

Schedule 1: General Order Form

Contract 999 ICT Hardware

The parties have agreed to use the short form contract structure as permitted under the Procure IT contracting framework. The shortened version of the General Order Form must include all the Items that are set out in clause 3.4 of the Customer Contract. (i.e. Items 1, 4, 7 (if there is a Head Agreement), 8, 10, 11, 12 and 13). General Order Form Schedule 1 to the Customer Contract (which is Part 2 of the Procure IT Framework). 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.

The parties wish to establish Standing Offer arrangement under this Schedule 1 General Order in accordance with Contract 999.

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)	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)	Level 6, 110 George Street Parramatta NSW 2150

Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	[REDACTED] [REDACTED]

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)	Dell Australia Pty Ltd ABN 46 003 855 561

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)	Dell Australia Pty Limited, Building 3, 14 Aquatic Drive, Frenchs Forest, NSW 2086

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)	Account Manager: [REDACTED]

Item 7 Head Agreement

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.1) Specify the Head Agreement number:	Contract Framework: NSW PROCURE IT FRAMEWORK VERSION 3.2 Head Agreement No: Contract 999 Head Agreement Title: ICT End User Device & Services for NSW Government
Term of the Head Agreement:	Start Date: 1 August 2017 End Date: 31 July 2019 unless extended under the Head Agreement.
Insurance (clause 16.2)	<ul style="list-style-type: none"> Public and Product Liability Insurance: USD \$20M per occurrence and in the aggregate. Professional Indemnity Insurance: USD \$20M in the aggregate. Workers Compensation Insurance: As required by law.
Performance Guarantee (clause 17.1)	Not Applicable.

Item 8 Modules that form part of the Customer Contract

Module 1 – Hardware Acquisition and Installation	<input checked="" type="checkbox"/>	Module 3 – Licensed Software	<input checked="" type="checkbox"/>
Module 2 – Hardware Maintenance and Support Services	<input checked="" type="checkbox"/>	Module 5 – Software Support Services	<input checked="" type="checkbox"/>

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

Schedule 2 – Agreement Documents	<input checked="" type="checkbox"/>	Schedule 7 – Statutory Declaration – Subcontractor [Not Required]	<input type="checkbox"/>
Schedule 3 – Service Level Agreement	<input checked="" type="checkbox"/>	Schedule 8 – Deed of Confidentiality [Not Required]	<input type="checkbox"/>
Schedule 6 – Deed Poll – Approved Agents [Not Required]	<input type="checkbox"/>	Schedule 11 – Dispute Resolution Procedures	<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)	<p>Commencement Date: On execution by the parties of this Schedule 1 General Order and will end on 31/07/2020 (Contract Period).</p> <p>Extension Option: The parties may by mutual agreement in writing, at least 30 days prior to the end of the current Contract Period, extend the Contract Period for a further term (Extended Contract Period).</p>

Item 11 Common Details

Formation (clause 3.4)			
Product and/or Service	Price per Unit	Quantity	Extended Price
<ul style="list-style-type: none"> The parties wish to establish Standing Offer arrangement under this Schedule 1 General Order in accordance with Contract 999. The Customer may, from time to time during the Contract Period, request Hardware or Services from the Contractor by following the process set out in: <ul style="list-style-type: none"> For Hardware: Module 1 Order Form 'Request for Hardware Acquisition and Installation' (a Request); For Services: Module 7 Order Form 'Request for Professional Services' (a Request for Services). The Price for the Hardware and/or Services requested by the Customer will be stated in the Contractor's Quote in accordance with Contract 999 and the process specified Module 1 Order Form and Module 7 Order Form. 			

	Sub-Total:	
	Delivery Charges:	
	Any Other Charges:	
	GST:	
This is the Contract Price (plus GST)	Total Amount:	As per above.

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:	Deliveries within Australia: As stated in the Customer's Purchase Order issued to the Contractor relevant to the Products procured.
Specify any delivery instructions:	<p>All Deliverables are to be delivered to the Customer free of charge.</p> <p>To avoid instances where the Customer has to warehouse Deliverables, the Contractor must work with the Customer to plan the production, configuration, packing, shipment and delivery of all Deliverables to meet a 'just in time' ordering process.</p> <p>Deliverables are to be packaged for delivery in order to minimise the chance of any damage occurring in transit.</p> <p>The Customer will not be responsible for any damage that occurs while Deliverables are in transit (except if caused by the Customer).</p>
Specify the hours during which delivery may be made to the Site:	<p>The Contractor must contact the Customer and arrange an acceptable delivery time, the Business Day before delivery is scheduled to occur.</p> <p>Unless otherwise specified by the Customer, all deliveries must occur during the standard business hours of the Customer.</p> <p>Unless otherwise agreed between the Contractor and Customer, the Contractor is required to deliver all Hardware items within three weeks of accepting a Purchase Order in accordance with the relevant Module Order Form (ie Module Order Forms 1,2,3 5 or 7).</p> <p>Hardware: Delivery is complete when the Customer takes physical receipt of the Deliverables.</p> <p>Services: On completion of the Service in accordance with this Customer Contract, in particular the relevant Module Order Form for the Services to be supplied.</p> <p>Buffer Stock: If requested by a Customer in order to facilitate shorter delivery times, the Contractor will hold Buffer Stock and deliver Buffer Stock within the following timelines:</p> <p>(a) Customer Sites located in Metro Areas within 10 Business Days; and</p> <p>(b) Customer Sites located in Regional Areas within 12 Business Days.</p> <p>Clause 34 of the Additional Conditions apply to the provision of Buffer Stock by the Customer.</p>

Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer	
Formation (clause 3.4)		
<p>If the Contract Specifications are the User Documentation leave this Item blank.</p> <p>If the Contract Specifications comprise other documents, list those documents in order of priority:</p>	The Contract Specifications consist of:	
	a)The Government Standard Specifications as published from time to time;	<p>Hardware Specification: As per Contract 999 or as set out in the Contractor's quotation to the (Contractor's Quote) relevant to the Products to be procured. This should be based on the Products and Services specified in Annexure 3 of the Head Agreement</p> <p>Warranty Period: As per Contract 999. If non stated for the specific Product in Annexure 3 of the Head Agreement, as per the Contractor's Quote.</p> <p>Warranty upgrade (if relevant): As per Contract 999. If non stated for the specific Product in Annexure 3 of the Head Agreement, as per the Contractor's Quote.</p>
	b) The Service Level Agreement attached to this Customer Contract in Schedule 3;	Not Applicable.
	c) Any requirements for the Services set out in the Additional Conditions specified in Annexure A to this Customer Contract (Additional Conditions);	As per Item 43.
	d) Any documents included and / or referenced in Schedule 2 – Agreement Documents;	Contractor's Quote or Contractor service description relevant to the Products procured.
	e) Any other requirement or specification agreed between the Parties in writing;	Contractor's Quote or Contractor service description relevant to the Products procured.
	f) any Accessibility ICT Standards set out in Item 30 (to the extent they are required by the Customer from time to time); and	Not Applicable to this Customer Contract.
	g) any documents incorporated by reference, or referred to, in any of the documents detailed above or produced in accordance with any of the documents detailed above.	Contractor's Quote or Contractor service description relevant to the Products procured.

Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clauses 11.1 and 11.2)	
Invoicing (clause 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	Customer Representative: As stated in the Customer's Purchase Order issued to the Contractor relevant to the Products procured.
Specify address to which invoices should be sent:	Address for Invoices: As stated in the Customer's Purchase Order issued to the Contractor relevant to the Products procured.
Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment. If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.	The Customer is not required to pay any amount to the Contractor unless it has received a Correctly Rendered Invoice for that amount. Unless otherwise agreed between the Customer and Contractor, the Customer must pay each Correctly Rendered Invoice within 30 days after receipt of that invoice . An invoice is only a Correctly Rendered Invoice if it is issued: a) for the total quantity ordered; and b) after delivery of the total quantity ordered. Notwithstanding the above, the Contractor may invoice the Customer for partially delivered Products and Services where that has been agreed in writing with the Customer.
Specify when the Contract Price must be paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one occasion then consider using a PIPP under Item 20.	Customer must pay each Correctly Rendered Invoice within 30 days after receipt of that invoice . No acceptance testing is required. The Contractor will issue the invoice on delivery of the Products.
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	The Contract Price is fixed. The Customer may only purchase Hardware and/or Services for the prices listed in Annexure 3 of the Head Agreement. However, the Parties acknowledge and agree that the prices listed in Annexure 3 are subject to change in accordance with the terms of the Head Agreement and that the Contractor may offer the Customer a discount on the prices listed in Annexure 3 from time to time, provided such discount is provided in compliance with the requirements of the Head Agreement Commercial Terms and Conditions.

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))	Nil. Standard OEM documentation accompanying the Products supplied only.

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)	Unless otherwise agreed by the parties, Not Applicable.
Management Committee (clause 6.6)	If required as per Clause 6.4 above, The management committee will meet on a monthly basis to discuss and review the Contractor's performance under this Customer Contract.
Management Committee (clause 6.8)	As set out in Annexure A of the Service Level Agreement.

Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Reviews (clause 6.10)	As agreed by the parties from time to time.

Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Site Specifications (clause 6.12)	Not Applicable. The Contractor is not responsible for any Site preparation works.
Access to Customer's Site (clause 7.1(b))	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 (clause 6.14)	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)	Not Applicable.
Invoicing (clause 11.7)	Not Applicable.
Staged Implementation (clause 6.20)	Not Applicable.

Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Liquidated Damages (clause 6.28 to 6.34)	Not applicable.

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)	Not applicable.
Customer Assistance (clause 6.41)	Not applicable.

Item 23 Escrow

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Escrow (clause 6.42)	Not required for this Customer Contract.

Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Contingency (clause 6.45)	Not required for this Customer Contract.

Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Access to Customer's Site (clause 7.4)	Not applicable.

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)	Not applicable.

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)	Not applicable.

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)	Subcontractor Statutory Declaration: Not required. Subcontracting: The Contractor may engage Contractor approved subcontractors for the provision of the services, including for example but not limited to installation, commissioning, configuration, warranty & repair, training, and technical & support services.

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:	<p>The Contractor must comply with the following relevant Australian, international and industry standards, specifications, guidelines and classification schemes:</p> <ul style="list-style-type: none"> (a) ISO/9000/1 - Quality Management; (b) ISO/27001; (b) AS/ISO 14001 - Environmental Management; (c) AS/NZS 4360 - Risk Management; and (d) ISO/IEC27001-2005 - Security Requirements <p>If requested by the Customer in accordance with the procedures set out in the Head Agreement Commercial Terms and Conditions and Annexure A to this Customer Contract General Order Form, the Contractor must also comply with either the entire, or specific aspects of the, EN 301 549 - Accessibility Requirements suitable for public procurement of ICT products and services.</p> <p>EN 301 549 - Accessibility Requirements: Are not applicable to this Customer Contract.</p> <p>The Contractor must ensure that these quality standards are maintained across its supply chain, including any Subcontractors.</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))	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	<p>Any statute, regulation, by-law, ordinance or subordinate legislation (including any industry codes of conduct) in force from time to time in New South Wales and any other jurisdiction that is applicable to the Deliverables, the Customer or the Contractor.</p> <p>Without limiting the foregoing, to the extent this Customer Contract involves child related employment, the Contractor must ensure that it complies with and ensures that its representatives, Subcontractors, dealers/agents comply with the Contract Authority, Customer's, Contractor's and their Personnel's obligations as an employer under the Child Protection (Prohibited Employment) Act 1998 (NSW) and the Commission for Children and Young People Act 1998 (NSW). The following standards:</p> <p>ISO/9000/1 Quality Management; AS/ISO 14001- Environmental Management; AS/NZS 4360 Risk Management; ISO/IEC 27001-2005 Security Requirements; and, if requested by the Customer in the Order Documents, the Accessible ICT Standards being the European Standard EN 301 549 (Accessibility Requirements suitable for public procurement of ICT products and services) and any other accessibility requirements specified by the Customer Contract.,</p> <p>Accessible ICT Standards: Not Applicable to this Customer Contract.</p>
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	The Customer's policies, standards and procedures as notified to the Contractor from time to time in writing.

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Warranties (clause 9.3(h))	As per Part 2 Customer Contract terms and conditions.
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	None.
Specify any codes, policies, guidelines or standards the Customer is to comply with:	The NSW Government and Customer's own codes, policies, guidelines or standards.

Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Part 3 Dictionary (clauses 1.2 to 1.4)	Unless otherwise agreed and stated in a separate Contractor statement of work, No acceptance testing required.
Acceptance (clause 10.1)	<p>No acceptance testing required for this Customer Contract. Acceptance shall be deemed to have been made on the date of delivery of the Hardware. Acceptance does not prejudice the Customer's rights for rectification of any defect in the Hardware in accordance with the Customer Contract.</p> <p>Testing by the Contract Authority under the Head Agreement: Deliverables may be subject to Acceptance Testing by the Contract Authority as set out in the Head Agreement. [Note: This will be completed prior to the approval of the device being listed in the Annexure 3.]</p>
Conducting Acceptance Tests (clause 10.3)	As per Above.

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)	Not Applicable.

Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Existing Material (clauses 13.7 and 13.9)	Software: All software (including open source software) distributed by the Contractor or forming part of the Services or used in providing the Services is subject to the licence agreement embedded in the software or forming part of the software or provided with the software (Software EULA).
Customer Owned New Material (clause 13.10)	Not Applicable.
Perpetual Licences (clause 13.8A) Specify any terms contrary to clause 13.8A	Software: Perpetual, unless otherwise stated in the relevant Module Order or Software EULA.

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.1)	Not required. Contractor is not required to obtain a Deed of Confidentiality from Contractor approved subcontractors.

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)	<ul style="list-style-type: none">Public and Product Liability Insurance: USD \$20M per occurrence and in the aggregate.Professional Indemnity Insurance: USD \$20M in the aggregate.Workers Compensation Insurance: As required by law.

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)	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)	Not Applicable.

Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Limitation of Liability (clause 18)	The default limitation of liability under clause 18.1 applies.
Specify the alternative cap of liability (clause 18.3):	Not Applicable.

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)	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the reports required, (if any), the time for provision and the agreed format:	As set out in Appendix A of the Service Level Agreement.

Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Dispute Resolution (clause 24.11)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7 to 24.8.	\$100,000
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	Subject to clause 24.11(a), all disputes arising out of or in connection with the Customer Contract are to be determined by expert determination under clauses 24.7 to 24.8.

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Termination for Convenience by the Customer (clause 25.4)	Clause 34 of the Additional Conditions specifies the costs that are recoverable under clause 25.4(b).

Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	Yes. The Additional Conditions are set out in Annexure A to the Customer Contract. <i>Also refer to Annexure A to the General Order Form</i>

Item 44 Transfer of Records outside NSW – Customer Data

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract.	Yes. As a global organisation customer information relevant to this procurement may be processed by the Contractor (ie Dell) in Australia and/or outside Australia to enable the Contractor to carry out procurement transactions that the Customer has requested and may include for example such things as product specifications, organisational information, contact details, tender information, transactional information, commercial, sales and contractual information, and product warranty information relevant to the Products procured by the Customer.
If yes, Customer to state whether consent is provided to transfer such State Records outside the jurisdiction of NSW, Australia, and, if consent is granted, any conditions on which such consent is provided.	Acknowledged and approved by Customer.

Item 45 Transfer of Records outside NSW – Personal Information

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify whether consent is provided to transfer Personal Information outside the jurisdiction of NSW, Australia	As per Item 46.
If yes, and, if consent is granted, any conditions on which such consent is provided.	As per Item 46.

Item 46 Transition Out

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify whether the Customer is required to pay for Transition Out Assistance	No transition out assistance or service, transition out plan or transition out period is required for this Customer Contract. If required a separate commercial quote can be provided to the Customer as per clause 39 of the Additional Conditions.
If yes, specify the rates that apply to the Transition Out Assistance	If required a separate commercial quote can be provided to the Customer as per clause 39 of the Additional Conditions.

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

SIGNED AS AN AGREEMENT

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

By the below specified person but not so as to incur personal liability

Signature of Customer Representative

Print name

19/07/2019

Date

Signed for and on behalf of Dell Australia Pty Limited (ABN: 46 003 855 561)

Signature of Authorised Signatory

Print name

11 July 2019

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
Request for Tender for Contract 999 – End User Devices and Services	
[Lot 1/Lot 2] Response Document	
Head Agreement Commercial Terms and Conditions	
Contractor's Quote relevant to the Products procured under Contract 999.	
Response to RFQATM0019a	27 July 2016
Clarification response	14 September 2016

Schedule 3: Service Level Agreement

1. Definitions and Interpretation

1.1 In this Service Level Agreement (**SLA**), unless the contrary intention appears:

DIFOT means delivery in full and on time.

DOA means dead on arrival.

KPI means the Key Performance Indicators set out in section 4 of this SLA.

Quarter means each period of 3 consecutive calendar months commencing on the first day of the first month after the date on which this SLA commences.

Reports has the meaning given to it in clause 7.4.

Resolution means a permanent fix that resolves a Defect to the satisfaction of the Customer.

Resolution Time means the time taken from the logging of a Defect by the Customer with the Contractor and ending when a Resolution for the Defect has been provided by the Contractor. For the avoidance of doubt:

- (a) Resolution Time will continue if the Resolution does not resolve a Defect to the satisfaction of the Customer.
- (b) Resolution Time includes the Response Time.

Response Time means the time taken for the Contractor to respond to and register a Defect with the Contractor's Help Desk (via phone or electronic message). Response Time does not include the time taken to send an automated email.

Service Improvement Plan means a plan prepared in accordance with section 5.

Service Level means the service levels for each KPI specified in section 4 of this SLA.

1.2 Other capitalised words and expressions used in this SLA are defined in Part 3 or the Additional Conditions attached as Annexure A to the Customer Contract.

2. General

PURPOSE OF SLA

2.1 This SLA:

- (a) provides a mutual understanding of the level of Service expected by the Parties and defines a benchmark for measuring the performance of the Service;
- (b) sets out how the KPIs will be measured; and
- (c) sets out the remedies that will apply if the Contractor fails to meet the KPIs.

2.2 The Contractor must cooperate and work with the Customer, and any third party suppliers to the Customer, to the extent that:

- (a) the Customer's, or third party supplier's, input is required for the Contractor to meet the Service Levels; and
- (b) the Contractor's input is required for the Customer, or one or more third party suppliers, to meet any Service Levels applicable to them.

REVIEW

- 2.3 This SLA may be reviewed on an annual basis upon the written request of either Party.

3. Primary obligations and remedies

OBLIGATIONS

- 3.1 The Contractor must:

- (a) meet or exceed the KPIs; and
- (b) provide all Reports within the timeframes set out in Annexure A to this SLA.

SERVICE IMPROVEMENT PLAN

- 3.2 If the same KPI is not met in 2 consecutive Quarters the Contractor must prepare, submit to the Customer, and once approved by the Customer implement, a Service Improvement Plan in accordance with section 5.

4. Key Performance Indicators

The KPIs below will be used to assess the Contractor's performance. The Contractor acknowledges that these KPIs are mandated by the Head Agreement and cannot be amended.

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KPI #	Service	Measurement	Target	Service Level	When measured
1	Delivery on time – Metro Areas	The percentage of orders DIFOT to Customer Sites in Metro Areas.	98% or more of orders DIFOT.	95% or more of orders DIFOT.	Last day of the Quarter.
2	Delivery on time – Regional Areas	The percentage of orders DIFOT to Customer Sites in Regional Areas.	98% or more of orders DIFOT.	95% or more of orders DIFOT.	Last day of the Quarter.
3	Response Time	The elapsed Response Time.	Response Time of 30 minutes for 98% or more of calls/ electronic requests to the Contractor's Help Desk.	Response Time of 30 minutes for 95% or more of calls/ electronic requests to the Contractor's Help Desk.	Last day of the Quarter.
4	Warranty service – Metro Areas	The time between the Customer contacting Help Desk (by phone or electronically) and on-site attendance by a Contractor Personnel at a Customer Site in a Metro Area.	On-site attendance by a Contractor Personnel must occur prior to the end of the next Business Day 98% or more of the time.	On-site attendance by a Contractor Personnel must occur prior to the end of the next Business Day 95% or more of the time.	Last day of the Quarter.
5	Warranty service – Regional Areas	The time between the Customer contacting Help Desk (by phone or electronically) and on-site attendance by a Contractor Personnel at a Customer Site in a Regional Area.	On-site attendance by a Contractor Personnel must occur prior to the end of the next Business Day 98% or more of the time.	On-site attendance by a Contractor Personnel must occur prior to the end of the next Business Day 95% of the time.	Last day of the Quarter.
6	Resolution Time – Metro Areas	The elapsed Resolution Time for Metro Areas.	Resolution Time of 2 Business Days for 98% of Defects.	Resolution Time of 2 Business Days for 95% of Defects.	Last day of the Quarter.
7	Resolution Time – Regional Areas	The elapsed Resolution Time for Regional Areas.	Resolution Time of 3 Business Days for 98% of Defects.	Resolution Time of 2 Business Days for 95% of Defects.	Last day of the Quarter.
8	Deliverable DOA	The percentage of Deliverables which are operational and functioning in accordance with their specifications at the point of installation.	N/A	98% of Deliverables operational at point of installation.	Last day of the Quarter.
9	Call out rate	The percentage of onsite callouts, or return to base repairs or replacements, for all machines installed with the customer base on all state government contracts for end user devices (All Machines).	2% or less of onsite callouts, or return to base repairs or replacements, for All Machines.	5% or less of onsite callouts, or return to base repairs or replacements, for All Machines.	Quarterly.
10	Defect rate by Deliverable	The percentage of Defects in all Deliverables of the same make, model and generation ordered by the Customer.	2% or less of Defects in all Deliverables of the same make, model and generation ordered by the Customer.	5% or less of Defects in all Deliverables of the same make, model and generation ordered by the Customer.	Quarterly.

KPI #	Service	Measurement	Target	Service Level	When measured
12	On time reporting	The percentage of time the Reports are provided on time, of acceptable quality and in the form requested.	No more than 1 Report provided late or not in an acceptable quality or form.	No more than 3 Reports provided late or not in an acceptable quality or form.	Last day of the Quarter.

5. Service Improvement Plans

APPLICATION

5.1 This section 5 applies in the circumstances set out in section 3.2.

SERVICE IMPROVEMENT PLAN

5.2 A Service Improvement Plan must specify:

- (a) the process for identifying, and where applicable must identify, the cause of a Service Level failure or Service Level failures that triggered the requirement for the Service Improvement Plan (**Relevant Service Level Failure**);
- (b) if the Relevant Service Level Failure can be remedied, the actions that will be taken by the Contractor to implement that remedy;
- (c) the actions that will be taken by the Contractor to prevent the same or a substantially similar Service Level failures from occurring in the future;
- (d) a timeline for the implementation of the Service Improvement Plan; and
- (e) any other content reasonably required by the Customer.

5.3 The Contractor must make any changes to the draft Service Improvement Plan required by the Customer (acting reasonably).

5.4 Once the Customer approves a Service Improvement Plan the Contractor must implement that Service Improvement Plan in accordance with the timeframes and other terms of that Service Improvement Plan at no cost to the Customer.

6. Changes to Service Levels

6.1 From time to time the Customer may, in accordance with clause 5.3 of the Customer Contract, request changes to the Service Levels (including by adding, changing or deleting existing Service Levels) specified in this SLA by giving the Contractor a Change Request in accordance with the variation procedures set out in Schedule 4 – Variation Procedures (**Service Level Change Request**).

6.2 The Contractor must sign a Service Level Change Request unless:

- (a) the Service Level Change Request changes the Service Levels and compliance with that change would cause the Contractor to incur material additional costs in performing its obligations under this Customer Contract; and
- (b) the Contractor has given the Customer a Notice in Writing of that fact within the timeframe specified in clause 1.3 of Schedule 4 – Variation Procedures.

6.3 If the Contractor is not obliged to sign a Service Level Change Request under section 6.2, the Contractor must negotiate in good faith with the Customer to agree changes to the Customer Contract necessary to implement the changes proposed in the Service Level Change Request.

7. Annexure A – Reporting

GENERAL

- 7.1 The Customer requires the Reports in order to measure the Contractor's performance under this Customer Contract.
- 7.2 The Contract Authority requires the Reports to assist in the establishment of a central information repository and to ensure that NSW Government agencies are receiving value for money.
- 7.3 The Contractor acknowledges and agrees that, as the Deliverables under this Customer Contract will become assets of the State of NSW, transparency is of premium importance and reporting requests over and above the Reports may be required by the Customer or the Contract Authority from time to time. The Customer and the Contract Authority will endeavor to limit additional reporting requests to the extent necessary and reasonable.

MINIMUM REPORTING OBLIGATIONS

- 7.4 The following reports are the minimum reports to be provided by the Contractor to the Customer and the Contract Authority (together, the **Reports**):
- (a) Granular Sales Report
 - (i) The Granular Sales Report must show sales of all Deliverables to the Customer.
 - (ii) The Granular Sales Report must be provided to the Customer and the Contract Authority no later than 10 Business Days after the end of each Quarter, showing the sales of all Deliverables for the immediately preceding calendar month.
 - (b) Contract Activity Summary Report
 - (i) The Contract Activity Summary Report must provide a summary of the Contractor's sales to the Customer, and must include:
 - (A) graphical representations, and a numerical summary table, of sales by Customer agency;
 - (B) graphical representations, and a numerical summary table, of sales by region;
 - (C) graphical representations, and a numerical summary table, of sales by device type; and
 - (D) any other graphical representation and / or numerical summary that the Contractor deems appropriate to adequately summarise the Contractor's sales.
 - (c) Performance Validation Report
 - (i) The Contractor must prepare and provide to the Customer a report containing enough detail to allow the Customer to assess the Contractor's performance against each KPI shown in this SLA (Performance Validation Report).
 - (ii) Each Performance Validation Report is expected to include performance against each KPI identified in this SLA.
 - (iii) The Contractor must include the following sections in the Performance Validation Report against each KPI:
 - (A) KPI 1: purchase order numbers, order quantity, delivery quantity, value of each order, date of each order, date each order was

supposed to be delivered, date each order was delivered (flagging late deliveries).

- (B) KPI 2: purchase order numbers, order quantity, delivery quantity, value of each order, date of each order, date each order was supposed to be delivered, date each order was delivered (flagging late deliveries).
- (C) KPI 3: time each call or electronic request was received, time each call or electronic request was attended (flagging time outside of the requirements).
- (D) KPI 4: time each call or electronic request was received, time each call or electronic request was attended to at the Customer's Site (flagging time outside of the requirements).
- (E) KPI 5: time each call or electronic request was received, time each call or electronic request was attended to at the Customer's Site (flagging time outside of the requirements).
- (F) KPI 6: time each call or electronic request was received, time taken for Deliverable to be repaired (flagging time outside of the requirements) and whether the Deliverable needed to be replaced.
- (G) KPI 7: time each call or electronic request was received, time taken for Deliverable to be repaired (flagging time outside of the requirements) and whether the Deliverable needed to be replaced.
- (H) KPI 8: purchase order numbers, value of each order (flagging Deliverables that are DOA).
- (I) KPI 9: date Device delivered, Device ID, name of Customer agency Device installed with, number of onsite callouts, number of return to base repairs and number of replacements.
- (J) KPI 10: purchase order numbers, order quantity, Deliverables in each order, number of defects.
- (K) KPI 12: required reports, the date reports were required to be provided and the date the reports were provided.

(d) Performance summary report

- (i) The Contractor must prepare and provide the Performance summary report, which is a high level summary of the Contractor's performance compared to KPIs, as validated in the Performance Validation Report.
- (ii) The Contractor must include the following sections in the Performance Summary Report against each KPI:
 - (A) KPI 1: percentage of deliveries made on time, order quantity and delivered quantity.
 - (B) KPI 2: percentage of deliveries made on time, order quantity and delivered quantity.
 - (C) KPI 3: percentage of calls or electronic requests attended to within requirements.
 - (D) KPI 4: percentage of calls or electronic requests attended to at the Customer's Site within requirements.
 - (E) KPI 5: percentage of calls or electronic requests attended to at the Customer's Site within requirements.
 - (F) KPI 6: percentage of calls or electronic requests received and the number of Deliverables repaired on time.
 - (G) KPI 7: percentage of calls or electronic requests received and the number of Deliverables repaired on time.
 - (H) KPI 8: percentage of Deliverables operational and functioning at installation.
 - (I) KPI 9: percentage of call outs per 1000 Deliverables.

- (J) KPI 10: percentage of Defects requiring repair or replacement, for per 1000 Deliverables.
- (K) KPI 12: number of reports not provided on time or in an acceptable format.

7.5 The Performance Validation Report and the Performance Summary Report must be provided to both the Customer and the Contract Authority on the 10th Business Day of each Quarter,

VARIATIONS TO THE MINIMUM REPORTING OBLIGATIONS

7.6 The Customer or the Contract Authority may vary the Reports or request the Contractor to prepare additional reports (**Variations**). The Customer and the Contract Authority will endeavour to limit such Variations to no more than twice per year (combined).

7.7 If a Variation to a Report, or a new report, is requested by either the Customer or the Contract Authority, the Contractor must:

- (a) submit to the Customer or the Contract Authority (as applicable) a statement of work detailing the scope of the change requested for review and approval; and
- (b) if the proposed Variation to an existing Report, or new report, results in the Contractor incurring additional costs or charges, the Contractor must include a commercial quote or price for the proposed Variation with the statement of work. If the Customer or Contract Authority accepts the price for the variation submitted by the Contractor, the Contractor may provide the Customer with a Change Request. If the Customer or the Contract Authority and Contractor fail to agree on the price for the scope of work and services requested or the Contractor is unable to implement variation due to technical issues, the Contractor will not be required to implement the change.

FORM OF REPORTS

7.8 The Contractor must provide all Reports, and any future reports requested from time to time by either the Customer or the Contract Authority, in the form requested by either the Customer or the Contract Authority.

MODULE ORDER FORM

MODULE 1 - HARDWARE ACQUISITION AND INSTALLATION

[Module 1 is varied by the Additional Conditions contained in Annexure A to the General Order Form]

Item 1 Spares Availability Period

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.8)	The Spares Availability Period for a Device is to match the Warranty Period for that Device.

Item 2 Delivery

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Delivery (clause 2.1)	(a) The Contractor is not required to install or integrate the Hardware unless otherwise agreed in writing in a Purchase Order (see below). (b) The Contractor is not required to demonstrate the use of the Hardware unless otherwise agreed in writing in a Purchase Order. Note: The process to order Hardware is set out in more detail in the attached Appendix.
Delivery (clause 2.2)	The Contractor must remove or dispose of any packing materials.

Item 3 Risk and Title

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Risk and Title (clause 2.4)	Title to the Hardware passes to the Customer on delivery to the Site or to the Customer. If the Customer Contract is terminated by the Customer prior to payment being made for the Hardware, or if the Contractor is required to refund any amounts paid for Hardware on a termination of the Customer Contract, then the Customer will return that Hardware and title to the Hardware will be transferred back to the Contractor upon its return.

Item 4 Additional Capacity or Features that the Customer can activate in the Hardware and/or Machine Code

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Additional Capacity or Features (clause 2.7)	As set out in Contract 999 and Annexure 3 of the Head Agreement.

Item 5 Hardware is to be Used for a Restricted Purpose

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Additional Capacity or Features (clause 2.8)	
Specify if the Hardware and/or Machine Code has a restricted use in a manner described in clause 2.9, e.g. the hardware is to be used only as a test machine.	There are no restrictions on the use of the Hardware. The Contractor has not tested or certified its hardware for use in high risk applications including medical life support, nuclear power, mass and air transportation control or any other potentially life critical uses.

Item 6 Ancillary Services

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Ancillary Services (clause 2.10)	

Specify if the details of any Installation services the Contractor is to provide, the Prices and when payment is due.	As set out in and agreed in a Purchase Order from time to time. Pricing for Ancillary Services will be as per Annexure 3 of the Head Agreement. If none stated for the specific Service in Annexure 3 of the Head Agreement, as per the Contractor's Quote.
Specify the details of any training services the Contractor is to provide, the Prices and when payment is due.	Not applicable.

Item 7 Business Models of the Reseller

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Acquisition through a Reseller (clause 3.1)	No. None of the Deliverables are being provided by the Contractor in the capacity of a Reseller.

Item 8 Value Add Services

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Acquisition through a Reseller (clause 3.3)	Not applicable.

Item 9 Training on use of Updated Hardware

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Availability of Hardware and Spares (clause 4.2(b)) Specify if the details of: <ul style="list-style-type: none"> (a) any training or other services the Contractor is to provide to assist the Customer use the Hardware; (b) any spares provided for the Hardware during the Contract Period; (c) the Prices and when payment is due. [If this Box is not completed no such training is provided.]	As set out in the Contract Specifications. Training: Not Applicable. Spares: Not Applicable. Other Assistance: As agreed by the parties.

Item 10 Warranties

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
Scope (clause 5.1(c)) Specify the Customer's hardware and software environment with which the Hardware and/or Machine Code must be compatible in accordance with clause 5.1(c). [Note: Include the model and make of hardware, name and version of software.]	Interoperability: As set out in the Contractor's or OEM's product specifications and any accompanying operating manuals.
Scope (clause 5.1(e)) Specify the extent to which the Hardware is required to be scalable. [Note: For example insert the extent to which the Hardware has to support additional usage over a defined time period.]	Scalability: As set out in the Contractor's or OEM's product specifications and any accompanying operating manuals.

Appendix C Ordering Hardware and Installation Services under Contract 999

The parties wish to establish Standing Offer arrangement under this Schedule 1 General Order formed under Contract 999. This Appendix C sets out the process to be followed by the Customer when ordering of Hardware and Installation Services.

1. Form of Request for Quote for Hardware

The Customer may, from time to time during the Contract Period, request Hardware from the Contractor by issuing the Contractor with a 'Request for Hardware Acquisition and Installation' (a **Request**) in writing in substantially the same form, or containing substantially the same information, as the form set out in Appendix A to this Module Order Form.

A Request may only be made by the Customer for Hardware set out in Annexure 3 to the Head Agreement and at the price set out in that Annexure 3.

2. Form of Request for Quote for Installation Services

A Request issued by the Customer should) must be in writing in substantially the same form, or containing substantially the same information, as the form set out in Appendix A to this Module Order Form, including the sufficient details of the installation services requested. Installation of any Hardware must be for a fixed fee.

3. Issuance of a Request for Quote to the Contractor by the Customer

Within 5 Business Days (or such other period as agreed) of receipt of a Request, the Contractor must provide the Customer with a draft 'Quote for Hardware Acquisition and Installation' (a **Quote**) in substantially the same form or in a form containing substantially the same information as the form set out in Appendix B to this Module Order Form.

4. Acceptance or Rejection of a Quote by the Customer

The Customer, upon receipt of a draft Quote (but no later than 5 Business Days of the date of receipt of the Quote or other period agreed by the parties), may then indicate to the Contractor whether:

- (i) it wishes to discuss the Quote, in which case the Parties will discuss and seek to finalise the Quote; or
- (ii) request the Contractor issue the Quote as originally presented in final written form.

The Price specified in a Quote is subject to the price review mechanism specified in Contract 999 and Annexure 3 of the head Agreement.

If the Customer fails to give the Contractor notice under this section 4 within the required timeframe, the response will have been deemed rejected by the Customer.

5. Acceptance of Quote by the Customer and formation of a Customer Contract

Following the finalisation of a Quote in accordance with paragraph 4(ii) above, the Contractor must provide the Customer with a final Quote in writing. Customer will then provide the Contractor with a valid Purchase Order generated from the Customer's purchasing system (as may be amended from time to time by the parties) which include the Contractor's Quote reference number and will be attached to the Contractor's final Quote and act as the Customer's formal written acceptance and confirmation of the final Quote.

A separate Customer Contract between the Contractor and Customer will be created under Contract 999 upon receipt and acceptance by the Contractor of a Purchase Order issued by the Customer in accordance with this Appendix C. The Purchase Order incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 Customer Contract as if repeated in full in the Purchase Order.

Any terms or conditions in a Customer Purchase Order purporting to alter the terms of the Customer Contract that would otherwise apply under the Customer Contract is of no effect.

The term of the Customer Contract formed by the issuance of a Customer Purchase Order under this Appendix C, in the case of Services, the date on which the Contractor completes delivery of the Services in accordance with the Customer Contract; or in the case of Hardware, the expiry of the warranty period for the Hardware; or in the case of Software, shall expire concurrently upon the expiration of the subscription support obligations in accordance with the end user licence agreement.

Appendix A: Template Request for Hardware Acquisition and Installation under a Customer Contract between the Customer and the Contractor under a Head Agreement between the Department of Finance, Services and Innovation and the Contractor for supply of End User Devices and Services

Customer Identification Number	
Customer Contact for this Request	
Background	[Customer to explain the background to the request for record keeping purposes and so that the Contractor can tailor the Purchase Order if necessary.]
Additional Hardware required	[Customer to identify the additional Hardware required. This should be based on Annexure 3 of the Head Agreement]
Delivery and installation of the Hardware	[Customer to identify its requirements for delivery and installation. Note, any special requirements such as specific security arrangements should be identified here.]
Other requirements (if any)	[Customer to identify any other requirements that may apply here.]

Appendix B: Template Quote for Hardware Acquisition and Installation under a Customer Contract between the Customer and the Contractor under a Head Agreement between the Department of Finance, Services and Innovation and the Contractor for supply of End User Devices and Services

Customer Identification Number	
Additional Hardware to be provided	[Contractor to specify the Hardware to be provided]
Location and time of delivery	[Contractor to provide a time and location for delivery of the additional Hardware. This should include: <ul style="list-style-type: none"> • the address; • the hours of access; and • any special requirements and any security arrangements that must be followed.]
Installation services	[Contractor to specify the time and location of any installation services.]
Customer Supplied Items or Customer Assistance	[Contractor to list any required Customer Supplied Items or Customer Assistance]
Details of any Acceptance Testing requirements	[Contractor to list proposed Acceptance Test Criteria if applicable]
Contract Price	[Contractor to identify the price for the additional Hardware based on Annexure 3 to the Head Agreement and a capped fee for any installation services].
Subcontractors	[Specify the full legal name of any Subcontractors involved in the provision or installation of additional Hardware.]
Other details (if any)	[Contractor to provide any other relevant details or descriptions of the additional Hardware or installation services]

MODULE ORDER FORM

MODULE 2 - HARDWARE MAINTENANCE AND SUPPORT SERVICES

[Module 2 is varied by the Additional Conditions contained in Annexure A to the General Order Form]

Item 1 Right to Suspend

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
Right to suspend (clause 2.3)	
Specify if clause 2.3 applies. If clause 2.3 applies, specify any percentage that is different to the percentage specified in clause 2.3(a).	Clause 2.3 applies. The percentage applicable under clause 2.3(a) is zero. <u>Suspension under clause 2.2:</u> Unless otherwise agreed by the Contractor in writing the Customer is not entitled to a pro rata refund for suspension of support services under clause 2.2.

Item 2 Details of Hardware Maintenance and Support

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
Scope (clause 3.1)	
Specify the Hardware Maintenance and Support Services which are to be provided, including: (a) the Contract Period (12 months from the AAD of the relevant Hardware by default); (b) the Hardware and related Machine Code that is to be the subject of the Hardware Maintenance and Support Services; [E.g. The model and serial number of Hardware; the version of Machine Code; etc.] (c) the details relating to any of the following Services that the Contractor is to provide: (i) Remedial Maintenance; (ii) Preventative Maintenance; (iii) Help Desk Services, including the hours of operation; (iv) any ancillary services; (d) any applicable Service Levels; (e) the particulars of any access to the Site or the Deliverables, on-site storage of parts and equipment or other resources that may be needed in connection with the Services; (f) the Price and any expenses or other charges that apply for each Service; (g) if the Services are to be provided by the Contractor as a Reseller, set out details of: (i) the manufacturer's support and maintenance services that the Contractor will co-ordinate and manage; and (ii) any value added services that the Reseller will provide.	<p>(a) The support for each Device is to be provided for the Warranty Period for that Device.</p> <p>(b) All Hardware supplied under Module 1 of this Customer Contract is to be covered by the Hardware Maintenance and Support Services as specified in Annexure 3 of the Head Agreement.</p> <p>(c) As set out in Attachment A to this Module Order Form.</p> <p>(d) The Service Levels are as set out in the Service Level Agreement.</p> <p>(e) As set out in the Contract Specifications.</p> <p>(f) The price that applies for each Service is included in the Contract Price.</p> <p>(g) Not Applicable. The Services are not to be provided by the Contractor as a Reseller.</p> <p>Contractor technical support specified in the Contractor's Quote and is provided in accordance with the Contractor technical support service description, maintenance & support guidelines and terms. Refer to the Contractor's Quote for specific details of the technical support per device.</p>

Item 3 Price Reduction for Overlapping Warranty and Maintenance

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
Scope (clause 3.4) Specify if the amount by which the Price for Hardware Maintenance and Support Services is reduced because of any overlapping Warranty Period. If this Box is not completed the reduction is 35% of the Contract Price for the first year.	Not applicable.

Item 4 Ancillary Services

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
Ancillary Services (clause 3.30) Specify if other services are to be provided after the Commencement Date of the Contract, including the Prices and when payment is due. [E.g. This may include training services and consulting services needed to implement installation of patches, fixes and updates; installation of additional hardware and/or software; and other additional services under clause 3.30.]	As set out in the Contract Specifications.

Item 5 Business Models of the Reseller

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
Reseller Provision (clause 4.1)	Not applicable. None of the Deliverables are being provided by the Contractor in the capacity as a Reseller.

Item 6 Value Add Services

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
Acquisition through a Reseller (clause 4.3) Specify if the details of any value add services the Contractor is to provide, the Prices and when payment is due.	Not applicable.

ATTACHMENT A – REQUIRED SERVICES

The Contractor must provide Remedial Maintenance and Help Desk services to the Customer until the warranty period of all Deliverables sold under this Customer Contract has lapsed.

Remedial Maintenance will be provided in accordance with clause 3.7 of Module 2 - Hardware Maintenance and Support Services.

Help Desk services will be provided in accordance with clause 3.8 of Module 2 - Hardware Maintenance and Support Services, during the hours of 8:00 am and 6:00pm AEST on Business Days. The Help Desk services includes:

- Access to a toll-free call centre number;
- Incident tracking, allowing Customer Personnel to check the status of each incident and the Contractor to report on incident statistics;
- Incident updates, informing Customer Personnel of the incident resolution progress;
- Remote troubleshooting and diagnostic assistance;
- Determination of whether the incident is covered under warranty;
- If covered under warranty and unable to be remedied by remote troubleshooting, the Contractor will apply the relevant device warranty as agreed in Annexure 3 of the Head Agreement or in this Customer Contract, and as (the warranty terms are) defined in Annexure A to the General Order Form.
- If not covered under warranty, provide a capped quotation to the Customer to remedy the Deliverable. The Customer may or may not accept the quotation.
- Incident reporting to the Customer, identifying compliance with the Service Level Agreement and any other metric reasonably requested by the Customer;
- Reasonable assistance integrating with the Customer's incident management systems.

For the avoidance of doubt, the Contractor is not responsible for Preventative Maintenance unless otherwise agreed by the Customer and Contractor and set out in the Module Order form above.

MODULE ORDER FORM

MODULE 3 – LICENSED SOFTWARE

[Module 3 is varied by the Additional Conditions contained in Annexure A to the General Order Form]

Item 1 Approved Purpose

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.1) Specify what purpose is the Licensed Software used for. If no other purpose is specified in this Box the Approved Purpose is the internal processing of the Customer's own data.	The Approved Purpose means use of the Licensed Software for the Customer's internal business and operational purposes from time to time in accordance with the Software EULA.

Item 2 Class of Licence

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.2) Specify the specific rights that are granted by the Contractor to the Customer to use the Licensed Software. The Class of Licence defines the Price, e.g. If the Licensed Software is licensed for X "Named Users", the Class of Licence must define what a "Named User" is. Examples of the types of issues that are included in the Class of Licence include: (a) the Licence Period; (b) number and type of user; (c) number, type or capacity of Hardware; or (d) any other licence restriction/right. Also specify whether the Customer is granted the right to transfer the Licensed Software to an outsourcer in accordance with clause 2.17. [Note: If this Box is not completed then the Contractor grants the Customer the default rights to use the Licensed Software and User Documentation as described in clauses 2.2 and 2.9 of Module 3.]	Class of Licence and Licence Terms: All software (including open source software) distributed by the Contractor or forming part of the Product or used in providing the Services is subject to the licence agreement embedded in the software or forming part of the software or provided with the software (Software EULA). Intellectual Property Rights in the software will be as specified in the Software EULA. The fee for the Licensed Software is not impacted by the environment in which it is used. The Customer is granted the right to transfer the Licensed Software to an outsourcer in accordance with clause 2.17 of this Module.

Item 3 Designated Equipment

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.3) Specify the hardware platform/operating system combination upon which the Licensed Software is installed. [Note: Specify the type and version number of the operating system and capacity/model of the Hardware, especially if the Class of Licence is based on type or size of capacity of the Hardware.]	Unless otherwise specified in the Software EULA, the Hardware procured under C999 and Annexure 3 of the Head Agreement.

Item 4 Third Party Components

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.14) Third Party Components Specify if the details of any software components, plug-ins and other programs are owned by third parties. This should include name and version number of each Third Party Component. Specify if the Third Party Components are supplied by the Contractor: (a) as part of the Licensed Software; or	All software (including third party software or open source software) distributed by the Contractor or forming part of the Services or used in providing the Services is subject to the licence agreement embedded in the software or forming part of the software or provided with the software (Software EULA).

<p>(b) as a Reseller (in which case Box 11 must be completed)</p> <p>[Note: See clause 2.7 for details.]</p> <p>[Note: Open source software is not included within the definition of Third Party Component.]</p>	
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Item 5 Extension of Period to Notice to Renew Licence

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<p>Licence Period (clause 2.6(a)) If the Licence is not perpetual, then specify the number of days written notice prior to the end of each current Licence Period that the Contractor must give of the Price, payment arrangements and/or terms for any extended Licence Period or new Licence Period that is to commence immediately after the end of the current Licence Period. If no period is specified in this Box, the period is 30 days.</p>	<p>The licence is perpetual unless otherwise stated in Software EULA.</p>

Item 6 Installation

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<p>Installation (clause 3.1) Specify if the Contractor is responsible to install the Licensed Software.</p>	<p><u>No. Not required unless otherwise agreed by the parties and set out in a Contractor statement of work or service description.</u></p>
<p>If the Contractor is responsible for installation of the Licensed Software:</p> <p>(c) specify the details of the Installation and the date of installation; and</p>	<p><u>No. Not required unless otherwise agreed by the parties and set out in a Contractor statement of work or service description.</u></p>
<p>(d) specify the Price for the installation, and when the Price is due.</p>	<p>A stated in the Contractor's Quote.</p>
<p>Installation (clause 3.3) Specify the date by which the access codes must be made available, if applicable. If a date is not specified, the access codes must be provided promptly following the date the Parties enter into the Customer Contract.</p>	<p>The access codes for the Licensed Software were delivered to the Customer upon delivery of the Licensed Software.</p> <p>Note: License keys may be made available online or supplied separately.</p>

Item 7 First Release

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<p>First Release (clause 3.9) Specify if the Licensed Software or any New Release will be a First Release.</p> <p>If so, specify the any additional terms and conditions that apply to the First Release.</p> <p>If this Box is not completed, the Licensed Software and each New Release is deemed not to be a First Release.</p>	<p>Not Applicable.</p>

Item 8 Right to Receive Updates and/or New Releases

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<p>Updates and New Release (clause 4.1) Specify if the Contractor provides the Customer the rights to receive:</p> <p>(a) Updates; (b) and/or New Releases, as part of the Licence (as opposed to part of a separate Software Support Service under Module 5).</p>	<p>Subject to the Customer holding a relevant software subscription support agreement for the software procured. Otherwise the Customer will be entitled to Updates and New Releases that the Contractor (or its licensor) generally makes available to its other customer</p>

	for the software procured during the licence period at no additional cost.
Updates and New Release (clause 4.4(c)) Specify the increased Licence Price when the Customer accepts the Update or New Release. If an increased Price is not specified, the Licence Price must not be increased for any Update or New Release provided during the Licence Period.	As per above.

Item 9 Warranties for Open Source Code

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Open Source Software (clause 5.2(b)) If the software is Open Source Software: (a) specify the Open Source Licence that governs the use of the open source software; (b) specify whether the open source software is provided with the warranties that the Contractor provides in respect of Licensed Software, or whether the Contractor provides the open source software without any warranty (to the extent permitted by law)	All software that includes open source software distributed by the Contractor or forming part of the Services or used in providing the Services is subject to the Open Source Licence agreement embedded in the software or forming part of the software or provided with the software.

Item 10 Ancillary Services

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Training (clause 6.1) Specify if training services are to be provided.	
If so, specify details, dates and the Prices of the training services, and when payment is due.	<u>No. Not required unless otherwise agreed by the parties and set out in a Contractor statement of work or service description.</u>
Other Services (clause 6.2) Specify the details, times, Prices for ad hoc issue resolution or support service for the Licensed Software, and when payment is due. [Note: If Software Support Services are being provided for the Licensed Software under Module 5, do not complete this Box.]	Ad Hoc: Subject to the Customer holding a relevant software subscription support agreement for the software procured. Otherwise as per the Contractor's Quote provided at the time of the request.

Item 11 Business Models of the Reseller

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Reseller Provision of Licensed Software (clause 7.1) Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller? If yes: (a) specify if the Licensed Software is supplied by the Contractor who is acting as Reseller as Facilitator. [Note: Reseller as Facilitator means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 7.1(a).] OR (b) specify if the Licensed Software is supplied by the Contractor who is acting as Reseller with Pass Through Warranties. [Note: Reseller with Pass Through Warranties means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 7.1(b).]	To be advised at the time of the Customer's request for Quote or Contractor's Quote for the Licence Software. Otherwise, Not Applicable.
	To be advised at the time of the Customer's request for Quote or Contractor's Quote for the Licence Software. Otherwise, Not Applicable.

Item 12Value Add Services

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Acquisition through a Reseller (clause 7.3) Specify if the details of any value add services the Contractor is to provide, the Prices and when payment is due.	Not Applicable.

Item 13Customer Maintains Records

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Records (clause 10.1(a)) Specify if and, if so, how the Customer must maintain records as to the locations of all copies of the Licensed Software and the usage of the Licensed Software.	As per Software EULA.
Records (clause 10.1(b)) Specify the frequency that the Customer provides copies of the records under clause 10.1(a). If this Box is not completed the Customer must provide copies of the records ever six months.	As per Software EULA.

MODULE ORDER FORM

MODULE 5 – SOFTWARE SUPPORT SERVICES

Module 5 is varied by the Additional Conditions contained in Annexure A to the General Order Form]

Item 1 Designated Equipment

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.1) Specify the hardware platform/operating system combination upon which the Supported Software is installed. [Note: Specify the type and version number of the operating system and capacity/model of the Hardware.]	Unless otherwise specified in the Software EULA, the Hardware procured under C999 and Annexure 3 of the Head Agreement or as stated in the Contractor's Quote or service description specified in the Customer Purchase Order.

Item 2 Developed Software

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.2) Specify which of the following categories of software to which each of the items of Developed Software applies: (a) an adaptation, translation or derivative of the Licensed Software; or (b) software that has been newly created by the Contractor under Module 4, or any other Module; or (c) [Note: For example "Payroll application developed under Module 4".] (d) other software, including software that is already owned by or licensed to the Customer or open source software. [Note: The definition of Developed Software does not include Licensed Software.]	Not applicable – there is no Developed Software.

Item 3 Installed on Contractor Equipment

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.6) Specify if the Supported Software is to be installed on equipment which is owned or controlled by the Contractor.	No. Not applicable.

Item 4 Prices of Software Support Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.13) Specify the fees payable for supplying the Software Support Services, and when they are due. [E.g. This may be on a monthly, quarterly or yearly basis or any other term that is agreed by parties.]	As per Contractor's Quote. Unless otherwise specified in the Contractor's Quote or service description, fees are payable in advance.

Item 5 Period of Software Support Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Support Period (clause 2.2) Specify the Contract Period during which the Software Support Services will be provided. If this Box is not completed and the Contract Period is not specified on the General Order Form, the Software Support Services will be deemed to start on the AAD of the relevant Supported Software, and continue until terminated by either Party giving the other 30 days Notice in Writing.	Unless otherwise specified in the Software EULA or subscription support agreement, the Support Period will be the Warranty Period for the Device on which the Software is installed.

Item 6 Extension of Contract Notification

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Support Period (clause 2.3) Specify (a) the number of days written notice prior to the end of each current Contract Period that the Contractor must give of the Price; (b) payment arrangements; (c) whether the Contract Period will be extended under this Customer Contract, or whether a new Customer Contract will be entered into, after the end of the current Contract Period. If no period is specified in this Box, the period is 30 days.	As specified in the General Order Form. If the Contract Period is extended under clause 2, it will be extended under this Customer Contract and not a new Customer Contract. Note: Any extension to the Software subscription services will be subject to the Contractor submitting a commercial proposal and price for the extended period.

Item 7 Details of Software Support Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Scope (clause 3.1) Specify the details of Software Support Services, including: (a) the Contract Period [Note: the default period is 12 months from AAD]; (b) the Supported Software that is to be the subject of the Software Support Services, being: (c) Licensed Software; (d) details of any Developed Software; (e) whether the Licensed Software is a First Release, or whether the First Release of New Release of any Licensed Software will be provided as part of the Software Support Services; (f) the details relating to any of the following Services that the Contractor is to provide: (i) Help Desk Services, including the hours of operation; (ii) whether the Customer is entitled to receive Updates and/or New Releases if and when they become available from the Contractor during the Contract Period, for: A. the Licensed Software; B. any Developed Software; (iii) any ancillary services; (g) any applicable Service Levels; (h) the particulars of any access to the Site and the Supported Software, including VPN access to the Supported Software required by the Contractor to effectively perform the Software Support Services; (i) the Price and any expenses or other charges that apply for each Service. [Note: Each of the items above should be fully detailed in this Box. The version numbers of each item of Support Software should be included. If the Software Support Services are described in another document, such as the Contractor's Software Support policies, this document should be cross- referenced in this Box.]	(a) Contract Period As set out in Item 10 of the General Order Form. (b) Supported Software the subject of the Software Support Services Subject to the Customer holding a relevant software subscription support agreement for the software procured. Otherwise as per the Dell Quote provided at the time of the request. Technical support services will be provided in accordance with Contractor's (or licensors's) EULA, subscription support service policies, guidelines and terms relevant to the software procured and to be supported. (c) Is the Licensed Software a First Release, or will the First Release of a New Release be part of the Software Support Services? Not applicable. Neither the Licensed Software or any New Release will be a First Release. (d) The details of the Services to be provided Subject to the Customer holding a relevant software subscription support agreement for the software procured. Otherwise as per the Dell Quote provided at the time of the request. As per Contractor's Quote. Technical support services will be provided in accordance with Contractor's (or licensors's) EULA, subscription support service policies, guidelines and terms relevant to the software procured and to be supported. (e) Service Levels Unless otherwise specified in the Software EULA or subscription support agreement, not applicable. (f) Particulars of access to the Site or the Deliverables As per Customer Purchase Order (g) Price As per Contractor's Quote

Item 8 Period of Support for each Release

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Updates and New Releases (clause 3.20(b)) Specify the period for which the Contractor will continue to offer standard support for each release.	Refusal by Customer to install an Update or New Release does not affect entitlement to use the Products. The Contractor will provide support for a previous release until a further new release is issued when Contractor may at its own discretion discontinue support for the previous release. The Customer will elect a time and method for implementing Updates and New Releases.
If this Box is not completed the period is 18 months from the date of general Release of the New Release.	See above.

Item 9 Transition out Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Scope (clause 3.14) Specify if transition out services are to be provided.	Transition Services are not required or included under this General Order.
Specify the details of the transition out services, dates, Price for such transition out services, and when payment is due.	Transition Services are not required or included under this General Order.

Item 10 Business Models of the Reseller

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Reseller Provision of Software Support Services (clause 4.1) Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller? If yes: (a) specify if the Software Support Services are supplied by the Contractor who is acting as Reseller as Facilitator. [Note: Reseller as Facilitator means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 4.1(a).]	To be advised at the time of the Customer's request for Quote of the Licence Software. Otherwise, Not Applicable.
OR (b) specify if the Software Support Services are supplied by the Contractor who is acting as Reseller with Pass Through Warranties. [Note: Reseller with Pass Through Warranties means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 4.1(b).]	To be advised at the time of the Customer's request for Quote of the Licence Software. Otherwise, Not Applicable.

Item 11 Value Add Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Acquisition through a Reseller (clause 4.3) Specify if the details of any value add services the Contractor is to provide, the Prices and when payment is due.	Not applicable.

Item 12Ancillary Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Ancillary Services (clause 5.1)	
Specify if other services are to be provided during the Contract Period.	Not applicable.
Specify the details of these other services, the Prices and when payment is due. [E.g. Ancillary services may include the consulting services needed to implement Updates or New Releases or training services.]	Not applicable.

ANNEXURE A TO THE GENERAL ORDER FORM - ADDITIONAL CONDITIONS

PART A: SPECIFIC VARIATIONS TO PROCUREIT

1 SPECIFIC VARIATIONS TO PART 1 OF PROCUREIT: HEAD AGREEMENT

1.1 On and from the Commencement Date, Part 1 of ProcureIT Version 3.1 'Head Agreement' is varied as follows:

- (a) clause 2.14 is deleted.

2 SPECIFIC VARIATIONS TO PART 2 OF PROCUREIT: CUSTOMER CONTRACT

2.1 On and from the Commencement Date, Part 2 of ProcureIT Version 3.1 'Customer Contract' is varied as follows:

- (a) clause 2.4 is deleted and replaced with the following:

'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 Customer Contract by the period specified in Item 10 in the General Order Form by giving the Contractor a Notice in Writing at least 30 days prior to the end of the current Contract Period.'*

- (b) clause 6.34(d) is deleted and replaced with the following:

'and if the Contractor has not remedied that Substantial Breach (by completing the LD Obligation) by the end of such period, the Customer may give the Contractor a Termination Notice for the Customer Contract.'

- (c) clause 10.4 is deleted and replaced with the following:

'10.4 *To the extent that:*

- (d) (a) Acceptance Test Data is required for the Contractor to complete the Acceptance Tests; and
- (e) (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,
- (f) the Customer must provide that Acceptance Test Data to the Contractor:
- (g) (c) at the times specified in the Order Documents or the documents that set out the Acceptance Tests; or
- (h) (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.';
- (i) clause 10.11(b) is deleted and replaced with 'not used.';

- (j) in clause 10.13(a) the following is inserted before ‘;’:
- (k) ‘and does not remedy that failure within 14 days after receiving a notice from the Contractor specifying:
 - (i) *the failure and the Deliverables to which it relates; and*
 - (ii) *that the Deliverable will be deemed to be accepted if that failure is not remedied’;*
- (l) clause 10.13(e) is amended by adding at the end the words ‘such consent not to be unreasonably withheld or delayed’;
- (m) clause 13.5(c) is deleted and replaced with:

‘13.5(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)).’*
- (n) a new clause 13.5A is inserted as follows:

‘13.5A *The Contractor also grants the additional rights for New Material specified in the Additional Conditions.’;*
- (o) a new clause 13.8A is inserted as follows:

‘13.8A *Subject to any terms to the contrary set out in the General Order Form, the licences granted under clauses 13.6(c), 13.6(d), 13.7 and 13.8 are perpetual to the extent required for the Customer to receive the benefit of the Products and Services in accordance with the terms and conditions of the Customer Contract.’;*
- (p) clause 13.10(b) is deleted and replaced with the following:
- (q) ‘(b) the Customer may, in its sole discretion and only if stated in the General Order Form, grant the Contractor a:
 - (r) (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
 - (s) (ii) licence in respect of the Intellectual Property Rights in the New Material on such terms as are specified in the General Order Form.’
- (t) clause 13.13 is deleted and replaced with the following:
- (u) **‘13.13** The Contractor must not, without the prior written consent of the Customer:
 - (v) (a) develop or enhance any Deliverable using Open Source Software; or
 - (w) (b) insert any Open Source Software into any Deliverable.

- (x) Where the Customer provides its consent in relation to the use of any Open Source Software under clause 13.13(a), the Contractor will ensure that the use of that Open Source Software will not:
- (y) (c) 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
- (z) (d) diminish the Contractor's obligations under this Customer Contract.'
- (aa) in clause 25.2 the preamble is deleted and replaced with the following:

'25.2 *The Customer may give the Contractor a Termination Notice for the Customer Contract in its entirety or to the extent it relates to one or more Deliverables if:';*
- (bb) in clause 25.3 the first sentence is deleted and replaced with the following:

'The Customer may give the Contractor a Termination Notice for the Customer Contract in its entirety or to the extent it relates to one or more Deliverables for convenience at any time.';
- (cc) the following words are inserted at the beginning of clause 25.4(a): 'if the Order Documents do not state an amount that is payable on termination,';
- (dd) in clause 25.4(a) the words ';' and' are deleted and replaced with ';' or';
- (ee) in clause 25.6 the preamble is deleted 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:';*
- (ff) a new clause 25.6A is inserted under the heading 'Consequences of Termination' as follows:

'25.6A *If a Termination Notice is given for the Customer Contract in its entirety or to the extent that it relates to one or more Deliverables, 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.';* and
- (gg) in clause 26.15 the reference to clause '13.8' is deleted and replaced with '13.8A'.

3 SPECIFIC VARIATIONS TO PART 3 OF PROCUREIT: DICTIONARY

- 3.1 On and from the Commencement Date, Part 3 of ProcureIT Version 3.1 'Dictionary' is varied as follows:
 - (a) clause 1.5A is inserted as follows:

'1.5A ***Accessibility ICT Standards*** has the meaning given to that term in Item 30 of the General Order Form';
 - (b) clause 1.7A is inserted as follows:

'1.7A ***Advanced Exchange Warranty*** has the meaning given to it in section 32 of these Additional Conditions';
 - (c) clause 1.13A is inserted as follows:

- '1.13A **Buffer Stock** means stock held by the Contractor at the Contractor's premises and reserved for the Customer in accordance with section 33 of these Additional Conditions.';
- (d) clause 1.13B is inserted as follows:
- '1.13B **Business Change** means:
- (a) any Divestiture; or
 - (b) any 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.';
- (e) clause 1.33A is inserted as follows:
- '1.33A **Customer Data** means:
- (a) data, information and other materials provided to the Contractor relating to the Customer or any other Agency or any of their operations, facilities, customers, Personnel, assets and programs (**Raw Data**); and
 - (b) data, information and other materials in any format whatever generated, stored, processed, retrieved, printed or produced by or on behalf of the Contractor utilising the Raw Data.';
- (f) clause 1.33B is inserted as follows:
- '1.33B **Customer Environment** means the combination of hardware, software, systems and network infrastructure and services used by the Customer from time to time;
- (g) clause 1.38A is inserted as follows:
- '1.38A **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);
- (h) clause 1.51A is inserted as follows:
- '1.51A **GSS** means the 'Government Standard Specifications'. The GSS is determined by the NSW Government. Its purpose is to document the specification of devices that are required by NSW Government agencies. The GSS is designed to describe the majority of NSW Government's requirements. At the Commencement Date, the current GSS has been attached to the 'Tendering Conditions' included as a part of the RFT.';
- (i) clause 1.54A is inserted as follows:
- '1.54A **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.';
- (j) clause 1.65A is inserted as follows:

- '1.65A Metro Area** means all postcode areas within NSW other than postcode areas that are Regional Areas.';
- (k) clause 1.71A is inserted as follows:
- '1.71A Next Business Day Warranty** has the meaning given to that term in clause 30 of these Additional Conditions.';
- (l) clause 1.72A is inserted as follows:
- '1.65A Non Contractor Supported Location** means those postcode areas within NSW that have been specified in Item 13 of the Head Agreement Details as areas where the Contractor is not able to provide onsite technical support services. The Contractor and the Customer will mutually agree the process for repair of devices at these Non Contractor Supported Locations.';
- (m) clause 1.84A is inserted as follows:
- '1.84A Privacy Laws** means the Privacy Act 1988 (Cth), the Privacy and Personal Information Protection Act 1998 (NSW) and related Statutory Requirements.';
- (n) clause 1.89A is inserted as follows:
- '1.89A Regional Areas** means all postcode areas in NSW within the following ranges:
- 2311 to 2312;
 - 2328 to 2490;
 - 2536 to 2551;
 - 2575 to 2739; and
 - 2787 to 2899.';
- (o) clause 1.90A is inserted as follows:
- '1.90A 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.';
- (p) clause 1.90B is inserted as follows:
- '1.90A Remote Location** means Lord Howe Island and Norfolk Island.';
- (q) clause 1.91A is inserted as follows:
- '1.91A 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.';
- (r) clause 1.91B is inserted as follows:
- '1.91B RFT** means the 'Tendering Conditions' and the Contractor's response to RFT for Contract 999: End User Devices and Services';
- (s) clause 1.91C is inserted as follows:
- '1.91C RTB Warranty** has the meaning given to it in clause 31 of these Additional Conditions';

- (t) clause 1.99A is deleted and replaced with:
- '1.99A *Specification Period*** means the period for which the relevant GSS version is valid. The Specification Period will expire on the earlier of (i) the date Intel releases its next generation Core CPU processor to the market; or (ii) 15 months from the date Intel released to the market its current generation of Core CPU processor.';
- (u) clause 1.104 is deleted and replaced with:
- '1.104 *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 with which compliance is either mandatory (as required by law) or that are specified in the Contract Specifications.';
- (v) a new clause 1.110A is inserted as follows:
- '1.110A *Termination Notice*** means a Notice in Writing given accordance with the Customer Contract or pursuant to a common law right terminating the Customer Contract in its entirety or to the extent it relates to one or more Deliverables.';
- (w) a new clause 1.110B is inserted as follows:
- '1.110B *Transition Out*** means the transfer of responsibility for the supply of the Deliverables to the Customer or a third party designated by the Customer.';
- (x) a new clause 1.110D is inserted as follows:
- '1.110D *Transition Out Period*** has the meaning given to that term in clause 39.1 of these Additional Conditions.'; and
- (y) in clause 1.113 subclause (a) is deleted and replaced with:
- '(a) *Where a GSS applies to a Deliverable under this Customer Contract, the warranty period stated in the relevant GSS will apply. Where a GSS does not include a warranty period, or where a GSS does not exist, the Warranty Period that will apply is as follows:***
- (i) *Desktops including all in ones, workstations and thin clients - four years and Next Business Day Warranty other than for a Non Contractor Supported Location where it is four years and RTB Warranty;***
 - (ii) *Monitors - four years and Next Business Day Warranty other than for a Non Contractor Supported Location where it is four years and RTB Warranty;***
 - (iii) *Notebooks including laptops, mobile workstations - four years and Next Business Day Warranty other than for a Non Contractor Supported Location where it is four years and RTB Warranty;***
 - (iv) *Tablets - three years Advanced Exchange Warranty other than for a Non Contractor Supported Location where it is three years and RTB Warranty;***
 - (v) *hybrid devices including detachable and convertible notebooks - three years Next Business Day Warranty other than for a Non Contractor Supported Location where it is three years and RTB Warranty; and***

- (vi) *Docking stations – three years Advanced Exchange Warranty other than for a Non Contractor Supported Location where it is three years and RTB Warranty,*
- (z) and to the extent any Hardware is provided that does not fall into any of the above categories, the minimum warranty period that will apply is 2 years RTB Warranty.'

4 SPECIFIC VARIATIONS TO MODULE 1 – HARDWARE ACQUISITION AND INSTALLATION

- 4.1 On and from the Commencement Date, Module 1 of ProcureIT Version 3.1 'Hardware Acquisition and Installation' is amended as follows:
 - (a) clause 6.1(h) of Module 1 is deleted and replaced with the following:
 - '(h) *any Virus, denial of service attack or other malicious act that adversely affects the Hardware except to the extent that the Virus, denial of service attack or other malicious act:*
 - (i) *was introduced or carried out by the Contractor or any of its Personnel;*
 - (ii) *was introduced or occurred as a result of the Contractor's or any of its Personnel's negligence; or*
 - (iii) *was introduced or occurred as a result of the Contractor breaching any of its obligations under the Customer Contract;'*

5 SPECIFIC VARIATIONS TO MODULE 2 – HARDWARE MAINTENANCE AND SUPPORT SERVICES

- 5.1 On and from the Commencement Date, Module 2 of ProcureIT Version 3.1 'Hardware Maintenance and Support Services' is as amended as follows:
 - (a) clause 6.1(h) is deleted and replaced with the following:
 - '(h) *any Virus, denial of service attack or other malicious act that adversely affects the Hardware except to the extent that the Virus, denial of service attack or other malicious act:*
 - (i) *was introduced or carried out by the Contractor or any of its Personnel;*
 - (ii) *was introduced or occurred as a result of the Contractor's or any of its Personnel's negligence; or*
 - (iii) *was introduced or occurred as a result of the Contractor breaching any of its obligations under the Customer Contract;'*

6 SPECIFIC VARIATIONS TO MODULE 3 – LICENSED SOFTWARE

- 6.1 On and from the Commencement Date, Module 3 of ProcureIT Version 3.1 'Licensed Software' is varied as follows:
 - (a) clause 2.1 is deleted and replaced with the following:

'2.1 *The Contractor grants to the Customer a non-exclusive License to exercise the rights specified in the Class of License stated in the Module Order Form in relation to the Licensed Software.'*;

(b) a new clause 2.1A is inserted as follows:

'2.1A *If the Module Order Form specifies that the Licensed Software may only be used on Designated Equipment, the Customer must only use that Licensed Software on that Designated Equipment.'*;

(c) clauses 5.1 and 5.2 are deleted;

(d) in clause 8.1 the words 'when operating on the Designated Equipment' are deleted;

(e) in clause 8.2(d) the words 'for the Designated System' are deleted and replaced with '*for the Designated Equipment or as specified in the Contract Specifications*'; and

(f) clause 9.1(d) is deleted and replaced with the following:

'(d) *any Virus, denial of service attack or other malicious act that adversely affects all or part of the Licensed Software except to the extent that the Virus, denial of service attack or other malicious act:*

(i) was introduced or carried out by the Contractor or any of its Personnel;

(ii) was introduced or occurred as a result of the Contractor's or any of its Personnel's negligence; or

(iii) was introduced or occurred as a result of the Contractor breaching any of its obligations under the Customer Contract.'

7 SPECIFIC VARIATIONS TO MODULE 5 – SOFTWARE SUPPORT SERVICES

7.1 On and from the Commencement Date, Module 5 of ProcureIT Version 3.1 'Software Support Services' is varied as follows:

(a) a new clause 1.10A is inserted as follows:

'1.10A ***Resolve*** has the meaning given to the term '*Resolution*' in the Service Level Agreement.';

(b) in clause 3.6 the word '*remedy*' is deleted and replaced with the word '*Resolve*';

(c) in clause 3.7 the word '*remedy*' is deleted and replaced with the word '*Resolve*';

(d) in clause 3.10 the words 'performance rebates stated in the Service Level Agreement' are deleted and replaced with '*Service Credits stated in the Service Level Agreement*'.

(e) in clause 3.14 the words 'on termination and / or expiry of the Support Services, the Contractor must render any reasonable assistance to the Customer to the extent necessary to effect an orderly assumption by a replacement contractor of the performance of the Contractor's obligations under the Customer Contract' are deleted and replaced with the following:

'the Contractor must comply with its transition out obligations set out in the Additional Conditions.';

(f) clause 7.1(f) is deleted and replaced with the following:

- '(f) *any Virus, denial of service attack or other malicious act that adversely affects all or part of the Supported Software except to the extent that the Virus, denial of service attack or other malicious act:*
- (i) *was introduced or carried out by the Contractor or any of its Personnel;*
 - (ii) *was introduced or occurred as a result of the Contractor's or any of its Personnel's negligence; or*
 - (iii) *was introduced or occurred as a result of the Contractor breaching any of its obligations under the Customer Contract;'*

PART B: OTHER ADDITIONAL CONDITIONS

Contractor Qualification: Unless otherwise agreed by the parties, only standard user manuals provided with, accompanying or embedded with Hardware or Software and supplied by the Contractor.

8 APPROVAL OF DOCUMENTS

APPLICATION

8.1 The process in this clause 8 applies to all Deliverables that are Documents unless the parties agree otherwise in the General Order Form.

SUBMISSION

8.2 The Contractor must submit all Deliverables which are Documents for approval in accordance with this clause 8 by the applicable date for that Deliverable specified in the PIPP or the Order Documents as applicable.

8.3 AAD for a Document will occur on the date on which that Document is approved in accordance with this clause 8.

APPROVAL

8.4 The Customer must, within 15 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 Document meets the Contract Specifications and the Customer approves the Deliverable; or
- (b) the Document does not meet the Contract Specifications and the Customer requires amendments to the Document, in which case the Customer must specify those amendments in the Notice in Writing.

8.5 If the Customer gives the Contractor a Notice in Writing requiring amendments to a Document under clause 8.4(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.

8.6 The Parties must repeat the process in this clause 8 until the Customer approves each Document in accordance with clause 8.4 of these Additional Conditions or the Customer gives

the Contractor a Notice in Writing in accordance with clause 8.4(b) of these Additional Conditions.

TERMINATION

- 8.7 If the Customer gives a Notice in Writing under clause 8.4(b) of these Additional Conditions, 3 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

- 8.8 If the Customer exercises its right under clause 8.4(b) 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.

9 BACKGROUND CHECKS

Unless otherwise required by the Customer in writing at the time of the Contractor's Quote , not applicable.

CONTRACTOR CHECKS

- 9.1 If requested by the Customer, or otherwise required by a Customer policy specified in the Order Documents the Contractor must:
- (a) conduct such background checks as may be requested by the Customer (including the Working with Children Check and criminal records checks) on the Contractor's Personnel involved in the performance of the Customer Contract as and when required by the Customer or as specified in the applicable Customer policy; and
 - (b) not use any Personnel in the performance of the Customer Contract who do not meet the requirements specified by the Customer (acting reasonably) from time to time in writing, including in an applicable Customer policy (**Customer Personnel Requirements**), unless otherwise directed by the Customer.
- 9.2 The Contractor must use all reasonable efforts to seek the consent of its Personnel to:
- (a) conduct the checks or investigations under clause 9.1 of these Additional Conditions; and
 - (b) permit the Contractor to provide the results of its checks or investigations under clause 9.1 to the Customer.
- 9.3 If the Contractor is unable to obtain a consent required under clause 9.2 of these Additional Conditions from a person, then, unless the Customer agrees otherwise in writing, the Contractor must:
- (a) not engage that person to perform, or remove that person from performing, the Contractor's obligations under the Customer Contract; and
 - (b) provide a replacement for that person who is acceptable to the Customer within 2 Business Days after the date on which the Contractor became aware of that issue.

CUSTOMER CHECKS

- 9.4 The Customer may at any time:

- (a) carry out the background checks referred to in clause 9.1 of these Additional Conditions itself; and
- (b) conduct such other investigations and background checks as the Customer considers appropriate,

(Customer Checks).

- 9.5 From time to time the Customer may (acting reasonably) request assistance in writing relating to the Customer Checks. The Contractor must provide all assistance relating to the Customer Checks requested by the Customer promptly after the Contractor receives that request.
- 9.6 If a Customer Check shows that a member of the Contractor Personnel does not meet the Customer Personnel Requirements, the Customer must advise the Contractor as soon as possible.

REMOVAL AND REPLACEMENT

- 9.7 If:
- (a) a check performed by the Contractor or a Customer Check performed by the Customer shows that a member of the Contractor Personnel does not meet the Customer Personnel Requirements; and
 - (b) that person is engaging in the supply of the Deliverables or the performance of the Contractor's obligations under this Customer Contract,

(Relevant Person) the Contractor must immediately:

- (c) remove that Relevant Person from the supply of the Deliverables or the performance of the Contractor's obligations under this Customer Contract; and
 - (d) withdraw and remove all access that the Relevant Person has to the Customer Data, Customer Supplied Items, Customer software or systems or the Sites.
- 9.8 If the Contractor is required to remove a Relevant Person in accordance with clause 9.7 of these Additional Conditions, the Contractor must replace that Relevant Person:
- (a) with a member of the Contractor Personnel who meets the requirements for the Contractor's Personnel specified in the Customer Contract; and
 - (b) if the Relevant Person is one of the Specified Personnel, with a member of the Contractor Personnel who is approved by the Customer in accordance with clause 8.9 of Part 2 of the Customer Contract.

DISCLOSURE OF INFORMATION RELATING TO CONDUCT

- 9.9 If there has been a criminal conviction recorded or final court determination (that is not subject to prohibition or restriction in relation to its disclosure), the Contractor must disclose to the Customer and the Contract Authority, any findings of dishonest, unfair, unconscionable, corrupt or illegal conduct against the Contractor, its directors or management, its Subcontractors or its parent company. This clause does not apply if complying with it would result in the Contractor breaching its confidentiality obligations under contract or at Law.
- 9.10 Any finding of the conduct referred to in clause 9.9 will amount to a Substantial Breach of this Customer Contract in accordance with clause 25.2 of the Customer Contract and the Customer may terminate this Customer Contract and the Contract Authority may terminate the Head Agreement as a result. An allegation of the conduct referred to in clause 9.9 will amount to a Substantial Breach of this Customer Contract in accordance with clause 25.2 of the Customer Contract where in the opinion of the Customer or the Contract Authority the

allegation is actually or potentially damaging to the Customer, the Contract Authority or the NSW government or their reputation, in which case the Customer may terminate this Customer Contract and the Contract Authority may terminate the Head Agreement as a result.

TERMINATION

- 9.11 If the Contractor breaches this clause 9, the Customer may terminate the Customer Contract in its entirety or to the extent it relates to one or more Deliverables with immediate or later effect, by giving the Contractor a Termination Notice.

10 PERSONNEL

SKILLS, EXPERIENCE

- 10.1 The Contractor must only use Personnel who:
- (a) are suitably qualified, skilled and experienced to supply the Deliverables; and
 - (b) have received training on the applicable requirements for supplying the Deliverables, including compliance with all applicable Customer policies; and
 - (c) ensure that all Contractor Personnel involved in the supply of the Deliverables are fluent in, and communicate with the Customer in English.

REPLACEMENT PERSONNEL

- 10.2 A Customer (acting reasonably) may at any time request the Contractor to replace any member of the Contractor Personnel stating the reasons for the requirement.
- 10.3 If a Customer makes a request under clause 10.2, the following procedure will apply:
- (a) if the reason for the request is due to:
 - (i) a contravention of a Statutory Requirement, another law or a Customer policy by that member of the Contractor Personnel;
 - (ii) a breach of the work health and safety obligations or other act or omission by that member of the Contractor Personnel that endangered the health or safety of any person on a premises, Site, facility or other location owned, leased or operated by the Customer; or
 - (iii) serious misconduct by that member of the Contractor Personnel,the Contractor must immediately remove that member of the Contractor Personnel from the supply of the Deliverables or the performance of the Contractor's obligations under this Customer Contract;
 - (b) for any other reason, the Contractor must:
 - (i) promptly meet with the Customer and discuss its concerns; and
 - (ii) if, after those discussions, the Contractor cannot demonstrate to the Customer's satisfaction (acting reasonably) that it is able to address the Customer's concerns in a reasonable timeframe, replace that member of the Contractor Personnel; and
 - (iii) if the Contractor is required to replace a member of the Contractor Personnel in accordance with clause 10.2 it must ensure that:

- (A) where that replacement relates to Specified Personnel, the person is approved by the Customer in accordance with clause 8.9 of Part 2 of the Customer Contract;
- (B) to the extent possible, there is a sufficient handover between the original member of the Contractor Personnel and the replacement so that the replacement is fully aware of the Deliverables and the Customer's requirements in connection with the Customer Contract (at no cost to the Customer); and
- (C) it withdraws and removes all access that the member of the Contractor Personnel being replaced has to the Customer Data, CSI, Customer software or systems or the Sites on the date on which that member of the Contractor Personnel was removed.

10.4 If the Contractor:

- (a) breaches clause 10.3(a), and has not remedied the breach within 5 Business Days of receipt of a notice from the Customer specifying the breach and requiring the breach to be remedied, the Customer may terminate this Customer Contract in its entirety or to the extent it relates to one or more Deliverables, with immediate or later effect, by giving the Contractor a Termination Notice; or
- (b) breaches clause 10.3(b), and has not remedied the breach within 10 Business Days of receipt of a notice from the Customer specifying the breach and requiring the breach to be remedied, the Customer may terminate this Customer Contract in its entirety or to the extent it relates to one or more Deliverables, with immediate or later effect, by giving the Contractor a Termination Notice.

11 CUSTOMER DATA

- 11.1 The Contractor does not own or have any interest in or rights to any Customer Data wherever it may be located other than as expressly set out in a Customer Contract.
- 11.2 The Contractor must not transfer, take or send any 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 such consent not to be unreasonably withheld or delayed.
- 11.3 If a Customer provides the Contractor with consent under clause 11.2 of these Commercial Terms and Conditions, the Contractor must comply with any conditions imposed by the Customer in relation to the Customer Data the subject of the consent.
- 11.4 The Contractor must retain only the Customer Data that a Customer has agreed the Contractor may retain and must only retain that Customer Data for the period of time and volumes notified in writing 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.
- 11.5 Where a 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, such approval not to be unreasonably withheld or delayed.
- 11.6 If required by a Customer Contract, the Contractor must take and maintain back ups of Customer Data that is loaded into a Device so that there is no loss of Customer Data in the event that any failure of any Device causes damage to, or loss of, any Customer Data.
- 11.7 The Contractor will have no liability to the Customer for errors or omissions in Customer Data or loss of use of system(s) arising out of the Customer's back up actions or failure to maintain

a complete a current backup of systems, data, software and programs prior to the provision of Services by the Contractor. This clause 11.7 does not apply to the extent backup is the responsibility of the Contractor under the Customer Contract.

12 SERVICE WARRANTIES

12.1 In addition to any other obligations of the Contractor under this Customer Contract, the Contractor warrants and represents that:

- (a) all Deliverables which are Services will be supplied:
 - (i) with due care and skill;
 - (ii) in a safe and efficient manner;
 - (iii) to the best of the Contractor's skill and knowledge; and
 - (iv) by suitably qualified, experienced and skilled personnel; and
- (b) it has the necessary knowledge and resources to supply the Deliverables.

13 FITNESS FOR PURPOSE

Qualification: The Hardware and/or software supplied will comply with the OEM specifications supplied at the time of the Contractor's Quote.

13.1 In addition to complying with the Contract Specifications set out in this Customer Contract, the Contractor must ensure that during the Warranty Period each Deliverable it provides to a Customer is fit for the purpose expressly made known to the Contractor by the Customer or the Contract Authority in writing at the time of the initial request for quote or order or if expressly stated in the Contract Specifications.

14 PRODUCT SAFETY

14.1 All Deliverables provided by the Contractor under this Customer Contract must comply with all applicable Statutory Requirements, in particular Statutory Requirements applicable in NSW relating to product safety, and any NSW Government policies regarding product safety notified to it in writing from time to time by the Customer or the Contract Authority.

14.2 All Deliverables provided by the Contractor under this Customer Contract are expected to include clear guidelines for end users, on how to safely operate and use the Deliverables.

15 RESTRICTION ON OFF-SHORING

Contractor Qualification: As a global organisation customer information relevant to this procurement may be processed by the Contractor (ie Dell) in Australia and/or outside Australia to enable the Contractor to carry out procurement transactions that the Customer has requested and may include for example such things as product specifications, organisational information, contact details, tender information, transactional information, commercial, sales and contractual information, and product warranty information relevant to the Products procured by the Customer.

15.1 The Contractor is required to notify the Contract Authority and the Customer if it intends to perform any Services outside of Australia and must provide such notification and comply with clause 15.2 before commencing those Services.

15.2 Subject to clause 15.3, in its notification the Contractor must provide the Customer and the Contract Authority with an independent supply chain audit report prepared by an independent third party of such off-shore performance. That supply chain audit report is only required to address:

- (a) the performance of the Services proposed to be performed by the Contractor outside Australia, and is not required to address all of the Contractor's offshore operations (eg its manufacture of Devices);
- (b) the locations that will be involved in the performance of the relevant Services; and
- (c) the handling and security of Customer Data, Personal Information or Confidential Information..

The Contractor is only required to provide a third party supply chain audit report if the Customer agrees to pay the reasonable costs of the audit (which must be approved in advance by the Customer). If the supply chain audit report reveals any non-compliance with the terms of this Customer Contract, then the Contractor must bear 50% of the costs of the audit.

15.3 The Contractor must not provide any of the following Services outside of New South Wales, Australia without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed:

- (a) any Services prior to the delivery of Deliverables involving access to any Customer Data, Personal Information or Confidential Information supplied by, or on behalf of, the Customer; and
- (b) any Services provided after delivery of Deliverables, whether or not requiring access to any Customer Data, Personal Information or Confidential Information.

16 DISPOSAL OF DELIVERABLES AND ENVIRONMENTAL CONTROLS

16.1 The Contractor must provide all Deliverables and Services under this Customer Contract, in a manner that does not cause or threaten to cause pollution, contamination or environmental harm to, on or outside of a Customer's Site.

16.2 The Contractor must, and must ensure its Personnel and Subcontractors, comply with all applicable environmental Statutory Requirements, and any environmental policies of the Customer or the Contract Authority made known to it in writing by the Customer or the Contract Authority from time to time.

16.3 The Contractor acknowledges and agrees that it will follow NSW Government policies and guidelines concerning the safe disposal of any hazardous substances that have been made known to it in writing by the Customer or the Contract Authority from time to time.

17 ICT ACCESSIBILITY

Contractor Qualification: Not Applicable to this Customer Contract.

17.1 The Contract Authority or the Customer may request the Contractor at any time to advise what Deliverables and/or Services supplied under this Customer Contract comply, in whole or in part, with the Accessibility ICT Standards and any other accessibility requirements specified by the Contract Authority or the Customer.

17.2 The Contractor agrees to provide a statement of conformity to the Customer or the Contract Authority (as applicable) within 14 days following receipt of a request made under clause 17.1.

17.3 The Contractor agrees to notify the Contract Authority or the Customer (as applicable) within 14 days of any changes to the compliance of the Deliverables and/or Services supplied under

this Customer Contract with the Accessibility ICT Standards referred to in any request made under clause 17.1.

- 17.4 If the Customer requires Deliverables and/or Services that conform to the Accessibility ICT Standards in accordance with the Contractor's notification of compliance under clause 17.2 and / or clause 17.3, it will specify such requirement in the Order Documents, including by reference in item 30 of the General Order Form.
- 17.5 The Contractor must ensure that any Deliverables and/or Services supplied to the Customer comply with:
- (a) any Accessibility ICT Standards where and to the extent they are expressly set out in this Customer Contract; and
 - (b) any accessibility requirements notified pursuant to clause 17.1 to the extent that the Contractor has indicated in its most recent notification under clause 17.2 and / or clause 17.3 that it is compliant with those accessibility requirements.

18 APPROVED AGENTS

Contractor Qualification: Not Applicable to this Customer Contract.

- 18.1 Deliverables provided by an Approved Agent under this Customer Contract, will be considered provided on behalf of the Contractor.
- 18.2 The Contractor will remain, at all times, contractually responsible for the performance of Approved Agents.
- 18.3 Deliverables provided by Approved Agents must not be priced higher than what has been agreed with the Contractor under this Customer Contract.
- 18.4 The Contractor is required to report on transactions made under this Customer Contract by, and the performance of, Approved Agents as part of their own reporting.
- 18.5 The Contract Authority may, at any time and in its discretion, remove an entity's authorisation to act as an Approved Agent under this Customer Contract, by advising the Contractor in writing.
- 18.6 The Customer may, at any time and in its discretion, remove an entity's authorisation to act as an Approved Agent under this Customer Contract, by advising the Contractor in writing.
- 18.7 The Customer may request supporting documentation from an Approved Agent or the Contractor in support of the entity seeking approval. That documentation may include commitments from the Approved Agent or Contractor as required by the Customer.

19 DISCLOSURE OF INFORMATION

CONFIDENTIALITY ARRANGEMENTS

- 19.1 For the purposes of interpreting any confidentiality provisions under this Customer Contract, it is agreed by the Contractor that the NSW Government is a single entity and that no barrier can be imposed to sharing information between NSW Government agencies with respect to transactions under this Customer Contract.

DISCLOSURE REQUIREMENTS

- 19.2 The Contractor acknowledges and agrees that the Customer or the Contract Authority may make available this Customer Contract and information and materials concerning or relating to

the Contractor or its performance pursuant to this Customer Contract (including any Confidential Information of the Contractor) to other NSW Government agencies, provided that such other entity agrees to comply with the confidentiality obligations contained in clause 8 of Part 1 Head Agreement and clause 14 of Part 2 Customer Contract.

19.3 The Contractor acknowledges and agrees that:

- (a) information about the Contractor from any source, including reports of performance, may be taken into account by Agencies (including a Customer and the Contract Authority) considering whether to offer the Contractor future opportunities for other work; and
- (b) the communication of such information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW).

DISCLOSURE OF PRIVATE SECTOR CONTRACTS

19.4 The Contractor acknowledges that each Customer and the Contract Authority may be required to publish certain information concerning this Customer Contract in accordance with sections 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW).

19.5 If the Contractor reasonably believes that any part of this Customer Contract contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Contractor should immediately advise the Customer and the Contract Authority in writing, identifying the provisions and providing reasons so that the Customer and the Contract Authority may consider seeking to exempt those provisions from publication. The Contractor may have nominated information in Item 14 of the Head Agreement Details that it considers commercial-in-confidence.

19.6 Within three days of receiving a written request from the Customer or the Contract Authority, the Contractor must (at no cost to the Customer or the Contract Authority) provide the Customer or the Contract Authority with immediate access to information referred to in section 121(1) of the *Government Information (Public Access) Act 2009* (NSW) (but excluding information referred to in section 121(2) of the *Government Information (Public Access) Act (2009)* (NSW) contained in records held by the Contractor, in the format and using the medium, reasonably requested. This is a fundamental term of this Customer Contract.

20 PRIVACY

20.1 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 this 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 promptly and in any event within 2 Business Days upon becoming aware of a breach or possible breach of any of the obligations in this clause 20, 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 this Customer Contract or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably necessary 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, such approval not to be unreasonably withheld or delayed;
- (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 20; 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 20 which are enforceable by the Contractor against the Approved Agent or the Subcontractor, as applicable.

20.2 This clause 20 survives the termination of this Customer Contract for any reason whatsoever.

21 BUSINESS CHANGE

Contractor Qualification: Not Applicable to this Customer Contract

RIGHTS

21.1 The Contractor acknowledges and agrees that the Customer may by giving notice to the Contractor do one or more of the following (**a Business Change Act**) as part of a Business Change:

- (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 this Customer Contract to one or more persons;
- (d) novate all or part of this Customer Contract to one or more persons; or
- (e) require the Contractor to supply one or more of the Deliverables directly to any other Relevant Entity,

for any one or more of the following purposes:

- (a) providing Transition Services (if applicable) to a Relevant Entity;
- (b) facilitating or implementing a Business Change; or
- (c) 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.

- 21.2 The Contractor consents to any Business Change Act notified to the Contractor in accordance with clause 21.1 of these Additional Conditions where the Business Change involves a Relevant Entity that is wholly-owned by the State of New South Wales. Where the Business Change involves an entity that is not wholly-owned by the State of New South Wales, it is subject to the consent of the Contractor, such consent not to be unreasonably withheld or delayed.
- 21.3 If any Business Change Act under this clause 21 changes the scope of the obligations or Deliverables to be provided by a Contractor under this 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.
- 21.4 If the Contractor is supplying any Licensed Software under the Reseller as a Facilitator model under clause 7.1(a) of Module 3, that Licensed Software will be supplied on the terms that apply between the original IP owner and the Customer and will not be subject to this clause 21.
- 21.5 If the Customer gives notice under clauses 21.1(a), (b), (c) or (e), then the Customer will remain a party to and liable under the Customer Contract.
- 21.6 If the Customer gives a notice under clause 21.1(d), then the incoming party under the novation will become a party to and liable under the Customer Contract in place of the Customer.

CONTRACTOR FACILITATION

- 21.7 The Contractor must, on request by a 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 clause 21.1 (including promptly executing all necessary documents and granting all necessary rights).
- 21.8 Any assistance or additional licenses required by a Customer from the Contractor in connection with a Business Change in addition to the Contractor's obligations in clause 21.7 will be subject to the Parties agreeing a Change Request.

DISCLOSURE

- 21.9 In addition to any other rights that the Customer has under this Customer Contract, the Customer may disclose the terms of this Customer Contract and any Confidential Information of the Contractor:
- (a) to any department or office of the State of New South Wales or other Agency;
 - (b) to any Relevant Entity or proposed Relevant Entity; or
 - (c) to any adviser or personnel of any such person specified in clauses 21.9(a) or 21.9(b).

22 AUDIT

- 22.1 During the Contract Period and for 7 years thereafter, the Contractor must keep financial records and other information relevant to the performance of this 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.

22.2 No more than once in any calendar year, or in the event that there is a major incident relating to the supply of Deliverables under this Customer Contract, the Customer may conduct an audit to determine the Contractor's compliance with this Customer Contract, in each case by giving the Contractor at least 5 Business Days' prior written notice.

22.3 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. The Contractor is not required to provide access under this clause 22.3 to:

(c) any information relating to other customers of the Contractor;

(d) any information that is the subject of legal professional privilege;

(e) any audit reports prepared by external auditors; or

(f) any audit reports prepared by the Contractor's internal audit function. .

22.4 For the purpose of complying with clause 22.3, the Contractor must promptly and efficiently give the Customer and its Personnel any assistance they reasonably require.

22.5 The Customer and its Personnel must comply with the Contractor's reasonable security requirements. If requested by the Contractor, the Customer will execute a confidentiality deed in substantially the same form as Schedule 8 of the Customer Contract in relation to any data or other information provided to the Customer as part of the audit. In any event, any such data or information is subject to the confidentiality obligations contained in clause 8 of Part 1 Head Agreement and clause 14 of Part 2 Customer Contract.

22.6 Without limiting the rights of the Customer, if an audit shows that the Contractor has breached or is in breach of the Customer Contract, the Contractor must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Contract Authority or the Customer.

22.7 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 INSPECTIONS

APPLICATION AND INTERPRETATION

23.1 The right to conduct an inspection under this clause 23 of these Commercial Terms and Conditions is in addition to, and does not derogate from any other audit or inspection rights that the Customer may have under this Customer Contract.

INSPECTIONS

23.2 The Customer may, no more than once a year or in the event that there is a major incident relating to the supply of Deliverables under this Customer Contract:

- (a) inspect the sites, facilities or other resources used by the Contractor or its Personnel to supply the Deliverables; or
- (b) attend the Contractor's or any of its Personnel's sites or facilities used to supply the Deliverables and observe the supply of the Deliverables,

by giving the Contractor a Notice in Writing (**Inspection Notice**) a reasonable time prior to the date on which the inspection will commence.

23.3 If the Customer gives the Contractor an Inspection Notice, the Contractor must give the Customer and its Personnel:

- (a) access to its, or its Personnel's, sites, facilities and other resources specified in the Inspection Notice; and
- (b) all assistance reasonably required by the Customer and its Personnel to conduct the inspection,

for purposes of enabling the Contract Authority or the Customer to assess compliance by the Contractor, or ability of the Contractor to comply with, the Head Agreement and Customer Contract.

23.4 The Customer and its Personnel (including internal and external auditors and advisers) must comply with the Contractor's reasonable security requirements when conducting an inspection or when involved in an inspection under this clause 23 and, if requested by the Contractor, will execute a confidentiality deed in substantially the same form as Schedule 8 of the Customer Contract in respect of any information provided or created as part of the inspection. In any event, any information to the Customer or its Personnel or created by them as part of the inspection is subject to the confidentiality obligations contained in clause 8 of Part 1 Head Agreement and clause 14 of Part 2 Customer Contract.

23.5 If the Contractor's security requirements prohibit the Customer from conducting an inspection themselves, the Contractor will propose an independent third party to whom it can provide access to its Personnel, sites, facilities and other resources specified in the Inspection Notice. If the Customer consents to the use of the independent third party, the Contractor will be responsible for engaging that third party, paying the costs of engaging that third party and providing the Customer with the results of the inspection within the timeframe requested in the Inspection Notice.

COSTS

23.6 Each Party will be responsible for its own costs of exercising its rights under, or complying with, this clause 23.

24 LIABILITY TO AGENCIES AND THE STATE OF NEW SOUTH WALES

24.1 The Contractor acknowledges and agrees that the Customer holds the benefit of the Contractor's obligations, the Customer's rights and any release or indemnity under this Customer Contract as principal and on trust for any other Agencies or related beneficiaries including Eligible non-Government Bodies nominated by the Customer in its Order Documents (**Beneficiary**) (as if the obligation, right, release or indemnity had been expressed to be for the benefit of them directly).

24.2 If another Agency or the State of New South Wales suffers losses as a result of one or more acts or omissions of the Contractor or any of its Personnel relating to the performance, non-performance or termination of this Customer Contract, the Customer will be able to recover those losses from the Contractor:

- (a) as if the losses were suffered or incurred by the Customer itself;

- (b) to the extent that losses would have been capable of being recovered by the Customer had the Customer suffered those losses; and
- (c) subject to the limitations and exclusions of liability set out in this Customer Contract.

24.3 For the avoidance of doubt:

- (a) all claims by the Customer and any Beneficiaries under this clause 23 will be subject in aggregate to the limitation of liability set out in clause 18 of the Customer Contract; and
- (b) if a Customer recovers losses on behalf of another Agency or the State of New South Wales under this clause 24, then that other Agency or the State of New South Wales (as applicable) may not recover such losses from the Contractor.

25 DESTRUCTION OF INFORMATION

25.1 On termination or expiry of this Customer Contract for any reason:

- (a) subject to any obligations arising out of any applicable State security classification or Statutory Requirements or as specified in the Order Documents, a Party to this Customer Contract may retain for quality assurance and risk management purposes any notes and other records created or received in providing any Product or performing any Service under this Customer Contract provided that any retained notes or records are subject to the confidentiality obligations in accordance with clause 14 of the Customer Contract.
- (b) at a Customer's request made within 60 days following termination or expiry of this Customer Contract, 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;
- (c) a Contractor must delete Customer Data at the end of the period specified in the Order Documents and, if requested by the Customer, provide certification that the Customer Data has been deleted;
- (d) 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;
- (e) the Contractor must cease providing the Products and Services; and
- (f) the Contractor must comply with any other reasonable direction issued by the Customer where permitted by the Customer Contract.

26 CIVIL LIABILITY ACT AND LIABILITY

26.1 The Contractor and the Customer agree to exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) from this Customer Contract.

27 COSTS RELATING TO A TERMINATION FOR CONVENIENCE

27.1 If a Customer gives a Termination Notice under clause 25.3 of Part 2 of the Customer Contract, and the Contractor is entitled to recover liabilities, costs or expenses under clause

25.4 of Part 2 of the Customer Contract (**Termination Costs**), the Contractor may only do so to the extent set out in this Customer Contract or otherwise to the extent that:

- (a) those Termination Costs are unavoidable and are directly, reasonably and necessarily incurred by the Contractor as a result of the termination;
- (b) those Termination Costs have not already been recovered by the Contractor (including as part of the Contract Price);
- (c) the Contractor substantiates that those costs have been or will be incurred to the Customer's satisfaction (acting reasonably);
- (d) those costs relate exclusively to the Deliverables and would not have been incurred by the Contractor but for the termination; and
- (e) the Contractor has not been able to mitigate those costs despite complying with its obligation under clause 25.3 of Part 2 of the Customer Contract.

28 CHANGES IN LAWS

28.1 If the Contractor is required to comply with any Laws under this Customer Contract, the Contractor must comply with those Laws as they exist from time to time.

28.2 "Laws" for purposes of this clause 28 includes Statutory Requirements, statutes, regulations, by-laws, ordinances or subordinate legislation, and any standards or codes of conduct with which compliance is mandatory (as required by law) or that are specified in the Contract Specifications.

29 HARDWARE WARRANTY EXEMPTIONS

29.1 The specific warranties that will apply to Deliverables under this Customer Contract are set out in clauses 30, 31 and 32 below. This clause 29 sets out exemptions that will apply to those warranties for particular Deliverables.

HARD DRIVES

29.2 If a Deliverable has a hard drive or a solid state drive, that drive remains the property of the Customer at all times. Irrespective of any requirement to return a Deliverable to the Contractor for repair, the Customer may retain the drive without extra cost.

BATTERIES

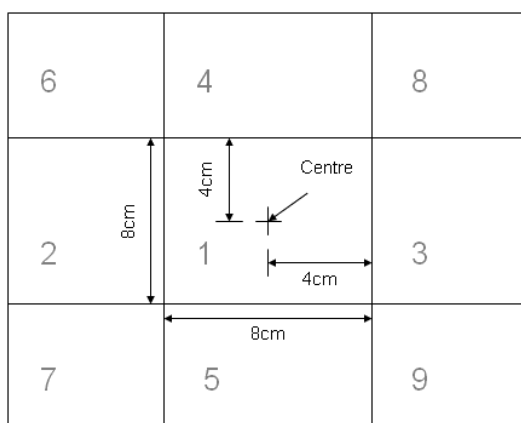
29.3 The Warranty Period for batteries supplied with Deliverables will be the same as the Warranty Period on the Deliverable itself, including integrated (sealed) batteries, unless otherwise stated in a GSS.

MONITORS

29.4 The provisions in this clause 29.4 apply to any Deliverable incorporating a screen including standalone monitors, all in ones, notebooks, laptops, and tablets.

- (a) A dead pixel can be either a dark or light, pixel or sub-pixel.
- (b) If any dead pixels become apparent in a Deliverable within 30 days of AAD, the monitor is to be replaced at the Contractor's cost. If the monitor alone cannot be replaced, the whole Deliverable must be replaced at the Contractor's cost.

- (c) After 30 days of AAD but within the Warranty Period for that Deliverable, the monitor is to be replaced at the Contractor's cost if a total of six or more dead pixels occur. If the monitor alone cannot be replaced, the whole Deliverable must be replaced at the Contractor's cost.
- (d) After 30 days of AAD but within the Warranty Period, the monitor is to be replaced, at the Contractor's cost, if the following dead pixel criteria are exceeded (refer below diagram for defined areas on LCD monitors):
- (i) area 1 – 0 dead pixels;
 - (ii) areas 2, 3, 4 and 5 – 1 dead pixel; and
 - (iii) areas 6, 7, 8 and 9 – 2 dead pixels.
- (e) The diagram below is for the purposes of the above-mentioned dead pixel warranty:



(f)

BUFFER STOCK

29.5 The Warranty Period start date for items held in Buffer Stock will be either:

- (a) the date of delivery of the Deliverable to the Customer (where the Customer holds the Buffer Stock), or
- (b) the date the Deliverable becomes part of Buffer Stock (where the Customer's nominated agent or the Contractor holds the Buffer Stock on behalf of the Customer).

30 NEXT BUSINESS DAY WARRANTY

30.1 If a 'Next Business Day Warranty' (**Next Business Day Warranty**) applies, the Contractor agrees to, following telephone-based troubleshooting and diagnosis by the Contractor:

- (a) provide the Customer with an appropriately trained representative at the relevant Customer Site, within the following times from receiving a call or receipt of an electronic request by the Customer (if a call is logged by the Contractor before 3PM (AEST/AEDT) on a Business Day):
 - (i) by the end of the next Business Day for a Customer Site located in a Metro Area;
 - (ii) within two Business Days for a Customer Site located in a Regional Area; or
 - (iii) within four Business Days for a Customer Site located in a Remote Location;

- (b) use all reasonable endeavors in order to return the Deliverable, the subject of the call or electronic request in clause 30.1(a), back to its normal operating condition within:
 - (iv) two Business Days for a Customer Site located in a Metro Area;
 - (v) three Business Days for a Customer Site located in a Regional Area; or
 - (vi) five Business Days for a Customer Site located in a Remote Location.
- (c) if the Deliverable is not repaired and at the Customer Site within six Business Days for Metro Areas or Regional Areas and 8 Business Days for Remote Locations following a call or electronic request in accordance with clause 30.1(a), the Contractor will provide a new replacement device of equal or better specification (appropriately configured) at no cost to the Customer, provided that delays are not caused by the Customer;
- (d) the Warranty Period for any replacement device provided in accordance with clause 30.1(c) will be limited to the remainder of the Warranty Period applicable to the originally supplied Deliverable; and
- (e) if, at time of call or electronic request in accordance with clause 30.1(a), the defective Deliverable is greater than thirty days old, the Contractor may provide a refurbished device as the replacement device. A replacement item must not be drawn from Buffer Stock, unless otherwise agreed by the Customer.

31 RETURN TO BASE (RTB) WARRANTY

31.1 If a 'Return to Base or RTB Warranty' (**RTB Warranty**) applies [*note – this is now addressed through clause 1.113*] then:

- (a) the Contractor must provide the Customer with a hotline for registering defects that will be manned by a Contractor technician. The Contractor technician will provide the Customer with trouble shooting over the phone in the first instance. If the Contractor technician is unable to rectify the defect over the phone, the Contractor technician will arrange for the Deliverable to be collected for repair;
- (b) following the receipt of a call in accordance with 31.1(a), the Contractor must arrange pickup and return of the defective Deliverable during the Customer's standard business hours;
- (c) the Contractor will collect, repair and return the defective Deliverable within six Business Days for Metro Areas or Regional Areas and eight Business Days for Remote Locations, after completion of telephone-based troubleshooting;
- (d) if the defective Deliverable is not repaired and returned within six Business Days for Metro Areas or Regional Areas and eight Business Days for Remote Locations then, provided the delays have not been caused by the Customer, the Contractor will provide:
 - (i) for Non Contractor Supported Locations, either a new or refurbished replacement Device of equal or better specification (appropriately configured); or
 - (ii) for all other locations, subject to clause 31.2, a new replacement Device of equal or better specification (appropriately configured),
- (e) at no cost to the Customer;
- (f) the Warranty Period for any replacement Deliverable will be limited to the remainder of the Warranty Period applicable to the originally supplied Deliverable which has been replaced.

- 31.2 If, at time of call or electronic request in accordance with clause 31.1(a), the defective Deliverable is greater than thirty days old the Contractor may provide a refurbished device as the replacement device. A replacement item must not be drawn from Buffer Stock, unless otherwise agreed by the Customer.

32 ADVANCED EXCHANGE WARRANTY

- 32.1 If an 'Advanced Exchange Warranty' (**Advanced Exchange Warranty**) applies *[note – this is now addressed through clause 1.113]* the Contractor agrees to following telephone based troubleshooting and diagnosis by the Contractor, provide the Customer with a replacement device of equal or better specification (appropriately configured) at no cost to the Customer within 4 Business Days for Metro Areas or Regional Areas and 6 Business Days for Remote Locations of receiving a call regarding the defective Deliverable.
- 32.2 The Warranty Period for any replacement device provided by the Contractor under an Advanced Exchange Warranty will be limited to the remainder of the Warranty Period applicable to the originally supplied Deliverable.
- 32.3 If, at time of call or electronic request in accordance with clause 32.1, the defective Deliverable is greater than thirty days old the Contractor may provide a refurbished device as the replacement device. A replacement item must not be drawn from Buffer Stock, unless otherwise agreed by the Customer.
- 32.4 The Contractor will provide the Customer with a one page instruction sheet with any replacement device provided under an Advanced Exchange Warranty, with instructions on returning the defective Deliverable. The instruction sheet will include a return address slip and reference details at the bottom, which will be used to label the return box. When returning a defective Deliverable, the Customer:
- (a) must pack the defective Deliverable into a box (the Customer can use the box the replacement device was shipped in);
 - (b) must label the return box using the return address slip on the bottom of the instruction sheet; and
 - (c) must return the defective device within five Business Days, from the time the replacement device is received.
- 32.5 The Contractor is responsible for the costs associated with the return of the defective device in accordance with clause 32.4.
- 32.6 If, irrespective of this clause 32, the Customer elects not to retain the hard disk drive, the Contractor will provide the necessary tools, as agreed by the Customer, to wipe the hard drive clean on the defective device prior to that device being returned to the Contractor.

33 COSTS RELATING TO WARRANTIES

- 33.1 For the purposes of clauses 30, 31 and 32, delivery and collection of Hardware, travel costs and all other associated costs associated with providing Services under those warranties are to be provided to the Customer free of charge provided that the Hardware is located within NSW. For the avoidance of doubt, no additional costs should be incurred by a Customer for relying on the warranties provided in clauses 30, 31 and 32.

34 BUFFER STOCK

- 34.1 If Buffer Stock is held by the Contractor on behalf of the Customer, the following terms apply:

- (a) A maximum quantity of Buffer Stock can be held by the Contractor at any given time, this maximum quantity must be advised in writing by the Customer and agreed with the Contractor before any stock is held on the Customer's behalf (**Maximum Quantity**). If Buffer Stock is held without a Maximum Quantity being advised in writing, or if Buffer Stock held is in excess of the Maximum Quantity, the Contractor will be responsible for that excess Buffer Stock and the Customer will not be required to procure or otherwise pay for that excess Buffer Stock.
- (b) The Buffer Stock will be held at the Contractor's premises, unless otherwise agreed by the Customer.
- (c) Within the first 5 Business Days of each calendar month, the Customer will provide the Contractor with a three month rolling forecast of its requirements for the Buffer Stock (including Buffer Stock mix and quantities) together with details of the inventory status and current usage patterns of all items held in the Buffer Stock.
- (d) If the rolling forecast requires the Contractor to hold more than the Maximum Quantity, the Contractor will seek approval from the Customer in writing before increasing beyond the Maximum Quantity.
- (e) The timeframe to replenish items ordered from the Buffer Stock will be a maximum of one month. However, for the initial Buffer Stock following the Commencement Date, the Contractor will have 8 weeks.
- (f) Where a Customer request for Deliverables exceeds the level of Buffer Stock held, standard delivery times will apply to the whole order and the shorter delivery times set out in Item 12 of the General Order Form will not apply.
- (g) When new models (including peripherals) are introduced into the Buffer Stock, the Customer must first deplete the superseded models or devices forming part of the Buffer Stock before it procures any new models or devices from the Buffer Stock.
- (h) The Customer acknowledges and agrees that items cannot be held in the Buffer Stock for more than 90 days from the time the item is held by the Contractor solely on behalf of the Customer in the Buffer Stock. The Customer must purchase items held in Buffer Stock after 90 days.
- (i) The Customer acknowledges and agrees that:
 - (i) if this Customer Contract is terminated other than as a result of a breach of this Customer Contract by the Contractor; or
 - (ii) this Customer Contract expires,

the Customer must purchase all remaining Buffer Stock held or ordered by the Contractor at the date of termination or expiry. For the avoidance of doubt, if the Customer Contract is terminated for breach by the Contractor, the Customer is not obliged to purchase all remaining Buffer Stock held or ordered by the Contractor at the date of termination or expiry.

35 LICENCE RIGHTS AND OPEN SOURCE SOFTWARE

35.1 If the Contractor supplies any software as part of any Deliverable, or as an output of any Services, the Intellectual Property Rights in which are not assigned under clause 13.10 of Part 2 of the Customer Contract or licensed under the terms of Module 3, then subject to any restrictions set out in the General Order Form the Contractor grants to the Customer a non-exclusive, royalty free, perpetual, irrevocable licence to:

- (a) install, run and use that software for its business purposes;

- (b) reproduce and copy that software as required to install, run and use the software or for any backup, archive or security purposes; and
 - (c) sublicense any person to exercise any of the rights specified in clauses 35.1(a) or 35.1(b) of these Additional Conditions for the Customer's business purposes or to otherwise solely for purposes of supplying services to the Customer (and not for any other purpose).
- 35.2 The Deliverables must not incorporate open source software in any software that is a Deliverable, unless otherwise approved by the Customer in writing.
- 35.3 If the Customer approves the incorporation of open source software in a Deliverable:
 - (a) the Parties agree that the open source software will be licensed under the terms of Module 3 of the Customer Contract as 'Licensed Software'; and
 - (b) the Contractor must ensure that the use or modification of that open source software will not result in an obligation to, disclose, licence or otherwise make available any part of the System, Customer Supplied Items or the Customer Environment or any other part of the Customer's Confidential Information to any third party.

36 DEFECT RECTIFICATION

APPLICATION AND INTERACTION WITH OTHER PARTS OF THE CUSTOMER CONTRACT

- 36.1 This clause 36 of these Additional Conditions sets out the general warranty and Defect rectification process for the Deliverables.
- 36.2 This clause 36 applies, subject to, the specific warranties set out in clauses 30, 31 and 32.
- 36.3 If a Defect is corrected as a result of the Contractor supplying the Services, that Defect will be corrected for the purposes of this clause 36 of these Additional Conditions.

BREACH OF SERVICE WARRANTY

- 36.4 If the Contractor breaches any warranty obligation under the Customer Contract (including under clauses 30, 31 or 32) in relation to any of the Services or Deliverables, the Customer may (in addition to any other remedies it may have at law or under the Customer Contract):
 - (a) give notice of the breach to the Contractor stating that the Customer is exercising its rights under this clause 36.4; and
 - (b) if the Contractor does not remedy the breach within 3 Business Days of receipt of the notice from the Customer, require the Contractor to supply the Deliverables or Services again at the Contractor's cost.

DEFECTS

- 36.5 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 (that is not a Service), the Contractor forms the view that there is a material risk of Deliverables supplied under the Customer Contract having a Defect, or the Customer advises the Contractor of a Defect in that 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 a reasonable period 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 warranties in the Customer Contract. The warranty period for any replaced or repaired Deliverable will not, unless otherwise specified in this Customer Contract, re-start as a result of the repair or replacement.

37 HARMFUL CODE

PROTECTION AND SCANNING

Contractor Qualification: Protection and Scanning Services, Clause 37.1 of the Additional terms: Scanning of a Customer's device surrendered or returned to the Contractor for warranty or maintenance repair or other services is not required or included as part of the warranty or technical support service provided under this Customer Contract. If required a separate Contractor Quote can be provided for this customised service.

37.1 The Contractor must, and must ensure that its Personnel:

- (a) use appropriate processes and up-to-date industry standard detection software (**Detection Software**) designed:
 - (i) to prevent the introduction of Harmful Code into, and to detect and eliminate, Harmful Code from, the Deliverables prior to their delivery to the Customer or while they are returned to the possession, custody or control of the Contractor; and
 - (ii) to prevent the introduction of Harmful Code into:
 - (A) the software or systems used by the Contractor or any of their 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 its Personnel; and
- (b) prior to supplying a Deliverable that is susceptible to Harmful Code, scan the Deliverable using the Detection Software; and
- (c) if and to the extent required in a Module Order Form, 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 Detection Software.

GENERAL OBLIGATIONS

37.2 The Contractor must not, and must ensure that its Personnel do not:

- (a) supply a Deliverable if Harmful Code has been detected in that Deliverable, until the Contractor (or member of its 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 its Personnel) is certain that the Harmful Code has been eliminated; or
- (c) 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.

REMEDY

37.3 In addition to any other rights the Customer may have under the Customer Contract, if Harmful Code is introduced into a Deliverable prior to the delivery of the Deliverables or while they are returned to the possession, custody or control of the Contractor, or any of the Customer's software or systems:

- (a) by the Contractor or any of its Personnel;
- (b) as a result of the Contractor's or any of its Personnel's negligence; or
- (c) as a result of the Contractor breaching any of its obligations under clause 37.1 or 37.2 of these Additional Conditions or any other term of the Customer Contract,

then, without limiting any other rights that the Customer may have in respect of that breach, the Contractor is liable for:

- (d) identifying and removing the Harmful Code; and
- (e) 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.

38 TERMINATION FOR FAILING TO PASS THE ACCEPTANCE TESTS

38.1 If:

- (a) a Deliverable is required to undergo Acceptance Testing in accordance with the Order Documents; and
- (b) the Customer rejects a Deliverable under clause 10.12(e) of Part 2 of the Customer Contract; and
- (c) the Contractor fails to remedy the Defect(s) within a further period of 10 Business Days (or such longer time as agreed in writing between the Customer and the Contractor),

the Customer may give the Contractor a Termination Notice for the Customer Contract to the extent it relates to any Deliverables that have not yet been delivered and paid for.

38.2 If the Customer gives the Contractor a Termination Notice under clause 38.1, the Contractor must refund all amounts paid in advance (if any) for the Deliverables the subject of the Termination Notice within 10 Business Days after the date on which the Termination Notice is given. To the extent that any Deliverables the subject of a Termination Notice have not been paid, the Customer will not be liable to pay for those Deliverables.

39 TRANSITION OUT

Contractor Qualification: No transition out assistance or service, transition out plan or transition out period is required for this Customer Contract. If required a separate commercial quote can be provided to the Customer as per clause 39 of the Additional Conditions. If required a separate commercial quote can be provided to the Customer as per clause 39 of the Additional Conditions.

TRANSITION OUT PERIOD

39.1 The Transition Out Period for a Deliverable (each a Relevant Deliverable) starts on the earlier of:

- (a) the date on which a Termination Notice is given for the Customer Contract to the extent the Termination Notice relates to that Relevant Deliverable; and

- (b) the end of the Contract Period as extended in accordance with clause 2.4 of Part 2 of the Customer Contract,

and ends on the date on which the Customer gives the Contractor a Notice in Writing stating that the Transition Out is complete.

TRANSITION OUT PLAN

39.2 Within 12 months after the Commencement Date, the Parties must negotiate in good faith to agree as quickly as possible a plan for the Transition Out (**Transition Out Plan**) including:

- (a) the steps, tasks and activities required to complete Transition Out and timetable for those steps, tasks and activities;
- (b) a resources inventory which sets out the resources required to supply the Relevant Deliverables;
- (c) the costs payable by the Customer for Transition Out (if any); and
- (d) the time at which, and circumstances in which, the Contractor will cease supplying the Relevant Deliverables.

39.3 The Contractor may not charge any amounts for preparing a Transition Out Plan.

TRANSITION OUT ASSISTANCE

39.4 During a Transition Out Period, the Contractor must:

- (a) perform all of the steps, tasks and activities allocated to the Contractor as the Contractor's responsibility in the Transition Out Plan at the times and in the manner specified in the Transition Out Plan; and
- (b) provide any other assistance, and perform all other steps, tasks and activities, required by the Customer or any nominee of the Customer (acting reasonably) to complete the Transition Out,
- (c) (Transition Out Assistance).

39.5 If the Relevant Deliverables are Services, the Contractor must cease supplying those Relevant Deliverables on the date on which the Contractor receives that Termination Notice.

39.6 If the Contractor ceases to supply a Relevant Deliverable, the Contractor is not entitled to, and must not, give the Customer a Tax Invoice for the Price to the extent it relates to those Relevant Deliverables, unless the amount relates to the period before the date on which the Contractor was required to cease supplying those Relevant Deliverables.

COSTS FOR TRANSITION OUT

39.7 The Customer is not obliged to pay any amount for the Transition Out Assistance unless required to do so under Item 46 of the General Order Form (in which case the costs will be agreed in the Transition Out Plan based on the rates set out in Item 46).

39.8 The Customer must pay for any Personnel required by the Contractor to supply the Transition Out Assistance which are in addition to the Personnel the Contractor uses to supply the Deliverables. The Price for that Transition Out Assistance will either be:

- (a) agreed and set out in the Transition Out Plan; or
- (b) calculated on a time and materials basis using rates approved by the Customer in writing up to a maximum approved by the Customer in writing.

40 ELECTRONIC COMMERCE

- 40.1 The NSW Government currently uses an eCatalogue System known as NSWBuy® for some of its electronic commerce. The Customer may use NSWBuy or any other NSW Government e Catalogue System or its own eCatalogue System to upload and maintain information about the Products and Services offered by the Contractor.
- 40.2 The Contractor agrees to provide assistance as reasonably requested by the Customer in uploading and maintaining information about the Products and Services offered by the Contractor in any eCatalogue System that the Customer may use at the Contractor's own expense.

41 EXPORT COMPLIANCE

- 40.1 Subject to clause 40.2, the Customer:
- (a) acknowledges that the Deliverables supplied under this Customer Contract, which may include technology and software, are not only subject to Commonwealth and/or State export control laws and regulations but may also be subject to the export control laws and regulations of the country from which they are received which may prohibit the sale, lease, export, re-export or any other form of transfer of the Deliverable to restricted end-users or to restricted countries and the use of those Deliverables for restricted activities (Export Controls); and
 - (b) agrees to abide by and will be responsible for their own compliance with any relevant Export Controls that apply to acts by the Customer.
- 41.1 The Contractor is responsible for compliance with any Export Controls that relate to the supply of the Deliverables to the Customer.

42 SECURITY

- 42.1 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;
 - (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.
- 42.2 Without prejudice to clause 41.1, 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.
- 42.3 If the Contractor becomes aware of an actual, alleged or suspected breach of the secrecy and security requirements referred to in clause 41.1 or 41.2 (Security Issue) it must:
- (a) immediately notify the Customer of the Security Issue;
 - (b) within 48 hours from the notification in clause 41.3(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 41.3(b) remedy the security breach and notify the Customer of the remedy.