the benchmarker and will ensure that the benchmarker is bound to confidentiality terms no less stringent than those contained in the Customer Contract.

BENCHMARKING PROCESS

- 19.6 The benchmarker may carry out the benchmark as it sees fit (including by determining the benchmarking methodology) provided that it complies with this clause 19 of these Additional Conditions.
- 19.7 The benchmarker must take into account relevant characteristics of the TCM System, Deliverables and Services being provided to the Customer and assess a pool of contracts, normalising for differences in those characteristics, including:
- (a) comparable service providers;
 - (b) scope;
 - (c) volumes;
 - (d) service levels, and
 - (e) other characteristics that, in the benchmarker's expert opinion, warrant consideration in undertaking the benchmarking.
- 19.8 The Parties must co-operate in good faith in the conduct of each benchmark.
- 19.9 If requested by the Customer, the Contractor must actively participate in the benchmarking

including:

- (a) attending benchmarking meetings;
- and
- (b) providing information and materials to the benchmarker.

BENCHMARKING REPORT

- 19.10 The Customer must instruct the benchmarker to provide the results of its benchmark to the parties in the form of a written benchmarking report which identifies (as a minimum):
- (a) whether any aspect of the Prices or Service Levels is non-competitive; and
 - (b) recommended changes that would need to be made to make those Prices or Service Levels competitive.
- 19.11 The Customer must instruct the benchmarker to provide both the Customer and the Contractor with a draft of the benchmarking report before it is finalised and a reasonable opportunity to raise any issues or concerns with the draft benchmarking report before it is finalised.
- 19.12 If either Party has any issues or concerns with the draft benchmarking report it must notify the other Party of the issues and concerns as soon as reasonably practicable (providing sufficient detail to enable the other party to understand the issues or concerns).

BENCHMARKING DISPUTE PROCESS

- 19.13 The benchmarker will act as an expert and not as an arbitrator and its decisions will be final and binding on the Parties.
- 19.14 Neither Party has the right to object to a benchmarking report or the conduct of a benchmark (other than for fraud or non-trivial manifest error).
- 19.15 If a Party considers that a benchmarking report contains a (non-trivial) manifest error and it wishes to dispute the benchmarking report, it must do so in accordance with the process below.
- 19.16 The disputing Party must issue a notice to the benchmarker (**Notice of Dispute**) no later than 10 Business Days after the benchmarker issues the benchmarking report.
- 19.17 The Notice of Dispute must contain sufficient detail and substantiation to enable the benchmarker to assess the dispute, including proposed amendments to the benchmarking report necessary to correct the errors.
- 19.18 The Customer must instruct the benchmarker to respond to a Notice of Dispute within 10 Business Days.
- 19.19 If the benchmarker determines that:
- (a) the dispute requires a change to the benchmarking report, it must issue a revised benchmarking report as soon as practicable; or
 - (b) the dispute does not require a change to the benchmarking report, the benchmarking

report as issued by the benchmarker will apply.

[REDACTED]

19.20 [Redacted]

19.21 [Redacted]

COSTS OF A BENCHMARK

19.22 The parties must share the costs of the benchmarker equally.

19.23 Each party will bear its own costs of complying with this clause 19 of these Additional Conditions.

20. Step In

RIGHT TO STEP-IN OR DIVERT PROCESSING

20.1 If the Contractor:

- (a) commits a material breach of this Customer Contract; or
- (b) fails to comply with this Customer Contract in such a way as to cause, or be likely to cause, significant disruption to the Customer's business,

the Customer may:

- (c) appoint its own management team and/or a third-party supplier to perform any or all elements of the Services or to observe the Contractor's performance; and/or
- (d) process Instructions from Motorway Operators itself using the Customer's own systems rather than pass on Instructions to the Contractor for processing.

NO OBLIGATION TO PAY

20.2 While the Customer or any third party supplier is providing any element of the Services pursuant to this clause 20, the Customer will not be obliged to pay the Prices (or any other charges, expenses or fees) in respect of that element of the Service and the Contractor will have no claim against the Customer for providing the Services itself or having a third party do so.

EXPIRY OF STEP-IN

20.3 The parties agree to transition the Services back to the Contractor in an orderly manner following resolution of the event giving rise to the step-in.

WITHOUT PREJUDICE TO OTHER RIGHTS

20.4 This clause 20 is without prejudice to any rights and remedies of the Customer including, but not limited to, any right of damages, Service Credits or termination of the Services (or any part of them) under this Customer Contract.

21. Suspension

SUSPENSION BY THE CUSTOMER

21.1 The Customer may by Notice in Writing at any time suspend the Customer Contract in whole or in part, such suspension to be effective after 30 days unless a longer notice period is stated

otherwise in the Notice In Writing. The Contractor must comply with any directions given in the Notice in Writing. After giving a notice to suspend (**Suspension Notice**), the Customer may by Notice in Writing require the Contractor to resume this Customer Contract, to be effective immediately unless stated otherwise on the Notice In Writing. The Contractor will be entitled to claim an extension of time if it needs additional time to remobilise its Personnel. The total period of suspension during this Customer Contract must not exceed 12 months unless otherwise agreed by the parties.

- 21.2 [Redacted], if the Customer exercises its right under clause 21.1 of these Additional Conditions above;
- (a) the Contractor will be excused from performing its obligations that are the subject of the Suspension Notice;
 - (b) [Redacted]
 - (c) [Redacted]
- 21.3 [Redacted]
- 21.4 [Redacted]
- 21.5 The Contractor must, in each sub-contract with any Subcontractor for the purposes of this Customer Contract, reserve a right of suspension, on the same terms as this clause 21 of these Additional Conditions to take account of the Customer's right of suspension under this Customer Contract.

22. Termination – additional rights

TERMINATION RIGHTS

- 22.1 In addition to the rights and remedies of the Customer in clause 25.2 (Termination for cause by the Customer) of Part 2 of the Customer Contract, the Customer may immediately terminate the Customer Contract in its entirety or to the extent it relates to 1 or more Deliverables by giving the Contractor a Termination Notice if:
- (a) if the Contractor breaches any of its obligations in relation to:
 - (i) prosecution assistance in clauses 8.2 to 8.4 (inclusive) of these Additional Conditions; or
 - (ii) any confidentiality and privacy obligations under this Customer Contract;
 - (b) the Contractor has committed a breach of this Customer Contract that can be remedied but the Customer has previously given a Termination Notice to the Contractor under this clause 22 or clause 25.2 (Termination for cause by the Customer) of Part 2 of the Customer Contract within the preceding 6 months for the same or similar breach;
 - (c) if there is a change in Control of the Contractor;
 - (d) if all or a substantial part of the Contractor's assets are acquired by a third party not being a Related Company of the Contractor and the change will adversely impact the Contractor's ability to deliver the Deliverables or Services; or
 - (e) if the Contractor merges with a third party or has its business acquired by a third party,

so that a different entity is supplying the Services to the Customer; or

(f) [Redacted]

22.2 The Customer may terminate this Customer Contract by giving notice to the Contractor where it is given the right to do so under any other term of this Customer Contract.

TERMINATION FOR FAILING TO PASS THE ACCEPTANCE TESTS

22.3 If the Customer rejects a Deliverable under clause 10.12(e) of Part 2 of the Customer Contract that has been resubmitted for testing more than twice, the Customer may terminate the Customer Contract in its entirety or in part to the extent it relates to one or more Deliverables by notice to the Contractor.

22.4 If the Customer terminates the Customer Contract under clause 22.3 of these Additional Conditions:

(a) the Contractor must refund all amounts paid for the Deliverables the subject of the termination within 20 Business Days after the date on which the notice is given; and

(b) the Customer must make the Deliverables the subject of the termination available for collection within 20 Business Days after the date on which the notice is given.

CONSEQUENCES OF TERMINATION

22.5 Without limiting the Contractor's other obligations under this Customer Contract (including in respect of transition out including under Module 12 (Managed Services)), on termination and expiry of this Customer Contract:

(a) Assistance in transition of Services: The Contractor must do all things necessary, execute all documents required and provide the Customer with all assistance the Customer reasonably considers necessary or desirable:

(i) to enable services similar to the Services to be provided to the Customer internally or by a replacement service provider, in a manner which ensures orderly transition on exit and continuity of service to the Customer; and

(ii) to assist in any feasibility or scoping activities undertaken by the Customer in relation to the Services and in providing the Customer with information and materials relating to the Services and relating to the operation and functionality of the TCM System.

The Customer acknowledges and agrees that this does not alter the ownership of Intellectual Property Rights or Confidential Information of the Parties under this Customer Contract and under no circumstances shall the Contractor be required to train a replacement service provider.

(b) [Redacted]

(c) TCM System: Upon termination of this Customer Contract by the Customer for cause and without limiting any other rights or obligations of the parties:

(i) all costs, losses and expenses incurred by the Customer as a result of the termination, including all termination costs, will be borne by the Contractor, and the Contractor will bear its own costs of effecting transition of the Services by performing the Transition Out Services to the Customer or a replacement

service provider; and

(ii) [Redacted]

23. Specific legislation and policy requirements

LIABILITY UNDER SPECIFIC LEGISLATION

23.1 The Contractor indemnifies the Customer against all liabilities, losses, damages and expenses suffered or incurred by the Customer or any of its Personnel relating to section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) or Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) or any similar, equivalent or replacement laws, relating to the Contractor's, or any of its Personnel's failure:

- (a) to pay all necessary payroll tax;
- (b) to pay any remuneration; or
- (c) to pay any workers compensation insurance premiums which are payable for any work done in connection with the Customer Contract.

Notwithstanding any other clauses in this Customer Contract, the Contractor has no financial cap on its liability arising under the indemnity in this clause 23.1 of these Additional Conditions.

ANTI-SLAVERY AND HUMAN TRAFFICKING

23.2 Without limiting any other provision of this Customer Contract, the Contractor must:

- (a) not engage in (and take reasonable steps to ensure that in the Contractor's operations and supply chains there are not):
 - (i) any activities, practices or conduct that would constitute an offence under Modern Slavery Laws; or
 - (ii) any activities practices or conduct which would constitute an offence under Modern Slavery Laws if it had taken place within another Australian jurisdiction or state other than New South Wales;
- (b) notify the Customer as soon as reasonably practicable after it becomes aware of any actual or suspected activity, practice or conduct of the kind described in paragraph (a);
- (c) provide the Customer with all information and records reasonably requested by the Customer in order for the Customer to comply with its reporting obligations under the *Modern Slavery Act 2018* (Cth) and equivalent legislation in the the states and territories within Australia, and provide such information and records to the Customer within 30 days of the Customer's request; and
- (d) comply with the mandatory reporting requirements under the *Modern Slavery Act 2018* (Cth) and equivalent legislation in the states and territories within Australia, if applicable, and provide a copy of their modern slavery statement to the Customer.

ANTI-BRIBERY AND ANTI-CORRUPTION

23.3 Without limiting any other provision of this Customer Contract, the Contractor must:

- (a) comply with all applicable anti-bribery and anti-corruption Statutory Requirements within

Australia, including the *Crimes Act 1914* (Cth) and *Criminal Code Act 1995* (Cth);

- (b) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (c) use all reasonable endeavours to ensure that Contractor Personnel, officers, employees and agents comply with this clause.

24. General - additional requirements

COSTS AND EXPENSES

- 24.1 Except as otherwise provided in the Customer Contract, each party will pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Customer Contract.

FURTHER ASSURANCE

- 24.2 Each party will promptly do further acts and execute and deliver further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to the Customer Contract. The Contractor will cooperate with the Customer and its contractors and provide assistance reasonably required by them for purposes related to the Customer Contract.

INDEMNITIES

- 24.3 Each indemnity in the Customer Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Customer Contract.
- 24.4 It is not necessary for a party to incur expense or to make a payment before enforcing a right of indemnity conferred by the Customer Contract.

PUBLIC ANNOUNCEMENTS

- 24.5 The Contractor may not (and may not allow any other person to) make any public statement or public disclosure about this Customer Contract or anything related to the subject matter of this Customer Contract, without the prior written consent of the Customer.

SET OFF

- 24.6 The Customer may set off:
- (a) money due to the Customer from the Contractor; or
 - (b) damages, costs or expenses recoverable by the Customer from the Contractor,
- against money due to the Contractor under this Customer Contract. This clause 24.6 of these Additional Conditions survives termination or expiry of the Customer Contract.

NON-SOLICITATION

- 24.7 For the Contract Period and for the period of 6 months after the expiry or termination of this Customer Contract, neither party will without the prior written consent of the other, directly or indirectly induce or attempt to induce from the employment of the other party any person employed in the provision or the receipt and/or administration of the Services. The restriction in this clause does not apply to either party employing (or offering to employ) any person who has

responded to general recruitment advertising.

Annexure B to Schedule 1: General Order Form

Statement of Work

[Redacted]

Annexure C to Schedule 1: General Order Form

Charges

[Redacted]