

PROCURE IT FRAMEWORK

VERSION 3.2

PART 2: CUSTOMER CONTRACT
CW2364460 - Telematics_GPS Upgrade

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1. Recitals

PROCURE IT FRAMEWORK

- 1.1 The New South Wales Department of Finance, Services and Innovation administers the *Procure IT Framework*.
- 1.2 The Procure IT Framework sets out the standard terms used by NSW Government buyers for the acquisition of information and communications technology related products and services. Such standard terms are set out in:
 - (a) in respect of Panel Arrangements, the relevant Part 1 - Head Agreement;
 - (b) Part 2 - the Customer Contract, including its Schedules;
 - (c) Part 3 - the Dictionary;
 - (d) Part 4 - the Modules; and
 - (e) Part 5 - the Module Order Forms.
- 1.3 The NSW Procurement Board ('the Board') is established under section 164 of the *Public Works and Procurement Act 1912 (NSW)* ('PWP Act'). The Board may pursuant to section 174(1) of the PWP Act, establish a scheme under which a Government Agency accredited by the Board may procure goods and services for that Government Agency or for other Government Agencies, subject to any terms and conditions of its accreditation.
- 1.4 The Board may issue directions and policies in relation to the NSW Government's procurement system under section 175 of the PWP Act. When engaging contractors under the Procure IT Framework, Government Agencies must comply with all such directions and policies of the Board that are applicable from time to time.
- 1.5 The Contract Authority is the head of a Government Agency, which may procure goods and services for that Government Agency or for other Government Agencies consistent with any applicable policies and directions of the Board, the terms of its accreditation (if any) by the Board, and the principles of probity and fairness.
- 1.6 The relevant Contract Authority is responsible for the administration of the Head Agreement on behalf of Eligible Customers and has authority to act on behalf of these entities in this respect.
- 1.7 The *Procure IT Framework* is designed so that Products and Services can be acquired:
 - (a) as a result of a panel arrangement where an entity acts as the Contract Authority and establishes a master purchasing arrangement where one or more Contractors agree to offer certain Products and/or Services to Eligible Customers at pre-agreed Prices and on pre agreed core terms and conditions, for a defined Term (**Panel Arrangement**); or
 - (b) using an alternate procurement process that does not involve a Panel Arrangement (**Non-Panel Arrangement**).

PANEL ARRANGEMENT

- 1.8 Where the *Procure IT Framework* is used for a Panel Arrangement, the Contract Authority will undertake a procurement process and the successful Contractors will sign the Head Agreement and go onto the panel. The Head Agreement requires that all Eligible Customers

who acquire Products and Services under the Panel Arrangement acquire the Products and Services using the form of Customer Contract that is set out in the *Procure IT Framework*.

- 1.9** The Head Agreement describes the relationship between the Contract Authority and the Contractor for the administration of the Panel Arrangement, including the Products and Services that can be acquired under the Panel Arrangement, how those Products and Services can be updated during the Term, the Pricing for the Products and Services, which entities are entitled to acquire Products and Services under the Panel Arrangement, which Approved Agents can be used by the Contractor to supply the Products and Services, the Term of the Panel Arrangement, the minimum insurance requirements and any Performance Guarantee that might apply to Customer Contracts entered into under the Head Agreement, as well as the general terms and conditions applicable to the relationship.

NON-PANEL ARRANGEMENT

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

CUSTOMER CONTRACT

- 1.11** The Customer Contract describes the relationship between the Customer and the Contractor for the supply of the Products and Services that are described in the Customer Contract. Where the Customer Contract is made under a Head Agreement:

- (a) the Products and Services that can be acquired, the Prices at which they can be sold, and the degree to which the terms and conditions can be varied are limited by the terms of the Head Agreement; and
- (b) the Customer is entitled to the benefits of any arrangements that have been made by the Contract Authority under the Head Agreement in respect to insurance and any Performance Guarantee.

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

DICTIONARY

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

2. Scope of Contract

PRODUCTS AND SERVICES

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

PRICING

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

the relevant Head Agreement are the maximum amounts payable by a Customer for the Products or Services acquired during the Term of such Head Agreement, subject to any increase made in accordance with any price variation mechanism stated in Annexure 3 to the Head Agreement. Nothing in this clause 2.3 prevents:

- (a) the Contractor from charging a Customer for any item, service, expense or other thing which is permitted to be charged for under a Customer Contract; or
- (b) the Contractor and the Customer agreeing Prices which will apply to a Customer Contract which are lower than the amounts stated in Annexure 3 to the Head Agreement.

CONTRACT PERIOD

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

NOMINEE PURCHASER

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

3. Formation of Customer Contract

FORMATION

- 3.1** A Customer Contract is entered into under a Head Agreement only where the Head Agreement is cross referenced in Item 7 of the General Order Form.
- 3.2** Where the Customer Contract is entered into (and there is either a Head Agreement or the Customer is not the Contract Authority), the Contractor and the Customer:
- (a) agree that the Contract Authority may enforce the Customer Contract as agent for the Customer, even though the Contract Authority is not a party to the Customer Contract in its own right and in such circumstances, the applicable limitations and exclusions of liability in respect of the relevant claim will be those set out in clause 18 below, rather than those set out in clause 12 of the Head Agreement; and
 - (b) may seek to include any Additional Conditions that vary any of the terms and conditions of the Customer Contract including the Protected Clauses, provided that the Customer first obtains the written approval of the Secretary, New South Wales Department of Finance, Services and Innovation in accordance with the directions and policies of the Board that are applicable from time to time.

- 3.3** A Customer Contract between the Contractor and Customer is created upon
- (a) the Parties: completing and agreeing the Order Details and any Additional Conditions; and
 - (b) signing the General Order Form.
- 3.4** The Parties must, at a minimum, include in the Order Documents details of the Parties (stated in Item 1 and Item 4 of the General Order Form), Item 7 (if the Customer Contract is placed under a Head Agreement), the relevant Modules that are to be included in Item 8, the Contract Period in Item 10, the Products and Services (stated in Item 11 of the General Order Form or in the relevant Module Order Form), the Price (or such details as are required to calculate the Price including those stated in Item 11 of the General Order Form or in the relevant Module Order Form), delivery details (including those stated in Item 12 of the General Order Form), the Contract Specifications (as stated in Item 13 of the General Order Form) and any details from the Module Order Forms that are required to describe the Products or Services.
- 3.5** The Parties may use a shortened version of the General Order Form (in hard or electronic format) which omits Items that the Parties agree are not required for the Customer Contract, provided that:
- (a) the minimum Order Details stated in clause 3.4 are included in that form, as well as any other Order Details that the Parties may agree to include;
 - (b) the structure and form of the General Order Form is consistent with Schedule 1 (even if some Items are omitted. Where Items are omitted subsequent Items that are included must retain their current Item number or heading so that the references in the Procure IT Framework remain accurate);
 - (c) the document is readily identifiable as a General Order Form that comprises part of this Customer Contract and:
 - (i) uses the heading:

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

"This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form."
 - and
 - (d) the shortened document is signed by both Parties.
- 3.6** The Parties may use an electronic form of any Order Document, provided that an electronic form of the relevant Order Document is lawful and is executed by the parties by means of electronic communication in accordance with relevant Statutory Requirements.
- 3.7** To the extent that an Item in the Order Documents has not been completed or is omitted, that Item will be deemed not applicable.
- 3.8** The Customer Contract comprises:
- (a) any Modules that are stated as forming part of the Customer Contract in Item 8 of the General Order Form and the corresponding Module Order Forms;

- (b) any Schedules that are stated as forming part of the Customer Contract in Item 9 of the General Order Form other than Schedule 1 (General Order Form), Schedule 2 (Agreement Documents), Schedule 3 (Service Level Agreement) or Schedule 12 (PIPP);
- (c) any Additional Conditions in Schedule 1 (if applicable);
- (d) the other provisions of Schedule 1;
- (e) these clauses 1 to 26;
- (f) Part 3, the Dictionary;
- (g) any PIPP agreed by the Parties based on Schedule 12 (PIPP);
- (h) any Service Level Agreement agreed by the Parties based on Schedule 3 (Service Level Agreement);
- (i) all other Order Documents;
- (j) Annexure 3 to the Head Agreement (if applicable); and
- (k) the Agreement Documents (if any).

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

3.10 For clarity:

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

COMPLIANCE WITH CONSUMER LAWS

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

3.12 To the extent that there is a failure to comply with a statutory guarantee under sections 54 to 59 in Schedule 2 of the CCA in respect of Deliverables comprising of goods, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

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

- 3.13** To the extent that there is a failure to comply with a statutory guarantee in respect of the supply of Deliverables comprising of services under sections 60 to 62 in Schedule 2 of the CCA, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

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

4. Relationship

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

5. Deliverable Specific Issues

DELIVERY

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

DOCUMENTATION

- 5.4** The Contractor must provide the User Documentation and any Bespoke User Documentation to the Customer in either hard copy or electronic format. If the User Documentation is provided in hard copy format:
- (a) the Contractor must make available, at no additional cost to the Customer, at least one copy of the User Documentation and such related material as the Contractor usually makes available free to its other customers, upon supply of the Product or Service to the Customer, or at the time(s) stated in the PIPP; and
 - (b) additional copies of the User Documentation must, if requested by the Customer, be provided by the Contractor at the Price stated in Item 15 of the General Order Form, or if the Price is not stated in the Order Documents, at the Contractor's then current commercial price.
- 5.5** The Contractor must ensure that any User Documentation and Bespoke User Documentation:
- (a) is of a reasonable standard in terms of its presentation, accuracy and scope;
 - (b) provides an explanation of functions, capacity and operations of the relevant Product, Service or Deliverable;
 - (c) in the case of User Documentation only, is the most current and up-to-date version available; and

(d) is in the English language.

- 5.6** Where the Customer identifies any Defect in the User Documentation or Bespoke User Documentation within 30 days of the date of supply of the User Documentation or Bespoke User Documentation to the Customer, the Contractor must amend the defective User Documentation or Bespoke User Documentation and must promptly supply to the Customer the amended User Documentation or Bespoke User Documentation (or the relevant part) at no additional cost to the Customer.
- 5.7** The Contractor grants the Customer a right to use the User Documentation in connection with the authorised use of the Product or Service including for training purposes. Where the User Documentation is only provided in an electronic format the Customer may print ad hoc pages of the User Documentation. The Customer must not otherwise copy or adapt (including incorporating parts of the User Documentation into other Documents) without the Contractor's prior written consent (not to be unreasonably withheld).

NORMAL USE

- 5.8** Except where expressly specified in the Order Documents or any Additional Conditions, for the purposes of the CCA, the Deliverables provided under this Customer Contract are ordinarily supplied for the use in connection with processing internal data for business applications which:
- (a) do not require very high levels of availability or completely error free use;
 - (b) are not used for a Prescribed Use;
 - (c) are not for resale.

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

PRODUCT SAFETY

- 5.9** If the Contractor determines that a Deliverable requires an engineering change that is classified by the supplier or manufacturer as being mandatory in order to ensure product safety then:
- (a) the Contractor will, at its own cost, provide a 'user installable part' which the Customer must promptly install; or
 - (b) the Customer will allow the Contractor to Install the engineering change, at the Contractor's own cost.
- 5.10** The Customer agrees that:
- (a) the Contractor may maintain such information (including Personal Information) as may be required to assist the Contractor in complying with its obligations under the CCA or other law in respect of product safety, including product recall; and
 - (b) it will promptly give the Contractor Notice in Writing of any information that the Contractor may need in order for the Contractor to provide any notice relating to product safety that it may be required to provide under the CCA or other law.

SYSTEM

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



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

6. Delivery Management

PROJECT MANAGEMENT

- 6.1 Where the Customer Contract is made under a Head Agreement, the Customer shall have the right to appoint a representative of the Contract Authority to act as the Customer's agent for the purpose of exercising any of the Customer's rights arising out of, or in connection with, the Customer Contract.
- 6.2 The following clauses 6.3 to 6.9 apply if and to the extent stated in the Order Documents.

MANAGEMENT COMMITTEE

- 6.3 If it is stated on the General Order Form that a management committee is to be established, the Parties must agree and establish a management committee and a process for the conduct of the management committee's business by the date stated in the Order Documents.
- 6.4 The management committee must consist of the Party's project managers or officers, or such other persons as stated in the Order Documents including Item 16 of the General Order Form.
- 6.5 All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Customer Contract.
- 6.6 The management committee must:
 - (a) review and monitor progress under the Customer Contract; and
 - (b) carry out any other functions stated in Item 16 of the General Order Form.
- 6.7 Unless agreed otherwise, the members of the management committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time.
- 6.8 At least 1 Business Day prior to a management committee meeting, the Contractor's project manager must submit to the Customer's project manager a report of progress under the Customer Contract including:
 - (a) details (including dates) of Deliverables and Milestones commenced, completed or accepted;

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

- 6.9** If the Customer disagrees with the details recorded in the report, then the Customer must, within 2 Business Days of receipt of the report, make a written endorsement on the report recording its version of the details. The amended report must be provided to the Contractor within 1 Business Day of the Customer updating the report.

PERFORMANCE REVIEWS

- 6.10** If it is stated in Item 17 of the General Order Form that the Parties must conduct a service and performance review of the Contractor's performance of the Customer Contract, then the Parties must conduct such reviews at the intervals and in accordance with the other requirements, including any obligations under any Service Level Agreement, stated in the Order Documents.
- 6.11** All reviews must be undertaken by representatives of both Parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review. Where the Customer Contract is made under a Head Agreement, either Party may request the involvement of the Contract Authority in any review.

SITE SPECIFICATIONS

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



IMPLEMENTATION PLANNING STUDY

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

PROJECT SCHEDULE

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

CHANGE CONTROL

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

STAGED IMPLEMENTATION

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



EXTENSION OF TIME

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

LIQUIDATED DAMAGES

- 6.28** Where the Parties have agreed in Item 21 of the General Order Form that liquidated damages will be payable for the late completion of an LD Obligation, clauses 6.29 to 6.34 apply.
- 6.29** Where the Contractor has not completed an LD Obligation by the Due Date, or if the Due Date has been varied by a Change Request or otherwise in accordance with the Customer Contract, such varied Due Date, the Contractor must pay liquidated damages stated in Item 21 of the General Order Form to the Customer unless the late completion of the LD Obligation is:
- (a) caused by a Force Majeure Event;
 - (b) caused by the Customer or its Personnel;
 - (c) caused by the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
 - (d) permitted because an extension of time for completion of the LD Obligation has been granted by the Customer in accordance with the Customer Contract.
- 6.30** The Customer must promptly give the Contractor Notice in Writing setting out the grounds on which the Customer claims that liquidated damages are payable.



- 6.31** Each Party acknowledges that the liquidated damages stated in Item 21 of the General Order Form are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 6.32 as a result of the Contractor not completing the LD Obligation by the Due Date.
- 6.32** The Contractor must pay any liquidated damages that are due from the Due Date until the earlier of:
- (a) the date that the Contractor successfully completes the LD Obligation in relation to which the liquidated damages have been applied; or
 - (b) the date on which the maximum number of days for which liquidated damages are payable as stated in Item 21 of the General Order Form have elapsed (the **Longstop Date**).
- 6.33** Liquidated damages paid under clause 6.32:
- (a) are the Customer's sole and exclusive financial remedy for the loss, damage and expense that the Customer suffers during the period in which liquidated damages are payable under clause 6.32 out of or in connection with the Contractor not completing the LD Obligation by the Due Date, subject only to the Customer's rights under clause 6.34; but
 - (b) do not relieve the Contractor from any other liability or from meeting any other obligation under the Customer Contract.
- 6.34** The Customer may, at any time during the period in which liquidated damages are payable under clause 6.32, issue a Notice in Writing of a Substantial Breach in respect of the Contractor not completing the LD Obligation by the Due Date specifying a period during which the Contractor is required to remedy that Substantial Breach, such period to be the greater of:
- (a) 10 Business Days;
 - (b) the period during which liquidated damages are payable for that Substantial Breach; or
 - (c) such longer period stated in the Notice in Writing,
 - (d) and if the Contractor has not remedied that failure to complete the LD Obligation (by completing the LD Obligation) by the end of such period, the Customer may terminate the Customer Contract immediately by Notice in Writing to the Contractor.
- 6.35** The Parties agree that where the Contractor has not successfully completed the LD Obligation in relation to which the liquidated damages have been applied by the Longstop Date, the payment of liquidated damages by the Contractor under clause 6.32 is without prejudice to the Customer's right to claim damages at large in respect of loss, damage or expense that arise after the Longstop Date out of or in connection with the Contractor not completing the LD Obligation by the Longstop Date.

CUSTOMER SUPPLIED ITEMS (CSI)

- 6.36** The Customer must provide and maintain the CSI at the times and in accordance with the requirements stated in the Order Documents including Item 22 of the General Order Form.
- 6.37** The Customer must enforce any agreement with a third party under which products or services of that third party are being provided to the Contractor as CSI (**Third Party CSI**), including support and maintenance contracts, to the extent that the relevant third party's failure to provide or resolve any issues with the Third Party CSI materially impacts the Contractor's ability to perform its obligations under the relevant Customer Contract.



6.38 The Contractor must:

- (a) not use any CSI other than for the purposes of the Customer Contract without the prior written consent of the Customer;
- (b) not part with possession of any CSI unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any CSI;
- (c) take all reasonable care of all CSI including accounting for, preserving, installing or handling the CSI in accordance with the Order Documents;
- (d) not modify any CSI without the prior written consent of the Customer;
- (e) promptly inform the Customer of any loss, destruction or damage to any CSI;
- (f) comply with any reasonable instruction of the Customer for preserving, forwarding or disposal of any damaged CSI; and
- (g) pay the costs, if any, stated in Item 22 of the General Order Form, for CSI.

6.39 If the CSI is no longer required for the purposes of the Customer Contract, it must be returned to the Customer or destroyed at the Customer's request as soon as practicable, unless other arrangements are agreed.**6.40** Provided the Contractor complies with its obligations under clauses 6.38(c) to 6.38(f), the Customer must repair or replace CSI within a reasonable time of becoming aware that the CSI does not comply with the requirements stated in the Order Documents.**CUSTOMER ASSISTANCE****6.41** During the Contract Period, the Customer must:

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

ESCROW**6.42** If stated in Item 23 of the General Order Form, the Contractor must arrange:

- (a) for itself, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement (or such other document reasonably acceptable to the Customer) in relation to the Escrow Materials; or
- (b) for the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.

6.43 Any escrow arrangements to which the Customer becomes a Party under clause 6.42 must endure for at least the period stated in Item 23 of the General Order Form unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in the Escrow Agreement.**6.44** The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under clauses 6.42.


BUSINESS CONTINGENCY

- 6.45** If stated in Item 24 of the General Order Form that a Business Contingency Plan is required, the Contractor must, within the time stated in Item 24 of the General Order Form or as otherwise agreed in writing, prepare a Business Contingency Plan for the approval of the Customer.
- 6.46** The Business Contingency Plan must include the details stated in Item 24 of the General Order Form or as otherwise agreed in writing. The Contractor must provide the Customer with a copy of the approved Business Contingency Plan within 30 days of the Commencement Date or such other period agreed by the Parties in writing.
- 6.47** The Business Contingency Plan must be reviewed, updated and tested by the Contractor at the intervals stated in Item 24 of the General Order Form.
- 6.48** If there is an interruption to the Customer's business that is contemplated by the Business Contingency Plan the Contractor must perform the obligations in the Business Contingency Plan. The Customer must provide the Contractor with any assistance reasonably required by the Contractor to create and perform the Business Contingency Plan.

7. Access

ACCESS TO CUSTOMER'S SITE

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

CUSTOMER DATA

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



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

SECURITY

- 7.10** The Contractor must:
- (a) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised access, use, destruction, loss or alteration of Customer Data and the Customer's other Confidential Information; and
 - (b) notify and keep the Customer notified at all times of the Contractor's current safety and security procedures and safeguards in respect of Customer Data and keep the Customer notified of any amendments to such procedures and safeguards that are made from time to time.
- 7.11** Without prejudice to clause 7.10, the Contractor must comply, and must ensure that its Personnel comply, with the secrecy and security requirements of the Customer as stated in Item 25 of the General Order Form, or of which the Customer subsequently provides the Contractor by written notice.
- 7.12** Unless approved by the Customer's Chief Information Officer and expressly agreed in the General Order Form, if the Contractor becomes aware of an actual, alleged or suspected breach of the secrecy and security requirements referred to in clause 7.10 or 7.11 (**Security Issue**), it must:
- (a) immediately notify the Customer of the Security Issue;
 - (b) within 48 hours from the notification in clause 7.12(a) conduct an investigation into the Security Issue and notify the Customer of the Contractor's findings in respect of whether a secrecy or security breach has occurred, the nature of the breach, its consequences and plan to remedy; and
 - (c) if a secrecy or security breach has occurred, within 24 hours from the conclusion of the investigation in clause 7.12(b) remedy the security breach and notify the Customer of the remedy.

8. Personnel

PERSONNEL - GENERAL

- 8.1** Neither Party may, without the prior written consent of the other Party, engage, employ or induce or cause a third party to induce the other Party's Personnel engaged in the

performance of the Customer Contract to enter into a contract for service or a contract of employment with it.

- 8.2** The restriction in clause 8.1 shall apply during the Contract Period and for a period of six months after the end of the Contract Period.
- 8.3** A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 8.1.
- 8.4** The Parties agree that the restrictions in clauses 8.1 to 8.3 are necessary to protect the legitimate interests of each Party.
- 8.5** The Customer must make available its Personnel to work with the Contractor as stated in the Order Documents including Item 26 of the General Order Form. The Parties will identify such Personnel and their roles in the Order Documents.
- 8.6** The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Contractor have the requisite authority, qualifications, competencies, skills and experience to perform their tasks.
- 8.7** The Contractor must ensure a safe system of work for any of the Customer's Personnel who the Customer makes available to perform work under the control and direction of the Contractor at the Contractor's premises.

SPECIFIED PERSONNEL

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

APPROVED AGENTS AND SUBCONTRACTORS

- 8.10** The Contractor may supply Deliverables to the Customer through Approved Agents.
- 8.11** If a Customer Contract is entered into between the Customer and an Approved Agent, the Contractor is deemed to have entered into a Customer Contract with the Customer.
- 8.12** The Contractor must ensure that its Approved Agents supply the Deliverables only in accordance with the terms of the Customer Contract under which the Approved Agent is to supply the Deliverables.
- 8.13** If requested in writing by the Customer, the Contractor must arrange for its Approved Agents to execute a Deed Poll substantially in the form of Schedule 6 – Deed Poll.
- 8.14** The Contractor must not subcontract the performance or supply of any Services under the Customer Contract without obtaining the prior written consent of the Customer which will not be unreasonably withheld or delayed and which may be given on such conditions as the Customer thinks fit.
- 8.15** Where the Customer believes that any Subcontractor is in breach of its obligations to the Contractor, or its performance of obligations or services is unsatisfactory, so that the Contractor is likely to be in breach of the Customer Contract as a result, the Customer may:

- (a) provide Notice in Writing to the Contractor setting out the details of its concerns;
- (b) require the Contractor to meet with the Customer within 3 Business Days of the Contractor's receipt of the Notice in Writing to discuss the concerns; and
- (c) if, following the discussions with the Contractor, the Customer is satisfied that the Contractor will be in breach of the Customer Contract as a result of the performance of the Subcontractor, the Customer may give Notice in Writing that it is withdrawing its consent to allow the Subcontractor to continue to work in connection with the Customer Contract and require the Contractor to procure that the Subcontractor promptly ceases performing any work in connection with the Customer Contract subject to any contrary requirements of the Customer in respect of effecting an orderly transition notified to the Contractor, and in such circumstances, the Contractor agrees that the Customer will have no liability whatsoever to the Contractor for any loss, damage or expense suffered by the Contractor arising out of any termination of, or the continuation of, the relevant subcontract.

8.16 The Contractor:

- (a) must ensure that each Subcontractor is aware of all the terms and conditions of the Customer Contract that are relevant to the Subcontractor's performance of its work;
- (b) is not relieved of its liabilities and obligations arising out of, or in connection with, a Customer Contract by subcontracting any work; and
- (c) must ensure that the Subcontractor ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 8.15(c).

8.17 If stated in Item 28 of the General Order Form, the Contractor must obtain from the Subcontractor a signed statutory declaration substantially in the form of Schedule 7 – Statutory Declaration – Subcontractor.

9. General Warranties

CONTRACTOR WARRANTIES

9.1 The Contractor warrants to the Customer that:

- (a) as at the Commencement Date, the Contractor is properly constituted and has the right and authority to enter into the Customer Contract;
- (b) to the best of its knowledge and belief there is no Conflict of Interest of the Contractor or its Personnel as at the Commencement Date, and during the Contract Period the Contractor will use its reasonable efforts not to permit a Conflict of Interest of the Contractor or its Personnel to arise in the performance of its obligations;
- (c) the information provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel, was to the best of the Contractor's knowledge and belief correct when it was provided to the Customer;
- (d) as at the Commencement Date, to the best of its knowledge and belief the Contractor has all the necessary licences, approvals and consents necessary to perform its obligations under the Customer Contract;
- (e) it will not maliciously or negligently introduce any Virus into the Customer's systems during the Contract Period;



- (f) that to the best of its knowledge and belief, the Contractor has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Customer the rights to use and/or own (if applicable) the Deliverables in accordance with the Customer Contract;
 - (g) it will perform its obligations in accordance with:
 - (i) the Statutory Requirements,
 - (ii) any other laws that are stated in Item 30 of the General Order Form;
 - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iv) the codes, policies, guidelines and standards listed in Item 8 of the Head Agreement Details and Item 30 of the General Order Form;
 - (h) it will maintain the quality standard accreditation stated in Item 29 of the General Order Form during the Contract Period; and
 - (i) it is responsible for the acts and omissions of its Personnel as if they were its own acts and omissions.
- 9.2** All licences, approvals and consents obtained by the Contractor in relation to the Customer Contract must be obtained at the Contractor's cost.
- 9.3** If stated in the General Order Form that the Products and Services procured by the Customer pursuant to this Customer Contract comprise a System:
- (a) subject to clauses 3.11 to 3.13 (inclusive), any qualifications to the warranties provided by the Contractor under the Modules in respect of the Products and Services comprising the System are excluded; and
 - (b) the Contractor warrants to the Customer that to the best of its knowledge and belief:
 - (i) the System will comply with the Contract Specifications and the Customer Contract;
 - (ii) the System will be properly installed in a professional and competent manner;
 - (iii) each Deliverable comprising the System will be compatible, interoperable and integrate properly with each other Deliverable comprising the System; and
 - (iv) the System will be compatible, interoperable and integrate properly with the Designated Environment.

CUSTOMER WARRANTIES

- 9.4** The Customer warrants to the Contractor that:
- (a) it has complied with all laws and policies, including procurement policies in awarding the Customer Contract to the Contractor;
 - (b) it will provide the Contractor and its Personnel with a safe place to work;
 - (c) it will supply any CSI in accordance with the requirements stated in the Order Documents;



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

MUTUAL WARRANTIES

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

- (a) co-operate with the other Party and its respective Personnel to ensure timely progress and fulfilment of the Customer Contract, provided that nothing in this clause 9.5 requires the disclosure of a Party's Confidential Information or granting of any Intellectual Property Rights;
- (b) act reasonably and in good faith with respect to matters that arise out of, or in connection with, the Customer Contract;
- (c) work together in a collaborative manner;
- (d) to the extent that is reasonably possible, perform its obligations so as to avoid hindering the performance of the other Party;
- (e) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other Party on a regular basis to ensure the other Party is fully informed of the progress of work required under the Customer Contract; and
- (f) perform its obligations and responsibilities by the dates stated in the Customer Contract.

10. Acceptance

ACCEPTANCE

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



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

ACCEPTANCE TESTING

- 10.2** Where it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, Acceptance Tests must be conducted in relation to the Deliverable and the following provisions in clauses 10.3 to 10.16 will apply.

CONDUCTING ACCEPTANCE TESTS

- 10.3** Acceptance Testing must be completed in accordance with the requirements of the Order Documents including Item 32 of the General Order Form, or if the details of the Acceptance Tests are not stated in the Order Documents, then at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree) the Parties must agree:
- (a) the identification of the Deliverables or part of the Deliverable to be tested;
 - (b) the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests;
 - (c) which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use;
 - (d) the methodology and process for conducting the Acceptance Tests;
 - (e) the scheduling of Acceptance Tests, including the Acceptance Test Period and the Acceptance Test Notification Period;
 - (f) the Acceptance Criteria. The Acceptance Criteria should only test whether the Deliverable meets the Contract Specifications and other requirements of the Customer Contract and should not include any other criteria unless the Parties otherwise agree in writing; and
 - (g) the Acceptance Test Data. The Customer is responsible for ensuring that the Acceptance Test Data is representative of the data that will be used by the Deliverable in the Customer's business or production environment.
 - (h) Where the details of the Acceptance Tests are not stated in the Order Documents, the Contractor shall, not less than 60 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree), notify the Customer that details of the Acceptance Tests (including those in (a) to (g) above have not yet been agreed and must be agreed at least 20 Business Days before the relevant Deliverable is



due to be delivered (or such other period as the Parties may agree). Any failure of the Parties to agree any matter relating to the Acceptance Tests will be dealt with in accordance with clause 24 below, and the 20 Business Days requirement referred to above will not apply.

10.4 To the extent that:

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

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

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

10.5 Where the Contractor is conducting the Acceptance Tests, the Customer's representative must be available during Business Hours on each day during the Acceptance Test Period to give any assistance and/or information reasonably requested by the Contractor.

10.6 Each Party must provide all reasonable cooperation and assistance to enable the performance of any Acceptance Tests.

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

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

- (a) a written summary of the Acceptance Tests;
- (b) the results achieved from those Acceptance Tests; and
- (c) a Defects List (if there are any Defects).

ACCEPTANCE TEST OUTCOMES

10.9 Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable meets the Contract Specifications and other requirements under the Customer Contract, the Customer must issue a certificate of acceptance to the Contractor within the Acceptance Test Notification Period.

10.10 Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable does not meet the Contract Specifications and other requirements under the Customer Contract then, if the Defects are only Minor the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:

- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
- (b) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer; or



- (c) accepts the Deliverable subject to an agreed reduction in the Contract Price.

10.11 Where the Customer conditionally accepts the Deliverable in accordance with clause 10.10(b) then:

- (a) the AAD occurs on the date that the Customer gives written notice that it conditionally accepts the Deliverable; and
- (b) the Customer may use the Deliverable in a business or production environment from the AAD.

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

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

10.13 The Deliverables are deemed accepted if:

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



- 10.14** Where the Acceptance Test relates to a Deliverable that is a Document, it is not a failure to provide the Document in accordance with the Contract Specifications and the other requirements of the Customer Contract where the Customer requests a change to:
- (a) any opinion expressed in the Document, provided that the opinion expressed in the Document is the professional opinion held by the Contractor;
 - (b) the style, formatting or layout of the Document, unless the style, formatting or layout is part of the Contract Specifications; or
 - (c) semantics.
- 10.15** The Warranty Period (if any) of a Deliverable commences on the AAD of that Deliverable.
- 10.16** In the event of power failure, air-conditioning failure or other cause outside the control of the Contractor:
- (a) the Customer must approve an extension of the Acceptance Test Period to accommodate any delays caused directly as a result of those circumstances; and
 - (b) the Contractor must ensure that the Deliverable is ready to resume or recommence Acceptance Tests when conditions are again satisfactory and stable.

11. Payment and Invoicing

PAYMENT

- 11.1** In consideration for the Contractor providing a Deliverable in accordance with the Customer Contract, the Customer must pay the Contractor the Contract Price in the amounts and at the times stated in the Order Documents (including the PIPP) and/or Item 14 of the General Order Form. If the time for payment is not stated in the Order Documents and/or Item 14 of the General Order Form, then the Contract Price is due:
- (a) on AAD for Products;
 - (b) monthly in arrears for Recurring Services, other than Services provided under Modules 2 and 5;
 - (c) annually in advance for Services provided under Modules 2 and/or 5.
- 11.2** The Prices are fixed for the Contract Period, unless otherwise stated in the Order Documents including Item 14 of the General Order Form.
- 11.3** A Customer may pay any amount due under the Customer Contract by credit/debit card or electronic facility stated in Item 33 of the General Order Form. The Contractor may only charge a fee for payment by credit/debit card where the fee is stated in Item 33 of the General Order Form.
- 11.4** Without prejudice to the Customer's other rights and remedies, if the Contractor refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Customer Contract, the Customer may withhold the payment associated with that failure until the Contractor performs the relevant obligation in accordance with the Customer Contract.
- 11.5** The Customer may retain a proportion of the payment for any Milestones in the amount and for the period stated in the PIPP for the due and proper performance and completion of the Contractor's delivery obligations under the Customer Contract incurred prior to the end of the Warranty Period or a period otherwise stated in the PIPP.



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

INVOICING

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

12. Taxes

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

13. Intellectual Property Rights

OWNERSHIP

- 13.1** All Intellectual Property Rights in:



- (a) any Existing Material remain vested in the person that owns the Intellectual Property Rights at the Commencement Date (**Owner**); and
- (b) any adaptation, translation or derivative of that Existing Material, vests in, or, is hereby transferred or assigned to the Owner, immediately upon creation.

CONTRACTOR OWNED NEW MATERIAL

- 13.2** The provisions of clauses 13.3 to 13.5 apply to New Material, unless clause 13.11 applies.
- 13.3** All Intellectual Property Rights in any New Material vest in, or, are hereby transferred or assigned to, the Contractor, immediately upon creation.
- 13.4** On the AAD of a Deliverable that incorporates the relevant New Material, the Contractor grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable licence to use, copy, adapt, translate, reproduce and in any way exploit that New Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated, subject to the restrictions set out in clause 13.5.
- 13.5** The licence to New Material in clause 13.4:
- (a) does not permit the Customer to disclose the New Material to any other person, except as stated in clauses 13.5(c) to (e);
 - (b) does not permit the Customer to manufacture, sell, license, transfer, commercialise or otherwise exploit any of the New Material or any Existing Material except as stated in clauses 13.5(c) to (e);
 - (c) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge to any "Public Service agency" or other "government sector agency" (as defined in the *Government Sector Employment Act 2013* (NSW)), any NSW Government agency or statutory body representing the Crown (as referenced in section 13A of the *Interpretation Act 1987* (NSW)), any other public authority that is constituted by or under an Act of the State of New South Wales or that exercises public functions, and any "public health organisation" (as defined in the *Health Services Act 1997* (NSW));
 - (d) permits the Customer's subcontractors to access the New Material, without additional charge, for the internal purposes of the Customer provided that, unless otherwise required by the Contractor, the Customer's subcontractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract; and
 - (e) permits the Customer to sublicense any of the rights in clause 13.4, without additional charge, to a contractor that is providing outsource services to the Customer that include the operation of the New Material, provided that:
 - (i) the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; and
 - (ii) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract.



EXISTING MATERIAL

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

CUSTOMER OWNED NEW MATERIAL

- 13.11** If it is stated on the General Order Form that this clause applies to some or all of the New Materials and subject to clauses 13.13 to 13.15, upon the AAD of the relevant Deliverable that incorporates the New Material:
- (a) any Intellectual Property Rights in the New Material vest in, or are hereby transferred or assigned by the Contractor to, the Customer; and

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

CUSTOMER MATERIAL

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

KNOW HOW ETC

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

OPEN SOURCE LICENCE

- 13.14** The Contractor must not, without the prior written consent of the Customer:
- (a) develop or enhance any Deliverable using Open Source Software; or
 - (b) insert any Open Source Software into any Deliverable.
- 13.15** Where the Customer provides its consent in relation to the use of any Open Source Software under clause 13.14(a) the Contractor will ensure that the use of that Open Source Software will not:
- (a) result in an obligation to disclose, license or otherwise make available any part of the Customer's environment, data or Confidential Information to any third party; or
 - (b) diminish the Contractor's obligations under this Customer Contract.

14. Confidentiality

- 14.1** Except to the extent necessary to comply with any Statutory Requirement or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with the Customer Contract, unless the other Party gives its prior written consent.
- 14.2** Each Party may disclose the Confidential Information of the other Party:



- (a) to the Contract Authority;
- (b) Secretary, New South Wales Department of Finance, Services and Innovation and to that Department's Personnel;
- (c) to its Personnel where the disclosure is essential to enable them to carry out their duties in connection with the Customer Contract or any Head Agreement;
- (d) to its Personnel, Related Companies and their directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the Party's performance under, the Customer Contract or any Head Agreement in circumstances where such persons have a need to know (and only to the extent that each has a need to know and has been directed and agrees to keep confidential the Confidential Information on terms not inconsistent with this Customer Contract); or
- (e) if the receiving Party is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.

14.3 Each Party must ensure that any Confidential Information of the other Party is used solely for the purposes permitted under clause 14.2.

14.4 The Customer may at any time require the Contractor to arrange for its Subcontractors to execute without delay a Deed of Confidentiality between the Customer and the Subcontractor substantially in the form of Schedule 8 – Deed of Confidentiality.

15. Privacy

15.1 The Contractor must when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under this Customer Contract:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with the Customer Contract only for the purposes of performing its obligations under this Customer Contract;
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (c) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Customer, would be a breach of any Privacy Laws;
- (d) not disclose Personal Information to any other person without the prior written consent of the Customer or as expressly required by Statutory Requirements;
- (e) notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 15.1, whether by the Contractor, its Approved Agents or their Personnel, and comply with any reasonable direction from the Customer with respect to remedying that breach;
- (f) notify any individual that makes a complaint to the Contractor regarding the Contractor's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (g) comply with all reasonable directions of the Customer in relation to the care and protection of Personal Information held in connection with the Customer Contract or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably within the Contractor's



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

- (h) not allow, or permit access to, or transfer any Personal Information that belongs to the Customer, has been provided by the Customer or has been collected, accessed or used by the Contractor with the consent of the Customer, outside of Australia, unless it has first obtained the Customer's approval in writing or as specified in Item 25B of the General Order Form;
- (i) ensure that any of the Contractor's Personnel who are required to deal with the Personal Information for the purposes of the Customer Contract are made aware of the obligations of the Contractor under this clause 15.1; and
- (j) ensure that any agreement with any Approved Agent or Subcontractor who may be fulfilling a requirement in relation to the Customer Contract which includes the handling of Personal Information contains substantially the same or equivalent obligations to this clause 15.1 which are enforceable by the Contractor against the Approved Agent or the Subcontractor, as applicable.

16. Insurance

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

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

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

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

16.3 If the Customer Contract is for the provision of Services, the Contractor must hold and maintain, or be an insured under, one or more insurance policies that include professional indemnity or errors and omissions insurance that provide indemnity cover of at least the amount of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. The Contractor must maintain the coverage required under this clause 16.3 during the Contract Period and until the date that is 4 years from the last day of the Contract Period.

16.4 The insurance policies in clauses 16.1(a), 16.1(b) and 16.3 must include cover for the Contractor's liability for the acts and omissions of the Contractor's subcontractors to the same extent as if they were the acts and omissions of the Contractor.

16.5 All policies of insurance must be entered into with an insurer which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced, or for workers' compensation insurance the insurer (including any self-insurance) must be authorised by law.



- 16.6** The Contractor must within 30 days of the start of the Contract Period or of a request in writing from the Customer provide the Customer with a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all the insurance policies required by the Customer Contract are current and that the insurance has the required limits of cover. Where the Contractor is insured under a Related Company's insurance policy, the certificate of currency must also show that the insurance policy includes the Contractor as an insured.
- 16.7** The Contractor agrees to hold, maintain or be an insured under, any additional insurance stated in Item 36 of the General Order Form.
- 16.8** Where the Contractor does not wish to hold and maintain, or be an insured under, insurance required by clauses 16.1 to 16.5, or does not wish to enter into one or more of those insurance policies with an insurer of the type required by clause 16.5, the Contractor may make application to the Customer to be exempted from the provisions of clauses 16.1 to 16.6. Such application must be supported by such documentation as may be required by the Customer, (including the Contractor's financial records (limited to publicly available financial records where a Contractor or any of its Related Companies is publicly traded)). The Customer may accept, conditionally accept or reject the Contractor's application. The Customer must provide the Contractor with written notice within 30 days of receipt of the Contractor's application of the Customer determination under this clause 16.8, and in absence of receipt of such written notice, the Contractor's application is deemed accepted by the Customer.
- 16.9** Where the Customer Contract is entered into under a Head Agreement:
- (a) the Customer cannot grant the Contractor consent to be exempt from any insurance requirements required under the Head Agreement;
 - (b) if the Contractor has obtained the consent of the Contract Authority and the Secretary, New South Wales Department of Finance, Services and Innovation to be exempt from any insurance requirements under any Head Agreement, then the Customer must accept the Contractor's application for an application for any similar exemption under the Customer Contract.
- 16.10** The effecting of insurance does not limit or expand the liabilities or obligations of the Contractor under the other provisions of the Customer Contract.

17. Guarantees

PERFORMANCE GUARANTEES

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



- (b) the Customer Contract is entered into under a Head Agreement but the Contractor has not provided a Performance Guarantee under that Head Agreement,

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

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

FINANCIAL SECURITY

- 17.4** Where it is agreed in Item 38 of the General Order Form, the Contractor must provide a Financial Security in the amount stated in Item 38 of the General Order Form substantially in the form of the agreement stated in Schedule 10 – Financial Security, or in the standard form that is usually provided by the issuing entity. The Contractor must, following such a request, ensure that the Financial Security is provided within 14 days of the Commencement Date, or such other period as agreed in Item 38 of the General Order Form.
- 17.5** The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under the Customer Contract.
- 17.6** The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Customer.
- 17.7** If the Contractor fails to properly perform and complete its obligations under the Customer Contract, and the Customer suffers loss, damage or expense arising from, or in connection with, such failure by the Contractor, the Customer may deduct its loss, damage or expense (in so far as those losses, damages and expenses may be payable by the Contractor taking into account the terms and conditions of the Customer Contract, including the provisions of clause 18) from the Financial Security.
- 17.8** The Contractor agrees that the Customer will have no liability for any loss, damage or expense suffered or incurred by the Contractor where the Customer exercises its rights in accordance with clause 17.7 in good faith.
- 17.9** Upon performance of part of the Customer Contract in accordance with its terms, the Contractor may request the Customer to consent to the discharge of the Financial Security provided under the Customer Contract and the substitution of another Financial Security in substantially the same form but for a lesser maximum aggregate sum. The Customer must not unreasonably withhold its consent to the substitution where the part performance of the Customer Contract has proportionately reduced the risk for which the Financial Security was originally provided.
- 17.10** The Financial Security will end on the sooner of:
- (a) the date when payment is made by the Issuer up to the maximum amount required under the Financial Security;



- (b) one year from the date that the last Deliverable under the Customer Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Customer Contract;
 - (c) the date the Customer and Contractor agree in writing to release the Issuer; or
 - (d) the date the Customer notifies the Issuer that the Financial Security is no longer required.
- 17.11** The Customer must reimburse the Contractor for any reasonable costs it incurs, including the fees payable to the Issuer, in connection with providing the Financial Security. These costs and fees must be reimbursed to the Contractor within 30 days of the Contractor providing a Correctly Rendered Invoice for the costs and fees.

18. Liability

- 18.1** To the extent permitted by law, and subject to clauses 3.12, 3.13, and 18.2 to 18.7, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out of, or in connection with, the Customer Contract shall not exceed in aggregate for all claims that arise out of, or in connection with, the Customer Contract, the greater of:
- (a) \$100,000; or
 - (b) in respect of claims that arise from:
 - (i) a Non-Recurring Service or Product; two times the Contract Value for the Non-Recurring Service or Product;
 - (ii) a Short Term Recurring Service; the Contract Value for the Short Term Recurring Service;
 - (iii) a Recurring Service other than a Short Term Recurring Service;
 - (A) if the claim arose after the Recurring Service had been provided for 12 months; the amount paid or unpaid but due and outstanding, for the Recurring Service for the 12 months prior to the date that the claim first arose; or
 - (B) if the claim arose prior to the Contractor providing 12 months of Recurring Services; the amount that is 12 times the average monthly amount that was paid or unpaid but due and outstanding for the Recurring Service prior to the date on which the claim first arose; or
 - (iv) a System, two times the Contract Value for the Non-Recurring Service or Product comprising the System.
- 18.2** In all cases, any refund of monies, payment of liquidated damages, or payment of any fees, rebates, credits, damages, losses, expenses, (including third party costs incurred and paid by the Contractor if a third party is engaged by the Customer to remedy a breach by the Contractor in accordance with the Customer Contract), liabilities or any other amounts that are stated as being payable by the Contractor in respect of any breach of the Customer Contract or under an indemnity, are included in determining whether the limitation of liability has been reached.
- 18.3** If the Customer Contract is for the supply of any Deliverables:



- (a) where the Contract Price under the Customer Contract is greater than \$20,000,000; or
 - (b) where the Customer Contract is for Deliverables that are to be used for a Prescribed Use,
- the Parties must discuss and agree an alternative cap of liability in Item 39 of the General Order Form.

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

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

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

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

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

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

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

19. Indemnities

CONTRACTOR INDEMNITY

19.1 The Contractor must indemnify and hold harmless the Customer, its officers and employees against any loss or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) to the extent it:

- (a) arises out of or in connection with the Contractor's breach of any privacy obligations under or pursuant to clause 15.1;
- (b) is the result of a claim against the Customer, its officers or employees made by a third party arising out of or in connection with a malicious or negligent act or omission of the Contractor, its directors, officers, employees, agents and subcontractors in the performance of the Contractor's obligations to the Customer under the Customer Contract; or



- (c) is the result of a claim against the Customer, its officers or employees made by a third party that the use of the Deliverable in accordance with the Customer Contract infringes any Intellectual Property Rights, including the Moral Rights, of the third party claimant, that are enforceable in Australia (**IP Claim**).
- 19.2** The Customer must promptly, and in any event within 5 Business Days of being notified of a claim for which it is seeking an indemnity under clause 19.1(b) or 19.1(c), provide the Contractor with Notice in Writing of the details of the claim. The Customer must (unless there is any government policy that prohibits the Contractor from handling the process for the settlement of the claim) permit the Contractor, at the Contractor's expense, to handle the process for the settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c) (including selecting solicitors and counsel), subject to the Contractor agreeing to comply at all times with the government policy relevant to the conduct of the litigation.
- 19.3** If the Customer does not permit the Contractor to handle the process for the settlement of such claim under clause 19.2 and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c), then the Customer must promptly and fully defend the claim (whilst complying with government policy), and not settle the claim without the Contractor's prior written consent, such consent not to be unreasonably withheld. The Customer must keep the Contractor fully informed throughout the period of the claim, including providing copies of all relevant documents.
- 19.4** The Customer must, upon the Contractor confirming its obligations under the indemnity in clause 19.1, provide the Contractor with reasonable assistance in defending, settling or otherwise conducting the negotiations or litigation, at the Contractor's expense, including providing all relevant documents, permitting its Personnel to testify for the Contractor if requested by the Contractor and using any defence that might be available to the person being indemnified.
- 19.5** Notwithstanding clause 19.1(c), the Contractor is not required to indemnify the Customer, its officers and employees to the extent that an IP Claim is caused by:
- (a) any open source software that forms part of the Deliverable;
 - (b) the combination, operation or use of a Deliverable with any other product, equipment business method, software or data (unless such combination, operation or use is approved by the Contractor or in accordance with the Contract Specifications);
 - (c) any modification of a Deliverable by any person other than the Contractor or its Personnel unless such modification is approved by the Contractor;
 - (d) the Contractor following the designs, specifications or instructions provided by the Customer or other person on the Customer's behalf; or
 - (e) the continued use of a Deliverable after the Contractor has provided the Customer a new software version, patch or correction, or a replacement part or other correction, that would have overcome the infringement.
- 19.6** Without prejudice to the Customer's rights under clause 19.1(c), if there is an IP Claim then the Contractor may, with the consent of the Customer, at the Contractor's expense, either:
- (a) obtain for the Customer the right to the continued use of the Deliverable in accordance with the Customer Contract;
 - (b) replace or modify the Deliverable so that the alleged infringement ceases and the replaced or modified Deliverable provides the Customer with substantially similar functionality and performance as required in the Contract Specifications; or

- (c) if, in the opinion of the Contractor, neither clause 19.6(a) nor 19.6(b) is reasonably commercially available and the Customer is not subject to the benefits of the legislation in clause 19.9, the Contractor may terminate the Customer Contract on 30 days' Notice in Writing and will be liable for all loss, damage or expense suffered by the Customer in connection with such termination.

19.7 Notwithstanding clause 19.1, the Contractor is not required to indemnify the Customer under clause 19.1(b) or 19.1(c) (as applicable), its officers and employees:

- (a) if the third party making a claim under clause 19.1(b) or the IP Claim (as applicable) is the Contract Authority or any other Eligible Customer who is obtaining the benefit of, or being provided with, the Product, Service or Deliverable under the Customer Contract; or
- (b) where the third party claim under clause 19.1(b) or the IP Claim arises from, or in connection with, the supply of any Product, Service or Deliverable (or the supply of any item based on any Product, Service or Deliverable) to the third party, whether the supply was made by the Customer or any person who has, directly or indirectly, acquired the Product, Service or Deliverable or item based on the Product, Service or Deliverable from the Customer.

19.8 The Contractor's liability in respect of the indemnity provided under:

- (a) clause 19.1(a), is subject to clauses 18.4, 18.6 and 18.7;
- (b) clause 19.1(b), is subject to clauses 18.1 to 18.7;
- (c) clause 19.1(c), is subject to clauses 18.4, 18.6 and 18.7.

19.9 For the purposes of clause 19.1(c) an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), sections 96 and 100 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

20. Conflict of Interest

20.1 The Contractor must:

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

21. Performance Management

REPORTING

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



22. Government Policy

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

23. Contract Administration

REPRESENTATIVES

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

NOTICE OF CHANGE IN CONTROL

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

RECORD KEEPING AND AUDIT

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

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

(b) to the Contractor's Personnel,

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

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

NOTICES

- 23.12** Any Notice in Writing must be sent to the receiving Party's Service Address addressed to the Party's nominee for receipt of notices, or if no such position is nominated, it must be addressed to the Authorised Representative of such Party.
- 23.13** Any Notice in Writing is regarded as given and received:
- (a) if sent by mail; 3 Business Days after it is posted;
 - (b) if sent by fax; at 9.00 am on the Business Day following the day when the addressee actually receives it in full and in legible form; and
 - (c) if sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

24. Dispute Resolution

- 24.1** The Parties agree to resolve any dispute between them that arises during the Contract Period out of, or in connection with, the Customer Contract in accordance with clause 24.
- 24.2** If a dispute arises out of, or in connection with, the Customer Contract during the Contract Period, then, subject to clause 24.13, the aggrieved Party must submit a Notice in Writing to the other Party of the issue, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of

the Customer Contract which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Issue Notice**). The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue. If the Party submitting the Issue Notice is the Contractor, then where the Customer Contract is made under a Head Agreement, the Contractor must send a copy of the Issue Notice to the Contract Authority.

- 24.3** If a Party submits an Issue Notice under clause 24.2, each Party must nominate in writing, within 7 days, a senior executive who will attempt to resolve the dispute. The nominated senior executives will promptly meet at a time and place that is mutually convenient with the objective of resolving the issue. The nominated senior executives may invite other Personnel to attend the mutually convenient conference subject to a list of additional invited Personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.
- 24.4** If the Parties are able to agree upon a resolution to the dispute, the terms of the agreement are to be documented and signed by both nominated senior executives. Such an agreement will be binding on both Parties.
- 24.5** Each Party will bear its own costs under clauses 24.2 to 24.4.
- 24.6** If the dispute is not resolved within 21 days of the date that the Issue Notice was received by the other Party, either Party may then refer the dispute to expert determination in accordance with clauses 24.7 to 24.8.
- 24.7** The Party that requires that the dispute is resolved by expert determination must submit a Notice in Writing to the other Party specifying the issue to be decided by expert determination, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Referral Notice**).
- 24.8** If the dispute is to be resolved by expert determination the Parties will be bound by the provisions and procedures contained in Schedule 11 – Dispute Resolution Procedures, unless agreed otherwise in writing.
- 24.9** If a Referral Notice has not been submitted within 20 Business Days of becoming entitled under clause 24.6 then the issue is barred from expert determination or any other action or proceedings, subject to clause 24.13. The Customer and the Contractor may, in writing, agree to extend this 20 Business Days period for the purposes of continuing to negotiate a resolution of a particular dispute for up to another 20 Business Days.
- 24.10** Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under the Customer Contract during the period of the attempt to resolve the dispute.
- 24.11** Unless the Parties otherwise agree in writing, clauses 24.7 to 24.8 do not apply to any dispute:
- (a) for which either Party's claim exceeds \$250,000 or the amount stated in Item 41 of the General Order Form; (b) that involves a party claiming that a statutory guarantee under the CCA is involved in the dispute; or
 - (c) which relates to an issue of the type stated in Item 41 of the General Order Form.

In this case if the dispute is not resolved within 15 Business Days of the date that the Issue Notice was received by the other Party, either Party may commence any other form of resolution, including court proceedings.



- 24.12** The amount specified in Item 41 of the General Order Form shall include the total amount being claimed by both Parties including the amount of any cross claim but excludes any set offs, interest and legal costs. If the Parties are unable to agree on the total amount being claimed each Party shall submit a claim to the other Party detailing the nature of the claim, the relevant term of the Customer Contract which has been breached and how it calculated the amount of its claim. Where only one Party is submitting a claim the other Party shall be entitled to submit its estimate of the amount of the claim to the other Party. If the calculations of each Party differ from one another the amount in dispute for the purposes of Item 41 of the General Order Form shall be calculated by totalling the value of all the claims or estimated amount of the claims together and dividing that amount by the total number of claims and estimated claims.
- 24.13** The provisions of clauses 24.2 to 24.12 do not apply where a party seeks urgent interlocutory relief or where a Party has terminated the Customer Contract for a Substantial Breach or Fundamental Breach of the Agreement.

25. Termination

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

TERMINATION FOR CAUSE BY THE CUSTOMER

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



- (vi) assist DFSI, the Contract Authority or the Customer to prevent unethical practices in the business relationship,

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

TERMINATION FOR CONVENIENCE BY THE CUSTOMER

- 25.3** The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice in Writing. The Contractor must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Customer Contract under this clause 25.3.
- 25.4** If the Customer exercises its right under clause 25.3, the Customer must:
- (a) if Item 42 of the General Order Form does not state an amount that is payable on termination, indemnify the Contractor against any losses, damages or expenses, which are reasonably and properly incurred by the Contractor to the extent that those losses, damages or expenses were incurred as a direct result of the termination of the Customer Contract in accordance with clause 25.3; or
 - (b) pay any amount that is stated in Item 42 of the General Order Form.
- 25.5** Once the Customer has paid the amounts in clause 25.4 no further compensation is payable for any termination under clause 25.3.

TERMINATION FOR CAUSE BY THE CONTRACTOR

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

- (A) more than one Unremedied Breach; or
- (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach; or
- (iii) obligations as to the Contractor's Intellectual Property Rights under the Customer Contract:
 - (A) more than one Unremedied Breach; or
 - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;

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

- (d) suffered an Insolvency Event.

CONSEQUENCES OF TERMINATION

25.7 In the event of termination under clause 25.2, the Customer may obtain from any other source a reasonably similar alternative to the Deliverables in which case the Contractor shall, subject to clause 18, be liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Deliverable and the similar alternative) or suffered by the Customer.

25.8 If the Customer Contract:

- (a) is terminated by the Customer for cause or it expires, then the Customer may provide the Contractor with written notice requiring the Contractor at its expense to remove Deliverables or to dismantle or remove work from the Customer's premises by a date stated in that notice;
- (b) is terminated by the Contractor for cause, then the Contractor may provide the Customer with written notice requiring the Customer to return any Deliverables that have not been paid for in full, and the Customer must return those Deliverables at its expense by the date stated in that notice; and
- (c) such termination or expiry is without prejudice to any right of action or remedy that has accrued or may accrue to either Party.

25.9 On termination of this Customer Contract for any reason:

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



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

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

26. General

VARIATION

- 26.1** Subject to any other rights given under this Customer Contract to vary its terms and the following provisions of clause 26.2, neither a Change Request nor a Contract Variation shall be valid unless agreed in writing and signed by both the Customer and the Contractor.
- 26.2** Where required under directions and policies issued by the Board from time to time, the Customer must obtain the written approval of the Secretary, New South Wales Department of Finance, Services and Innovation prior to agreeing to a variation of any term or condition of the Procure IT Framework, including a variation to any of the Protected Clauses. In such circumstances, the Contractor must obtain a copy of such written approval from the Customer before entering into the relevant Change Request that varies such term or condition, including a Protected Clause.

ASSIGNMENT AND NOVATION

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

WAIVER

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



MATERIAL ADVERSE EVENTS

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

FORCE MAJEURE EVENTS

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

GOVERNMENT INFORMATION

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

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

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

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

SEVERABILITY

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

ENTIRE AGREEMENT

26.18 To the extent permitted by law:

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

RIGHTS ARE CUMULATIVE

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

SURVIVAL

26.20 The provisions of clauses 3.11 to 3.13, 6.42 to 6.44, 8.1 to 8.4, 13.4 to 13.8, 13.9, 13.11, 13.13, 13.15, 14.1 to 14.3, 15, 16.3, 18, 19, 25.7, 25.8, 26.20 and 26.22, and any other clause which naturally should survive termination or expiry of the Customer Contract, shall survive termination or expiry of the Customer Contract.

COUNTERPARTS

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

APPLICABLE LAW

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

SIGNED AS AN AGREEMENT

Signed for and on behalf of

Sydney Trains

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

Signature of Customer representative



19/6/2019

Date

In the presence of:

Signature of Customer's witness



Tinny Wong Thiptharadon

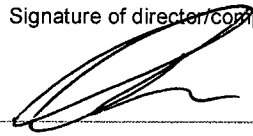
Print Name

19/6/2019

Date

Signed by IntelliTrac Pty Ltd (ACN 081575108) as trustee for The Calapai Family Trust
ABN 31 238 398 354 in accordance with section 127(1) of the Corporations Act 2001 (Cth)
by:

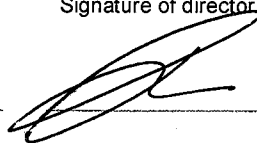
Signature of director/company secretary



Print name

DINO PLACIDO CALAPIAN

Signature of director



Print name

DINO PLACIDO CALAPIAN

Date

11/6/2019



Schedule 1: General Order Form

PROCURE IT VERSION 3.2

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

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

- *Include all the Items that are set out in clause 3.4 of the Customer Contract. (i.e. Items 1, 4, 7 (if there is a Head Agreement), 8, 10, 11, 12 and 13);*
- *Include any other Items (if any) that the Parties agree;*
- *Be in the same form and structure (even if some Items are omitted);*
- *Ensure that the Items that remain have the same number or heading as the number or heading in this pro forma General Order Form;*
- *Include the following as a title:*
 "General Order Form. Schedule 1 to the Customer Contract"
- *Include the following text above the signature box:*
 "This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of the Customer Contract as if repeated in full in this General Order Form."
- *Be signed by both Parties;*
- *Cross-reference and include the relevant Order Details from any Module Order Form and any details from the Module Order Forms that are required to describe the Products or Services.*

CUSTOMER**Item 1 Name of Customer**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's full legal name:	Sydney Trains ABN 38 284 779 682

Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's service/delivery address:	Level 1 36-46 George Street Burwood, NSW 2134

Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Customer's Authorised Representative:	Tanim Giwa Projects Improvement Manager Commercial and Supply Chain Engineering and Maintenance Sydney Trains T 02 9536 2503 M 0419407954 Muhammadu.giwa@transport.nsw.gov.au Level 2, 36 – 46 George St, Burwood, NSW 2134 or such other person notified by the Customer to Contractor from time to time in writing

CONTRACTOR**Item 4 Name of Contractor**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's full legal name:	IntelliTrac Pty Ltd (ACN 081575108) as trustee for The Calapai Family Trust (ABN 31 238 398 354)

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)	



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the Contractor's service/delivery address:	11 Scholar Drive University Hill Business Park Bundoora, 3083 Victoria Fax: +61 3 9466 71 88

Item 6 Contractor's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Contractor's Authorised Representative:	Dean Calapai CEO and Founder IntelliTrac Pty. Ltd. 11 Scholar Drive University Hill Business Park Bundoora, 3083 Victoria Australia Ph: +61 3 9467 6188 Mobile: 0413922122 dean.calapai@intellitrac.com.au or such other person notified by the Contractor to the Customer from time to time in writing

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:	There is no Head Agreement.
Specify the Head Agreement title:	There is no Head Agreement.
Specify the Term of the Head Agreement: Start Date: End Date: If the Term of the Head Agreement has expired the Customer must obtain the Contract Authority's approval to enter into a further Customer Contract, and this approval should be attached to this General Order Form.	There is no Head Agreement.
Insurance (clause 16.2)	
Specify the insurances required under the Head Agreement:	There is no Head Agreement.
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for	There is no Head Agreement.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	
The default insurance requirement under the Head Agreement is product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	There is no Head Agreement.
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement. If so, the default insurance requirement is for a limit of cover of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	There is no Head Agreement.
Workers' compensation insurance in accordance with applicable legislation:	There is no Head Agreement.
Specify any other type of insurance required under the Head Agreement and the specified amount:	There is no Head Agreement.
Performance Guarantee (clause 17.1)	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	There is no Head Agreement.

Item 8 Modules that form part of the Customer Contract

Formation (clause 3.8(a))

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

Module 1 – Hardware Acquisition and Installation	☒	Module 11 – Telecommunications as a Service	☐
Module 2 – Hardware Maintenance and Support Services	☒	Module 12 – Managed Services	☐
Module 3 – Licensed Software	☐	Module 13 – Systems Integration	☐
Module 4 – Development Services	☐	Module 13A – Major Project Systems Integration Services	☐
Module 5 – Software Support Services	☐		
Module 6 – Contractor Services	☐		
Module 7 – Professional Services	☐		
Module 8 – Training Services	☐		
Module 9 – Data Migration	☐		
Module 10 – As a Service	☒		

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

Formation (clause 3.8(b))

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

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

Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contract Period (Clause 2.4)	
Specify the Commencement Date if it is not the date when the Customer and the Contractor sign the Customer Contract:	The date when the Customer and the Contractor have signed the Customer Contract
Specify the end of the Contract Period:	Three (3) years from the Commencement Date
Specify any period of extension of the Contract Period in days/weeks/years:	At least 30 days prior to the expiry of the Contract Period, the Customer may, in its sole and absolute discretion, notify the Contractor of the Customer's intention to exercise its option to extend the Contract Period for a further period of 1 year (Option). The Customer may exercise the Option 2, such that the total period of extension shall not exceed 2 years. The exercise of an Option to extend the Contract Period has the effect of extending this Customer Contract and after the end of the current Contract Period, does not create a new Customer Contract or constitute entry into a new Customer Contract.

Item 11 Common Details

Formation (clause 3.4)				
Monthly Charge				Charge for the Contract Period
Product and/or Service	Price per Unit (Ex-GST)	Quantity as number of Vehicles	Extended Price (Ex-GST)	Extended Price (Ex-GST)
One-Time Cost				
IntelliTrac Hardware Devices	\$1,230	1200	\$1,476,000	\$1,476,000

The cost of the Hardware will be invoiced at the end of each month based on the number of the Telematics systems installed during that given month.

Monthly Charges				
Item 11(ii) Monthly Charge in relation to the Services described in Module 10 for the first 3 years after the Commencement Date. [Software: \$25.00, Installation: \$7.00, SIM Card \$11.00]	\$43	1200	\$51,600	\$1,857,600
Item 11(ii) Monthly Charge in relation to the Services described in Module 10 for the fourth (4 th) year and Fifth (5 th) year after the Commencement Date. [Software: \$25.00, SIM Card \$11.00]	\$36	1200	\$43,200	\$518,400
Item 11(ii) Monthly Charge in relation to the Services described in Module 10 for the fifth (5 th) year after the Commencement Date. [Software: \$25.00, SIM Card \$11.00]	\$36	1200	\$43,200	\$518,400
Item 11(ii) Monthly Charge in relation extended Contract Periods is the previous year's fee with Consumer Price Index adjustments per the below payment terms.	To be agreed between the parties	Optional		
Payment terms: - Capitalised terms used in this section have the same meaning ascribed to such terms in the Service Level Agreement. - The Monthly Charge (less applicable service credits referenced in the Service Level Agreement) for Services are payable in monthly instalments in arrears. - The invoice will detail the Monthly Charge, any applicable service credit amounts and the resulting Monthly Charge due. - Service credits described in the Service Level Agreement will be applied as follows: - calculated from the Monthly Service Level Report; - applied to the invoice for the Monthly Charge. Service credits will apply from the Commencement Date. The Monthly Service Level Report and supporting performance statistics acceptable to the Customer will be produced by the Contractor from the Commencement Date. These will be agreed by the Customer as a true record for the month, before being used to calculate any rebate. - The Parties agree that the Price will be adjusted annually on the anniversary of the Commencement Date during the Contract Period (where the Customer has exercised an option to extend the Contract Period) as follows (CPI Adjustment). The Contractor must give the Customer a notice in writing at least 30 days prior to the expiry of each Contract Period of its intention to adjust the Price that it proposes will apply to the Price for any extension period. Any extension period to the Contract Period will constitute an extension of the Contract Period, and not a new Customer Contract. If the Contractor wishes to increase the Price, the following formula for indexing the Price will be used to calculate a base value of the increase: $AP = P \times [1 + 0.9 \times (CPI\ 2 - CPI\ 1) / CPI\ 1]$ Where: 1 AP - is the adjusted Price that will apply after the Adjustment Date				

2	P - is the Price applicable just prior to the Adjustment Date	
3	CPI 1 - is the Consumer Price Index for the quarter ending immediately prior to the date that is 12 months before the Adjustment Date	
4	CPI 2 - is the Consumer Price Index for the quarter ending immediately prior to the Adjustment Date.	
5	Where: Consumer Price Index means the weighted average of eight capital cities Consumer Price Index published by the Australian Bureau of Census and Statistics, or as otherwise determined in accordance with point 6 below; and Adjustment Date means the end of the relevant Contract Period or rolling 12 month period.	
6	If the Consumer Price Index ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Customer and any necessary consequential amendments are to be made.	
The Parties agree that any adjustment to the Price cannot exceed the amount derived from the above formula and that any increase is subject to the Customer accepting any increase in writing.		
	Sub-Total:	\$4,370,400
	Delivery Charges:	Nil
	Any Other Charges:	Nil
	GST:	\$437,040
This is the Contract Price (plus GST)	Total Amount:	\$4,807,440

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:	There are multiple sites as specified in scope document
Specify any delivery instructions:	Delivery plan with be coordinated and agreed post contract award with the successful vendor
Specify the hours during which delivery may be made to the Site:	The Services are to be provided per the Module 10 – As a Service the subject of this General Order Form.

Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
If the Contract Specifications are the User Documentation, leave this Item blank. If the Contract Specifications comprise other documents, list those documents in order of priority:	The Contract Specifications comprise the document 604162433_1_2018_11_30 Telematics Scope of Work (referenced at Schedule 2 to this General Order Form and attached at Exhibit 1 to this General Order Form)

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
System (clauses 5.11 and 9.3)	
Specify whether the Products and Services comprise a System.	The Products and Services do not comprise a System.

Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clauses 11.1 and 11.2)	
Invoicing (clauses 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	All invoices are to be sent to Transport Shared Services, Accounts Payable via email to: tss.invoices@transport.nsw.gov.au The Contractor must ensure that 1. All invoices and supporting documents are sent in a 'PDF' file format; 2. Only one 'PDF' file should be enclosed in each email; 3. Any supporting documents must be contained within the same enclosed 'PDF' file as the invoice with the invoice being the first page and all supporting documents to follow. A valid Purchase Order number and /or a business contact name must be quoted on all invoices. If the Contractor transacts with the Customer via the Ariba Network then invoices must be submitted by the Contractor to Customer via the Ariba Network
Specify address to which invoices should be sent:	All original invoices must be submitted via email to: tss.invoices@transport.nsw.gov.au OR via ordinary mail to: Attention: Accounts Payable PO Box 533, Burwood NSW 1805 Email is the preferred method of submitting an invoice.
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 must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.
Specify when the Contract Price must be paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one occasion then consider using a PIPP under Item 20.	See Item 11.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
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:	1. The Contract Price is fixed in accordance with Item 11. 2. The Contract Price is subject to adjustment as described in Item 11.

Item 15 User Documentation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
User Documentation (clause 5.4(b))	
Specify the Price of any additional copies of the User Documentation:	The Contractor will provide the Customer with digital copies of all Contract Specifications and User Documentation at no charge.

Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Management Committee (clause 6.4)	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	Not applicable
Management Committee (clause 6.6)	
Specify the function to be performed by the management committee:	Not applicable
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	Not applicable
Management Committee (clause 6.8)	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	Not applicable
Specify any other details:	Not applicable

Item 17 Performance Review Procedures

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

Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
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Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Site Specifications (clause 6.12)	
Specify: - Site location; and - whether a Site Specification is required.	The Site locations will be directed by the Customer from time to time
Access to Customer's Site (clause 7.1(b))	
Specify any other requirements in relation to the Site access:	Requirements for access to the Sites will be directed by the Customer from time to time
Specify any requirements for the preparation and maintenance of the Site:	Not applicable

Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Implementation Planning Study (clauses 6.14 to 6.16)	
Specify if the Contractor must provide an implementation planning study:	Not applicable
Specify the implementation planning study objectives and time for provision of study:	Not applicable
Date for delivery of the implementation planning study to the Customer:	Not applicable
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	Not applicable

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Project Schedule (clause 6.17)	
Invoicing (clause 11.7)	
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	Not applicable
Staged Implementation (clause 6.20)	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the PIPP together with the period during which the Customer must give written notice to move to the next Stage (if greater than 10	Not applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Days):	

Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Liquidated Damages (clauses 6.28 to 6.34)	
Specify if Liquidated Damages (LDs) will apply:	Not applicable
Specify the Milestones which are LD Obligations:	Not applicable
Specify the Due Date for completion of each LD Obligation:	Not applicable
Specify the calculation and amount of LDs for each LD obligation:	Not applicable
Specify the maximum number of days LDs are to be paid for each LD obligation:	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)	
Specify each CSI to be provided by the Customer: CSI may be: - office access, desks etc (specify location, standards, times of access); - Hardware or software (specify equipment, capacity, versions of software and dates of availability); - VPN access or other remote access (specify capacity and hours available). [Note: details of any Customer Personnel should be specified in Item 26].	Not applicable
Specify if any CSI must be covered by support and maintenance contracts including the period of cover, the Contractor's rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor:	Not applicable
Specify the times when each CSI is to be provided:	Not applicable
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	Not applicable



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	Not applicable
If so, specify the verification check process for each CSI: Include: • a process to manage satisfactory and unsatisfactory verification checks; • a process to manage 'reissued' CSI's; • a process to manage repeat CSI verification checks; • a process to manage 'draft' or 'incomplete' and 'updated' CSI's; • a process to manage rejected CSI's; • a process to manage previously satisfactory CSI which becomes defective; • a list of required verification check forms and/or registers and a corresponding data entry process; • a list of Customer and Contractor nominee/s for responsibility to undertake verification checks;	Not applicable
Specify any amount payable by the Contractor to the Customer for any item of CSI:	Not applicable
Customer Assistance (clause 6.41)	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	Not applicable

Item 23 Escrow

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Escrow (clause 6.42)	
Specify if an escrow arrangement is required:	Not applicable
Specify the parties to the escrow arrangement:	Not applicable
Specify the time for the escrow arrangement to endure:	Not applicable

Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Contingency (clauses 6.45 to 6.47)	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify if a Business Contingency Plan is required:	Yes
Specify when the Business Contingency Plan is required:	The Contractor will be required to prepare a Business Contingency Plan for the approval of the Customer within 30 days of the Commencement Date or such other period agreed by the Customer in writing. The Contractor must provide to the Customer with a copy of the approved Business Contingency Plan within 60 days of the Commencement Date or such other period agreed by the Customer in writing.
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	As agreed to in writing by the Customer
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	Annually, on each anniversary of the Commencement Date.
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	Annually, on each anniversary of the Commencement Date.

Item 25A Transfer of Records outside NSW - Customer Data

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Data (clause 7.5) Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract. If yes, Customer to state whether consent is provided to transfer State Records outside the jurisdiction of New South Wales. If consent is granted, Customer to specify: - the jurisdiction(s) for which consent is granted - the conditions on which such consent is granted. [Note: Clause 7.5 of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]	No Customer Data (which includes state records (as defined in the <i>State Records Act 1998</i> (NSW) (State Records or a State Record)) will be transferred to the Contractor's possession, except for the sole purpose of the Contractor providing Software Support Services. The Customer provides consent to the Contractor to transfer, take or send the Customer Data outside of the jurisdiction of New South Wales on the following basis: - The Contractor may transfer Customer Data which the Contractor receives during the course of the provision of Services to the Customer outside of New South Wales, but only to the extent the transfer of such Customer Data outside of New South Wales is reasonably necessary to enable the Contractor to provide such Services to the Customer and provided that the Contractor: - secures such Customer Data while in transit and at rest; and - takes all reasonable precautions to maintain control and avoid disclosure of such Customer Data while outside of New South Wales. - In relation to any Customer Data provided by the Customer to the Contractor (or to the Personnel or Related Company of the Contractor) under or in connection with the Customer Contract, Products or Services, the Contractor warrants that it will comply, and will ensure that the relevant Personnel or Related Company of the Contractor complies with all Privacy

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	Laws and the Contractor's privacy policies that are applicable to the Contractor and / or the relevant Personnel or Related Company of the Contractor. c) Where the Contractor (or the Personnel or Related Company of the Contractor) accesses, collects or discloses Customer Data on behalf of the Customer and / or in connection with the Services, the Products or the Customer Contract, then the Contractor must do so, and must ensure that the relevant Personnel or Related Company of the Contractor does so, in accordance with all Privacy Laws and the Contractor's privacy policies that are applicable to the Contractor and / or the Personnel or Related Company of the Contractor. d) Without limiting sub-clauses (a), (b) and (c) above, and to avoid doubt, the Contractor must at all times handle and must ensure that any Personnel or Related Company of the Contractor handles all Customer Data under or in connection with the Services, the Products or the Customer Contract, in accordance with the most current version of the "Information Protection Principles".

Item 25B Transfer of Records outside NSW – Personal Information

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Privacy (clause 15) Customer to specify whether consent is provided to transfer Personal Information outside the jurisdiction of New South Wales. If consent is granted, Customer to specify: - the jurisdiction(s) for which consent is granted - the conditions on which such consent is granted. [Note: Clause 15.1(h) of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]	See Item 25A above. For the avoidance of doubt, Personal Information is a State Record.

Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Access to Customer's Site (clause 7.11) Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.	The Contractor must comply with, and must ensure that each of the Contractor's Personnel, when on the Customer's premises and when accessing the Customer's facilities, Site, computer systems and information, comply with: the Customer's policies and procedures as made available on the Customer's websites and as amended or supplemented by the Customer, and such other Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	policies and procedures advised to the Contractor from time to time including in relation to confidentiality and system security. As at the date of this Customer Contract those policies include: - NSW Government Digital Information Security Policy dated April 2015; - NSW Government Information Security Event Reporting Protocol; and - NSW Government Cloud Policy dated August 2015; - the Customer's site access sign-in procedures specified by the Customer including when accessing a Site; - the Customer's site access sign-out process when leaving a Site; and - all other reasonable requirements and directions of the Customer in regard to conduct, behaviour, protection of privacy, use of systems, safety and security (including submitting to security checks as required and complying with any obligation imposed on any person by law). Where requested by the Customer, the Contractor must ensure that the Contractor Personnel execute a deed of confidentiality in the form required by the Customer.
Timeframes for response to a Security Issue	
Specify whether Customer agrees to any alternate timeframe for: - Notification of actual, alleged or suspected security breach (clause 7.12(a)) [Note: default is immediate notification] - Investigation of Security Issue (clause 7.12(b)) [Note: default is within 48 hours from notification] - Remedy the Security Breach (clause 7.12(c)). [Note: the default is within 24 hours from conclusion of investigation]. Any alternate timeframes agreed to in this General Order Form must: - be approved by the Customer's Chief Information Officer; and - comply with the NSW Government Digital Information Security Policy, NSW Government Information Security Event Reporting Protocol, NSW Government Cloud Policy and all other applicable NSW Government policies; - comply with applicable security standards; and - comply with the Customer's Information Security Management System and other Customer security and policy requirements.	The Customer does not agree to alternate timeframes.

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

Item 26 Customer's Personnel

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

Item 27 Specified Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specified Personnel (clause 8.8)	
Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:	• Dean Calapai, CEO and Founder, 11 Scholar Drive, Bundoora, 3083, Victoria, Ph: +61 3 9467 6188, Mobile: 0413922122, dean.calapai@intellitrac.com.au • John Durante, Managing Director – GPS • Geoffrey Zhou, Managing Director – GIS • Johky Chen, IT Manager GPS/GIS • Muhamad Sofyan, GPS Software developer • Irwandi Doank, GPS Software developer • Christopher Dowd, Systems & Support Engineering Manager • Oksana Bobechko, Quality Assurance • Emanuel Rodrigues, Operations Manager • David Costanzo, Project Hardware Planning and Commissioning • Dan Ciuche, Internal Infomatics ERP systems IT Manager

Item 28 Subcontractors

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



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:	QA ISO9001 or equivalent ISO e.g.:- ISO TS 16949 for automotive components manufacturing

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:	The Contractor must, without limitation: - comply with all applicable Laws, including any relevant mandatory Approvals, when carrying out, providing or supplying the Services; and - ensure that the Contractor and its personnel are aware of, and comply with, the policies, codes and standards referenced in the box immediately below (for the avoidance of doubt, any reference to "NSW government sector employees" or "RMS employees" in the policies, codes and standards is to be read as a reference to the Contractor's employees and Personnel). Approval means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any Authority having any jurisdiction in connection with the Contractor's activities or under any applicable Law, which must be obtained or satisfied to carry out, provide, supply or use the Services. Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality. Laws means the common law and any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by any Authority.
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	The Contractor must comply with the most recent version of the following policies, codes and standards, as updated from time to time, to the extent they relate directly to the performance of the Contractor's obligations under this Customer Contract: - the policies, codes and standards that appear on the website: http://www.transport.nsw.gov.au/sydneytrains/contractors; - the policies, codes and standards that appear on the Railsafe website at https://railsafe.org.au/, including but not limited to: - the policy entitled "Health and Safety Policy"; and - the applicable specifications on the safety and environment specifications page, available at: https://railsafe.org.au/safety-and-environment-specifications ; - the New South Wales Government Code of Practice for

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	Procurement (January 2005); 4. in relation to work, health and safety management, the Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (September 2013); and 5. the Customer's policies, standards and procedures as listed in Item 25 or as updated or as notified to the Contractor from time to time.

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Warranties (clause 9.4(h))	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	Not applicable
Specify any codes, policies, guidelines or standards the Customer is to comply with:	Not applicable

Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Part 3 Dictionary (clauses 1.2 to 1.5)	
Acceptance Test Notification Period is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period: If no period is specified, the period is 2 Business Days:	Not applicable, except as provided in Module 10
Acceptance Test Data is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:	Not applicable, except as provided in Module 10
Acceptance Test Period is the period for the performance of any Acceptance Tests for any Deliverable. Specify this period: If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.	Not applicable, except as provided in Module 10
Acceptance (clause 10.1)	
For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing: If not, the Deliverable will be Accepted under clause 10.1(a)	Not applicable, except as provided in Module 10

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date for a Deliverable occurs: If no period is specified, then the period is 2 Business Days.	Not applicable, except as provided in Module 10
Conducting Acceptance Tests (clause 10.3)	
For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:	Not applicable, except as provided in Module 10
Specify the identification of the Deliverables or part of the Deliverables to be tested:	Not applicable, except as provided in Module 10
Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:	Not applicable, except as provided in Module 10
Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use:	Not applicable, except as provided in Module 10
Specify the methodology and process for conducting Acceptance Tests:	Not applicable, except as provided in Module 10
Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:	Not applicable, except as provided in Module 10
Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:	Not applicable, except as provided in Module 10
Specify the Acceptance Test Data required:	Not applicable, except as provided in Module 10
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	Not applicable, except as provided in Module 10

Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clause 11.3)	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	Not applicable
Specify any fee that is applicable for payment by credit/debit card	Not applicable

Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Existing Material (clauses 13.7, 13.9 and 13.10)	
Specify any terms and condition applicable for granting a licence for Existing Material owned by a third party:	
If a perpetual and irrevocable licence to use certain Existing Material cannot be provided (for example because it is licensed under subscription for a defined period), specify: - the duration of the licence to use that Existing Material and/or - the terms on which the licence may be revoked.	If a perpetual and irrevocable licence to use certain Existing Material cannot be provided, the duration of the licence to use that Existing Material must be for the duration of the Contract Period.
Specify any fees to be charged for any licence to use any of Contractor's Existing Materials:	Any fees are listed in Item 11.
Customer Owned New Material (clause 13.11)	
Specify whether clause 13.11 applies ie. whether the Customer owns any New Material. If so, specify: - which items of New Material are Customer Owned New Material; and - whether the Contractor is granted any licence by the Customer to use the Customer Owned New Material, and if so, what licence terms apply to the Contractor's use of the Customer Owned New Material. If clause 13.11 does not apply, state "Not applicable".	Clause 13.11 does not apply.

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.4)	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8- Deed of Confidentiality:	If the Customer gives prior written consent to the Contractor to engage a Subcontractor under clause 8.14 of the Customer Contract, then the Contractor must ensure that that Subcontractor executes a Deed of Confidentiality substantially in the form of Schedule 8 - Deed of Confidentiality before performing any Services or receiving any Confidential Information of the Customer.



Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Insurance (clause 16.7)	
Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]	\$20 million in respect of any one occurrence. Maximum deductible: \$10,000
Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if any higher limit of cover that is required by the Customer Contract:]	\$20 million in respect of any one occurrence and in the aggregate. Maximum deductible: \$10,000
If Services are being provided under the Customer Contract the default level of indemnity of professional indemnity insurance for the total aggregate liability for all claims for the period of cover is \$1,000,000 [Only specify if a higher limit that is required by the Customer Contract:]	\$5 million including provision for at least 1 automatic reinstatement Maximum deductible: \$10,000
Specify any additional insurance that the Contractor is to hold, including the type of insurance, the term of the insurance and the amount of the insurance:	Workers compensation in accordance with applicable legislation.

Item 37 Performance Guarantee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Guarantee (clause 17.2)	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	Not applicable
Specify the date by which the Performance Guarantee must be provided to the Customer. If no date is specified the Contractor must provide the Performance Guarantee to the Customer within 30 days of the Commencement Date.	Not applicable

Item 38 Financial Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Financial Security (clause 17.4)	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial	Not applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Security:	
Specify the date by which the Financial Security must be provided to the Customer: If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	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)	
If the Parties cannot agree the amount that is legally payable under the Customer Contract for the: • Non-Recurring Service or Product; and/or • Short Term Recurring Service (as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price). Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service. (See the definition of Contract Value in Part 3)	To the extent permitted by law and subject to clauses 3.12, 3.13 and 18.2 to 18.7, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out of, or in connection with, the Customer Contract, shall not exceed in aggregate for all claims that arise out of, or in connection with the Customer Contract, the Contract Price.



If Services are being provided under any of the following Modules:

- Module 6 – Contractor Services;
- Module 7 – Professional Services; or
- Module 8 – Training Services,

specify whether the Parties regard the relevant Services as being:

- the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring Services for the purpose of the limitation of liability; or
- provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability.

(See definition of Non-Recurring Services and Recurring Services in Part 3)

The Professional Services provided under Module 10 are to be classified as Non-Recurring Services for the purpose of the limitation of liability, but subject to the limitations set out in the preceding box.

Details to be included from the Customer Contract

Specify the alternative cap of liability (clause 18.3):

Order Details agreed by the Contractor and the Customer

See the limitation of liability provision above.

Item 40 Performance Management Reports

Details to be included from the Customer Contract

Reporting (clause 21.1)

Specify the reports required, (if any), the time for provision and the agreed format:

Order Details agreed by the Contractor and the Customer

The Contractor will provide the Customer with performance management reports as reasonably required by the Customer.

The performance management reports must:

- a) provide an analysis of the performance of the Contractor in meeting the key performance indicators (KPIs) and Service Levels set out in Schedule 3;
- b) propose an action plan to remedy all non-compliances with the KPIs and Service Levels set out in Schedule 3, including a time frame within which the Contractor will rectify the non-compliance; and
- c) evidence all steps taken by the Contractor to improve its processes following non-compliance to ensure all KPIs and Service Levels set out in Schedule 3 are complied with for the duration of the Contract Period (including relation to prior non-compliances and KPIs and Service Levels set out in Schedule 3, if they have not been

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	previously addressed to the reasonable satisfaction of the Customer).

Item 40A Audit

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Alternative Audit Mechanism (clause 23.11)	
If the default audit provisions of clause 23.5-23.8 are to apply, state "Not Applicable". If an alternative audit mechanism is agreed by the Customer and Contractor, specify the terms of such alternate audit including the Contractor's obligations to be audited. Note: Any alternate audit mechanism must address compliance with the Contractor's Customer Data, security and privacy obligations and such other obligations required by the Customer and reasonably agreed by the Contractor.	Not applicable, default provisions apply.

Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Dispute Resolution (clause 24)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7-24.8.	\$250,000.00 (excluding GST)
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	Not applicable.

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Termination for Convenience by the Customer (clause 25.4)	
Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3, and if so, specify that amount:	If the 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(a) of Part 2 of the Customer Contract (Termination Costs), the Contractor may only do so 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 under a Contract Document (including as part of the Contract Price); c) the Contractor substantiates that those costs have been or

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	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; e) those Termination Costs do not exceed the amount that would have otherwise been payable if the Customer Contract had not been terminated; and f) 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. For the avoidance of doubt, no further amounts are payable 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
Specify any Additional Conditions: Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the consent of the Contract Authority and the Secretary of the New South Wales Department of Finance, Services and Innovation where an Additional Condition varies any term or condition of the Procure IT Framework including a Protected Clause.	Additional definitions 1. In this General Order Form, Modules and Customer Contract, the following words have these definitions: "Customer's Affiliate" means each of the following "public transport agencies" (as that term is defined in the Transport Administration Act 1988 (NSW)): a) Transport for NSW; b) RailCorp; c) Sydney Trains; d) NSW Trains; and e) State Transit Authority, and includes: f) any public or private subsidiary corporations of such public transport agencies; and g) any successors to the entities set out in (a) - (e) from time to time. Assignment by Contractor and changes in corporate structure of Contractor 2. The Contractor must not, without the prior written approval of the Customer and except on the terms and conditions determined in writing by the Customer (including as to payment of the Customer's legal and other costs), assign, encumber, declare a trust over or otherwise deal with its rights under the Customer Contract. 3. For the purpose of paragraph 2, a change in shareholding of the Contractor, such that change in control occurs (whether occurring at the one time or through a series or succession of transfers or issues) or a change occurs in the corporate structure of the Contractor which results in a person (including a company) other than the shareholders of the Contractor at the date of the Contract:

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	a. controlling the composition of the board of directors; b. controlling the voting power of the board of directors or any class of shareholders or both; or c. holding more than one half of the issued share capital (either beneficially or otherwise), will be taken to be an assignment of the Customer Contract for the purposes of paragraph 2. 4. For the purposes of paragraph 2, any change in beneficial or legal ownership of any equity interests (including shares or units) that are listed on a prescribed financial market will be disregarded. 5. The Contractor must give the Customer prior written notice of all proposed changes in its shareholding or corporate structure regardless of whether they have the effect referred to in paragraph 2. 6. If the Customer, in its absolute discretion, approves a novation of this Customer Contract, the Contractor must provide the Customer with a duly completed and executed deed of novation (in the form set out at Appendix 1A) and the Customer's costs and expenses in connection with negotiating, preparing and executing any such deed of novation will be a debt due and payable from the Contractor to the Customer. Evidence of financial standing or financial arrangements 7. The Contractor warrants to the Customer that the Contractor will at all times have sufficient financial capacity to meet all of its obligations under the Customer Contract. 8. Without limiting clauses 23.4 to 23.11 (inclusive), the Contractor must, as and when requested by the Customer from time to time, promptly, and in any event within the period stated in the Customer's request, provide the Customer with a copy of such evidence reasonably required by the Customer which demonstrates the Contractor's financial capacity to meet all of its obligations under the Customer Contract. 9. The Contractor must promptly notify the Customer of: a. any material change to any information provided by the Contractor under paragraph 8; and b. any material change in the Contractor's financial standing which may affect, or is likely to affect, the Contractor's financial capacity to meet all of its obligations under the Customer Contract. 10. The Contractor must assist and fully co-operate with the requirements or requests of the Customer or the Customer's nominees in relation to any review of: a. any information provided by the Contractor under



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	paragraph 8; or b. the Contractor's financial capacity to meet the Contractor's obligations under the Customer Contract. 11. Clause 1.118(b) of Part 3 Dictionary is amended by adding a new sub-clause 1.118(b)(x) and inserting the following wording: "failing to comply with Additional Condition paragraph 8." Exchange of information between government agencies 12. The Contractor authorises the Customer and its Personnel to make information concerning the Contractor and the Customer Contract available to the Customer's Affiliate and NSW government departments or agencies, including: a. any information provided by the Contractor to the Customer; b. any information relating to the Contractor's performance under the Customer Contract; and c. the terms of the Customer Contract. 13. The Contractor acknowledges and agrees that: a. any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work; b. the communication of such information to any NSW government department or agency is a communication falling within section 30 of the Defamation Act 2005 (NSW); and c. the Customer has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Customer Contract and that it will participate in the Customer's Contractor performance reporting process.

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



SIGNED AS AN AGREEMENT

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

Sydney Trains (ABN 38 284 779 682)

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

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



Signature of Customer

LEN BLANKMORE

Print name

19 / 6 / 2019

Date



Signature of Witness

Tinny Wong Triphtharadon

Print name

19 / 6 / 2019

Date

Signed by IntelliTrac Pty Ltd (ACN 081 575 108) as trustee for The Calapai Family Trust (ABN 31 238 398 354) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of director/company secretary



Print name

D. CALAPAI

Date 11/6/2019

Signature of director



Print name

D. CALAPAI

Date 11/6/2019

Schedule 1 - Appendix 1A

Dated the Effective Date

Parties [insert] ("Retiring Party")
 Sydney Trains (ABN 38 284 779 682) ("Continuing Party")
 [] ("Substitute Party")

Recitals

- A. The Retiring Party and the Continuing Party are parties to the Contract.
- B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C. The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears, and in this deed:

Contract means the agreement between the Retiring Party and the Continuing Party entitled [insert description] and dated in or about [insert]

Contract Guarantees means the guarantees (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

Effective Date means the date on which the last party to execute this deed executes this deed.

GST means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth).

Liability means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

Related Entity means:

- (a) in respect of the Continuing Party any 'public transport agency', including Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988 (NSW)*, and any entity controlled by any of them; and
- (b) in respect of the other parties, has the meaning ascribed to that term in section 9 of the *Corporations Act 2001 (Cth)*.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

3. Novation

3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

- (a) The Substitute Party:



- (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract, in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
- (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, Claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

4. Insurance

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party (or, if applicable, the benefit of cover is extended to the Substitute Party) as required by the Contract; and
- (c) the Substitute Party must take the necessary steps to ensure that, for all insurances required to be effected by the Substitute Party under the terms of the Contract, the Continuing Party is named (or, if applicable, the benefit of cover is extended to the Continuing Party) as required by the Contract.

5. Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

6. Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

7. Representations and warranties

7.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

7.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

7.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

8. Duties, Costs and Expenses

8.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

8.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

8.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the



party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;

- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

9. General

9.1 Governing law

This deed is governed by and must be construed according to the laws applying in New South Wales.

9.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.2(a).

9.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

9.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

9.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

9.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:



- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

9.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

9.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Executed as a deed.

Signed, sealed and delivered by [insert]

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

Signature of Director / Secretary

Signature of Director

Print name

Print name

Date

Date

Executed for and on behalf of Sydney Trains (ABN 38 284 779 682) by an authorised delegate in the presence of:

Signature of Witness

Signature of Authorised Delegate

Full name of Witness (print)

Full name of Authorised Delegate (print)

Date

Date



Signed, sealed and delivered by [Insert Substitute Party name] (ABN [Insert])

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

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date



PART 2: CUSTOMER CONTRACT - SCHEDULES

Document	Date of Document
604162433_1_2018_11_30 Telematics Scope of Work (attached at Exhibit 1 to this General Order Form)	04/12/2018

Schedule 3: Service Level Agreement

1. Definitions and Interpretation

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

"Availability" means the figure calculated in accordance with the table set out in section 4.2. **Available** has a corresponding meaning;

"Planned Outage" means an outage of the System and in respect of which the Customer has received at least 5 Business Days notice and the Customer has provided written approval;

"Response" means notification by the Contractor to the Customer that the Contractor has received notice of a Defect, has allocated one or more people to assess the Defect, and that those people have started assessing the Defect. **Respond** has a corresponding meaning;

"Resolution" means permanently fixing a Defect or closing a Defect by agreement with the Customer and does not include a temporary Workaround. **Resolve** and **Resolved** have a corresponding meaning;

"Scheduled Maintenance" means the time (in minutes) in a month during which a Planned Outage results in the System or components of the System being unavailable to the Customer;

"Severity Level" means a severity level as set out in section 4.3;

"Support Hours" means:

- (a) for email help desk services, 24 hours a day, 7 days a week;
- (b) in relation to telephone support for named personnel, between 9am - 5.15pm on Business Days; and
- (c) in relation to application monitoring, 24 hours a day, 7 days a week;

"Support Request" means, in relation to the System:

- (a) a request for assistance; or
- (b) notification of a Defect,

by the Customer to the Contractor;

"System" means the system described in the Agreement Documents, comprising among other things, the Support Services.

"Total Time" means the total minutes in a month;

"Uptime" means the time (in minutes) in a month during which the Software as a Service is free of Defects and is able to be used by the Customer; and

"Workaround" means a fix or alternative procedure to temporarily address a Defect.

2. General

2.1 Purpose of the Service Level Agreement

This Service Level Agreement provides the Service Level commitments of the Contractor in relation to the Support Services as specified in the Module 10 Order Form.

2.2 Duration of Service Level Agreement

This Service Level Agreement will commence on the Commencement Date and will expire or terminate as per the expiry or termination of the Support Services specified in the Module 10 Order Form.

3. Key Performance Indicators

The Contractor must comply with the key performance indicators specified below.

Key Result Area	KPI	Measure	Target to be achieved by the Contractor
Safety and Environment	Safety & Environment	Number of safety related incidents caused or contributed by the Contractor	No safety related incidents which are caused or contributed by the Contractor
Delivery	Completion of Deliverables	Deliverables completed in accordance with the timeframes identified in the relevant Customer Contract document.	Each Deliverable is completed on or before the Delivery Date, at least 95% of the time
Quality	Standard of work	Number of times the Customer rejects the Deliverables	No more than 1 instance of a Deliverable being rejected by the Customer for not meeting one or more contractual requirement
Quality	Skills and experience	Assessment of the skills and experience level of the Contractor's personnel assigned to the Contract	All the Contractor's personnel performing the services have the skills and experience at the level stated in the Contractor's tender response / proposal and as required by the Contract
Quality	Accuracy of invoices	Percentage of invoices that have no errors and contain all required information	At least 90% of invoices issued by the Contractor and paid by the Customer without requiring amendment
Quality	Performance Management Reports	Performance Management Reports produced and delivered by the Contractor to the Customer as required under Item 40	95% of reports produced are accurate and provided within the timeframes set out in the Contract
Price	Cost saving initiatives	Number of tangible cost saving initiatives identified by the Contractor and realised by the Customer	Contractor to identify at least 2 tangible cost saving initiatives that were suggested by the Contractor and realised by the Customer in the previous 12 months



Key Result Area	KPI	Measure	Target to be achieved by the Contractor
Innovation and customer service	Continuous improvement initiatives and innovation	Number of innovative value adding / continuous improvement initiatives to improve process efficiency, pricing, safety, value delivery, service of operational efficiencies and drive best practice	Contractor to propose and have approved by the Customer, at least 2 initiatives in each 12 month period to improve process efficiency, pricing, safety, value delivery, service or operational efficiencies and drive best practice

4. Service Levels

4.1 General

The Contractor must provide the Support Services during the Support Hours in accordance with the Service Levels set out in this section 4.

4.2 Availability

The Contractor must ensure that the System is Available each month at or above the target Service Level set out in the table below:

Service Criteria	Definition	Target Service Level
Availability per month	$\text{Availability} = \frac{\text{Uptime}}{\text{Total Time} - \text{Scheduled Maintenance}} \times 100$	99.9%

4.3 Severity Levels

A Severity Level, assigned by the Customer at the time of communicating a Support Request, may be changed by mutual written consent during the process of providing a Resolution or Workaround. The Severity Levels are the following:

Severity Level	Definition
1 - Critical	The Defect affects critical functionality or critical data. It does not have a Workaround.
2 - Major	The Defect affects major functionality or major data. It has a Workaround but is not obvious and is difficult.
3 - Minor	The Defect affects minor functionality or non-critical data. It has an easy Workaround.

Severity Level	Definition
4 - Trivial	The Defect does not affect functionality or data. It does not even need a Workaround. It does not impact productivity or efficiency. It is merely an inconvenience.

4.4 Response and Resolution

- (a) In the event of a Support Request, the Contractor will Respond to, provide a Workaround for, and Resolve the Defect within the times set out below according to the Severity of the Defect:

Severity	Response time	Resolution time	% Service Level Achievement
1 - Critical	1 day	2 Business Days	98%
2 - Major	1 day	5 Business Days	97%
3 - Minor	1 day	10 Business Days	96%
4 - Trivial	1 day	Resolution to be provided in next Update, or as agreed between the parties, acting reasonably.	95%

- (b) Should a Severity Level 1 or 2 Support Request fail to be Resolved within the maximum Resolution time, the Contractor must deploy all necessary resources to achieve the Defect Resolution.
- (c) In case a Workaround for a Severity Level 1 or 2 Support Request is provided, then the Contractor must provide a final Resolution within, respectively, five or ten Business Days after the provision of the Workaround.
- (d) The parties agree to regularly review and (if required) revise the Service Levels in order to ascertain that the quality of service and the cost of that quality of service are appropriate to the Customer's operational needs.

5. Escalation Procedure

If, in relation to a Support Request, and subject to clause 4.4(c), the Resolution times in section 4.4(a) are exceeded by:

- (a) 50%, the Contractor must immediately escalate the Support Request to the attention of the Contractor's Representative; and
- (b) 100%, the Contractor must participate in a performance review in accordance with clause 6.10 of the Customer Contract.

6. Measurement and Reporting

6.1 Contractor to undertake analysis

- (a) The Contractor must undertake a root cause analysis for all:
 - (i) Severity 1 and 2 Defects; and
 - (ii) Systemic service issues.
- (b) The Contractor must provide the Customer with the written results of the analysis as soon as practicable (and, in the case of Defects, no later than Resolution of the Defect), including:
 - (i) the detailed analysis; and
 - (ii) recommendations on preventing reoccurrence of Defects, or to correct systemic service issues.
- (c) The Customer must review the Contractor's report under this section 6.1 within a reasonable time.
- (d) The Contractor must make any changes to the report reasonably requested by the Customer.
- (e) The Contractor must then implement the required changes to the Defect resolution services.

7. Service Level Reporting

7.1 General reporting and communication

The Supplier must:

- (a) provide a call reporting and tracking system for all support calls escalated to application level support;
- (b) provide monthly Service Level Agreement reports. The content and layout of this report is as specified by the Customer (**Monthly Service Level Report**);
- (c) provide monthly statistics and a graph showing trends of support calls. This report should include received, active, closed and outstanding calls;
- (d) maintain a fault and incident history for the System applications;



- (e) attend technical, business and support meetings in relation to the supported System at the request of Customer as per this Service Level Agreement; and
- (f) provide other reports as detailed in this Service Level Agreement.

7.2 Reporting regarding Defects

The Contractor will produce a Monthly Service Level Report showing the following details and supporting performance statistics for Defects:

- (a) Severity Level (1, 2, 3 or 4).
- (b) Service Level actions and timing achieved (Response, Restoration / Workaround and Resolution).
- (c) % SL Achievement required per month.
- (d) % SL Achievement attained per month.

7.3 Delivery of reports

The Monthly Service Level Report and its supporting performance statistics will be delivered to the Customer's representative by the 8th day of every month, for the previous month's period, in soft copy format and hard copy if requested by the Customer. These will be agreed by the Customer as a true record for the month.

8. Service Credits

Service credits (**Service Credits**) are categorised in line with the Severity Levels (as detailed in the Service Level Measurement table) such that failure to meet higher priority problems carries a higher penalty. Service Credits for failure to meet a Service Level will be expressed to apply in different percentages depending on the Severity Level.

A service credit will apply for each failure to attain the required "% Service Level Achievement", based on a percentage of the monthly charge (as per Item 11 of the General Order Form)(**Monthly Charge**) payable to the Contractor. The % service credit can be expressed as follows:

Category 1: 2.5% of the Monthly Charge

Category 2: 1.25% of the Monthly Charge

Category 3: 0.75% of the Monthly Charge

Category 4: 0% of the Monthly Charge

It is proposed that the total monthly rebate be capped at 7.5% of the Monthly Charge.

Schedule 4: Variation Procedures

1. Procedures

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



- 1.5** If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary any terms or conditions of the Customer Contract, including a Protected Clause and the Customer approves of the Change Request, the Customer must submit the Change Request to the Contract Authority and the Secretary of the New South Wales Department of Finance, Services and Innovation, for approval immediately after it has notified the Contractor that it approves the Change Request.

2. Status

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



3. Change Request Form

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CHANGE REQUEST BRIEF DETAILS

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

CHANGE REQUEST HISTORY LOG

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

DETAILS OF CHANGE REQUEST

Summary

[Insert a summary of the changes, if required]

SCOPE

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

EFFECT OF CHANGE ON CONTRACT SPECIFICATION

[Insert any changes to the Contract Specification]

EFFECT OF CHANGE ON PROJECT TIMETABLE

[Insert changes to the project timetable]

New PIPP (annexed)

[Annex new PIPP if required]

EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

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

CHANGES TO CSI

[Insert any changes to the CSI]

CHANGES TO CUSTOMER PERSONNEL

[Insert any changes to the Customer's Personnel]

CHANGES TO CUSTOMER ASSISTANCE

[Insert any changes to the Customer's Assistance]

PLAN FOR IMPLEMENTING THE CHANGE

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

THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

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

Responsibilities of the Contractor

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

Responsibilities of the Customer

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

EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE

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

EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

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

EFFECT ON USERS OF THE SYSTEM/SOLUTION

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

EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES

Changes will be required to the following documents:

[Add any other documents which may be affected.]

EFFECT ON TRAINING

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

ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

[insert if there are any other matters.]

ASSUMPTIONS

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

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

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

LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

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

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

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

Note that variations to any of the terms and conditions of the Procure IT Framework including the Protected Clauses require the Customer to obtain the prior written approval of the Contract Authority and the Secretary, New South Wales Department of Finance, Services and Innovation approval in accordance with directions and policies issued by the Board from time to time. (clause 26.2))

AUTHORISATION

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



SIGNED AS AN AGREEMENT

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

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

Signature of Customer Representative

Print name

Date

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

INTELLITRAC PTY LTD ATF THE CALAPPA FAMILY TRUST
ABN 31 238 398 354


Signature of Authorised Signatory

D CALAPPA
Print name

11/6/2019
Date

Date

Schedule 5: Escrow Deed

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PART 2: CUSTOMER CONTRACT - SCHEDULES

Deed dated the day of 20

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

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

And [insert name of Government Party] ("the **Principal**")

RECITALS

- A. By Licence Agreements made between the Contractor and the Principal, the Contractor has agreed to grant licences to the Principal to use the Licensed Software and Developed Software. By the Support Agreement made on about the date of this Deed, the Contractor has agreed to provide Software Support Services to the Principal in respect of that Licensed Software and Developed Software.
- B. The Contractor and the Principal have agreed to appoint an escrow agent and the Escrow Agent has agreed to act as an escrow agent and to hold the Escrow Material for the Licensed Software and Developed Software on the following terms and conditions.

NOW THIS DEED WITNESS:

1. Agreed Terms and Interpretation

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

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

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

Deed means this Deed of Agreement;

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

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

Escrow Materials means the source code and/or object code of the Licensed Software, Developed Software and all other software programs all as owned by the Contractor, documentation, drawings and plans as well as a list of any third party software programs that would enable a competent programmer skilled in the use of the Licensed Software and Developed Software and any necessary development tools to keep the Licensed Software and Developed Software in good order and repair that are stated in Attachments 2 and 3;

Insolvency Event means that a party to this Deed:

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

Licence Agreement means the contracts entered into pursuant to which the Contractor is providing Licensed Software and Developed Software to the Principal referred to in Recital A;

Licensed Software means the Application Software (as defined in the Maintenance Support Services Specification referenced in the Support Agreement) and Developed Software the Contractor has licensed to the Principal and includes any enhancements, Updates or New Releases of that software that may be provided to the Principal from time to time in accordance with the Software Support Agreement;

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

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

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

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

1.2 In this Deed, unless the contrary intention appears:

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

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

COMPLIANCE WITH CONSUMER LAWS

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

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

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

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

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



2. Duration

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

3. Appointment of Escrow Agent

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

4. Contractor's Obligations

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

5. Escrow Agent's Obligations

- 5.1 The Escrow Agent shall accept custody of the Escrow Material on the date of delivery in accordance with clause 4.1 above and, subject to the terms and conditions of this Deed, shall hold the Escrow Material on behalf of the Principal and the Contractor.
- 5.2 The Escrow Agent shall take all reasonable necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Escrow Material while it is in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an atmosphere which does not harm the Escrow Material or in a secure electronic environment.
- 5.3 The Escrow Agent shall bear all risks of loss, theft, destruction of or damage to the Escrow Material while it is in the Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, its employees or agents.⁵⁸
- 5.4 If the Escrow Material is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent shall immediately notify the Principal and the Contractor.
- 5.5 Unless this Deed is terminated in accordance with clause 9.2(b), the Contractor shall, upon receipt of notice from the Escrow Agent under clause 5.4 above, promptly deposit a replacement copy of the Escrow Material with the Escrow Agent.
- 5.6 Without limiting any other rights the Contractor and the Principal may have under this Deed or at law, where the loss, damage or destruction of the Escrow Material is caused by the negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, the Escrow



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

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

6. Escrow Fee and Expenses

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

7. Testing and Verification

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

8. Release of the Escrow Material

- 8.1 The Escrow Agent shall not release, or allow access to, the Escrow Material except in accordance with the provisions of this Deed.
- 8.2 If:
- a) an Insolvency Event has occurred in relation to the Contractor; or
 - b) the Principal has validly terminated the Support Agreement for cause (each of (a) and (b) being a **Trigger Event**),

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

8.3 Where:

- a) the Licence Agreement has been lawfully terminated by the Contractor or the period of licence has expired;
- b) the Support Agreement has been lawfully terminated by the Contractor or the period of Software Support Services has expired;
- c) the Principal has agreed to the release;
- d) this Deed is terminated in accordance with clause 9 below; or
- e) the Contractor is not obligated under the Agreement to execute a substantially similar Deed to replace this Deed,

the Escrow Agent shall, upon written request from the Contractor, release the Escrow Material to the Contractor.

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

- a) is granted a limited right to use the Escrow Materials:
 - (i) for the same usage rights as the Principal has been granted the right to use the Licensed Software and Developed Software under the Licence Agreement; and
 - (ii) to correct Defects in the Licensed Software and Developed Software; and
- b) subject to (c), must use the Escrow Materials subject to all the other terms of the Licence Agreement, as if the Escrow Material is included in the definition of Licensed Software Developed Software in that Licence Agreement; and
- c) must keep the Escrow Materials strictly confidential and not disclose them to any person, and must not use them for any purpose other than that referred to in clause 8.4(a) above.

This clause 8.4 survives expiry or termination of this Deed.

9. Termination

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



- a) has become subject to any form of insolvency administration; or
- b) is in breach of any obligation under this Deed so that there is a substantial failure by the Escrow Agent to perform or observe this Deed.

- 9.3** If this Deed is terminated in accordance with this clause 9 while the Agreement remains in force, and the Principal continues to use the Licensed Software and Developed Software, the Principal and the Contractor shall enter into a new escrow agreement on substantially the same terms and conditions as are set out in this Deed, with an alternative escrow agent who is acceptable to the Principal and the Contractor.
- 9.4** The Principal and the Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Deed, however in this case, no refund of advance payment of the Escrow Fee will be payable by the Escrow Agent.

10. Confidentiality

- 10.1** The Escrow Agent shall not, except as permitted by this Deed, make public or disclose to any person any information about this Deed or the Escrow Material.
- 10.2** The Escrow Agent shall not reproduce, or cause to have reproduced, a copy of the Escrow Material or any part thereof, except as may be necessary to electronically store (and maintain a back up) of the Escrow Material.
- 10.3** The obligations under this clause 10 shall survive the termination of this Deed.

11. Compliance with Laws

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

12. Resolution of Disputes

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

Negotiation

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

Mediation

- b) If the Dispute is not settled within 10 Business Days of notification under clause 12.1(a), the parties must submit the Dispute to mediation administered by one of the following bodies as agreed by the parties:
- (i) the Australian Disputes Centre Limited (**ADC**); or
 - (ii) the Resolution Institute,
- failing agreement, the ADC.



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

Court proceedings and other relief

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

Continuation of rights and obligations

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

13. Applicable Law

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

14. Variation and Waiver

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

15. Assignment

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

16. Severability

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

17. Notices

- 17.1 A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the



sending party must confirm receipt by some other means. The address for services of notice for a party is, in the case of the:

Escrow Agent

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Contractor

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Principal

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

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



17.2 A notice or other communication is deemed to be received if:

- a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
- b) sent by post from and to an address within Australia, after three (3) Business Days;
- c) sent by post from or to an address outside Australia, after ten (10) Business Days;
- d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours); or
- e) sent by email, when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).



EXECUTED AS A DEED

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

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

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

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

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

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date



Signed, sealed and delivered for and on behalf of [insert name of Principal], ABN [insert ABN]

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

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

Signature of Principal's representative

Signature of Principal's witness

Print Name

Print Name

Date

Date



Escrow Deed of Agreement

ATTACHMENT 1

Details of Escrow fees:

REVIEW OF FEES

The Escrow Agent may review fees annually provided that no increase in fees shall exceed the increase in the Consumer Price Index (All Groups) since the fees were last reviewed.



Escrow Deed of Agreement

ATTACHMENT 2

Details of Licensed Software and Developed Software to be held in Escrow

Source Code:

Source code in relation to the following:

Flow Charts:

Diagrams:

Listings:



Escrow Deed of Agreement

ATTACHMENT 3

Supporting materials

All available support material relevant to the Licensed Software and Developed Software, including:

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



Schedule 6: Deed Poll – Approved Agents

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

1. Definitions

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

By this Deed:

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

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

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

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date



Schedule 7: Statutory Declaration – Subcontractor

Oaths Act (NSW), 1900 Eighth Schedule

I,, do solemnly and sincerely declare that

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

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at: on

[place] *[date]*

[signature of declarant]

in the presence of an authorised witness, who states:

I, a
[name of authorised witness] *[qualification of authorised witness]*

certify the following matters concerning the making of this statutory declaration by the person who made it: *[*please cross out any text that does not apply]*

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have confirmed the person's identity using an identification document and the document I relied on was
[describe identification document relied on].

[signature of authorised witness]

[date]

Schedule 8: Deed of Confidentiality

67

Deed of Agreement dated the

11

day of

JUNE

20

19

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

INTELLITRAC PTY LTD ATE THE CALAPAT FAMILY TRUST
OF 11 SCHOLAR DRIVE BUNDOORA 3083 VIC.

RECITALS

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

WHAT IS AGREED

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

2. Interpretation

DEFINITIONS

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

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

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

Confidential Information means information that:

- a) is by its nature confidential; or
- b) is communicated by the Customer to the Subcontractor as confidential; or
- c) the Subcontractor knows or ought to know is confidential; or
- d) relates to:
 - (i) the Products and Services;
 - (ii) the financial, the corporate and the commercial information of the Customer;
 - (iii) the affairs of a third party (provided the information is non-public); and
 - (iv) the strategies, practices and procedures of the State and any information in the Subcontractor's possession relating to the State public service,
- e) but excludes any information which the Subcontractor can establish was:
 - (i) in the public domain, unless it came into the public domain due to a breach of confidentiality by the Subcontractor or another person;
 - (ii) independently developed by the Subcontractor; or
 - (iii) in the possession of the Subcontractor without breach of confidentiality by the confidant or other person.

Contractor means [insert name of Contractor]. **INTELLITRAL P/L ATF**

THE CALAPAT FAMILY TRUST

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

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

Intellectual Property Rights means all intellectual property rights including:

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

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

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

State means the State of New South Wales.

GENERAL

- 2.2** Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply

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

3. Non disclosure

- 3.1** The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 3.2** The Customer may grant or withhold its consent in its discretion.
- 3.3** If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 3.4** If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.⁵²
- 3.5** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- a) to its directors, officers, employees and contractors;
 - b) to the Contractor and its directors, officers, employees and the Contractor's other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,
- each referred to as **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.
- 3.6** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- a) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
 - b) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.



- 3.7** Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.8** The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
- 3.9** If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

4. Restriction on use

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

5. Survival

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

6. Rights of the Customer

PRODUCTION OF DOCUMENTS

- 6.1** The Customer may demand the delivery up to the Customer of all documents in the possession or control of the Subcontractor containing the Confidential Information.
- 6.2** The Subcontractor must immediately comply with a demand under this clause 6.



6.3 If the Customer makes a demand under this clause 6, and documents containing the Confidential Information are beyond the Subcontractor's possession or control, then the Subcontractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.

6.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

LEGAL PROCEEDINGS

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

7. Indemnity and release

7.1 The Subcontractor is liable for, and agrees to indemnify and keep indemnified the Customer in respect of, any claim, damage, loss, liability, cost, expense, or payment which the Customer suffers or incurs as a result of:

- a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
- b) the disclosure or use of the Confidential Information by the Subcontractor or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

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

9. Waiver

9.1 No waiver by the Customer of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.

9.2 None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Customer unless by its express consent in writing.

10. Remedies cumulative

CUMULATIVE

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

OTHER INSTRUMENTS

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



11. Variations and amendments

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

12. Applicable law

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

13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post, email or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.
- 13.4 If delivery of a notice is made by email, the notice will be taken to have been received when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending). 5



EXECUTED AS A DEED

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

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

In the presence of: [insert name of witness]

Signature of Customer

Signature of Witness

Print name

Print name

Date

Date

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

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

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date



Schedule 9: Performance Guarantee

Deed dated the

day of

20

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

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

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

DEFINITIONS

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

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

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

Insolvency Event means where the Contractor:

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

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

BY THIS DEED

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

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

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

Guarantor

Physical address

Postal address

Email address

Fax number



Contractor

Physical address

Postal address

Email address

Fax number

Customer

Physical address

Postal address

Email address

Fax number

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

10. A Notice in Writing is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at 9.00 am the next Business Day); or
 - (e) sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).
11. The laws of New South Wales govern this Deed of Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.



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

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

By *[insert name of Customer representative]*

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

Signature of Customer representative

Signature of Customer's Witness

Print Name

Print Name

Date

Date

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

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

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date



Schedule 10: Financial Security

78

Deed dated the

day of

20

Between *[insert name of the Customer]* (Customer)And *[insert name and ACN/ABN]* (Guarantor)

DEFINITIONS

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

BY THIS DEED:

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



Guarantor

Physical address

Postal address

Phone number

Email address

Fax number

Contractor

Postal address

Phone number

Email address

Fax number

Customer

Postal address

Phone number

Email address

Fax number

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

8. A notice or other communication under this Financial Security is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours); or
 - (e) sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

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

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

By *[insert name of Customer representative]* but not so as to incur personal liability
In the presence of: *[insert name of witness not a party to this Deed]*

Signature of Customer representative

Print name

Date

Signature of Customer witness

Print name

Date

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

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

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

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

Signature of Director/Secretary

Print name

Date

Signature of Director/Secretary

Print name

Date

Schedule 11: Dispute Resolution Procedures

1. Expert Determination

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

2. Submissions

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



- f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

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

4. Questions to be determined by the Expert

- 4.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - a) is there an event, act or omission that gives the claimant a right to compensation under the Customer Contract:
 - (i) for damages for breach of the Customer Contract, or
 - (ii) otherwise in law?
 - b) if so:
 - (i) what is the event, act or omission?
 - (ii) on what date did the event, act or omission occur?
 - (iii) what is the legal right which gives rise to the liability to compensation?
 - (iv) is that right extinguished, barred or reduced by any provision of the Customer Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
 - c) in the light of the answers to clause 1.4:



(v) What compensation, if any, is due from one Party to the other and when did it fall due?

(vi) What interest, if any, is due when the expert determines that compensation?

4.2 The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.

4.3 The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 for the determination, and bear their own expenses.

4.4 If the expert determines that one Party must pay the other an amount exceeding the amount specified in General Order Form (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.

4.5 Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Customer Contract:

- a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
- b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

5. Role of Expert

5.1 The expert must:

- a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
- b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
- c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
- d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
- e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d).

5.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.

6. Confidentiality

6.1 Each Party involved in the expert determination process, including the expert, the Parties, their advisors and representatives shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of the expert determination process,

the expert's determination, or any information received or obtained, in the course of the expert determination process, including the existence of that information, except to the extent:

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

A handwritten signature in black ink, consisting of a stylized, cursive 'B' followed by a horizontal line and a small upward stroke.

Schedule 12: Project Implementation and Payment Plan (PIPP)

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

1. Introduction

DOCUMENT SCOPE

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

2. Project Overview

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

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

Outline any key assumptions or dependencies.

3. Scope of Work

PRODUCTS AND SERVICES

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

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

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

Specify if the Contractor is acting as an Approved Agent.

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

OVERVIEW OF DELIVERABLES

List of Deliverables

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

Hardware

Licensed Software

Hardware Maintenance and Support Services

Software Support Services

User Documentation

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

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

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

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

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

Summary Table of Deliverables

Insert the list of Deliverables into the following table:

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

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

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

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

- part of a Stage,
- an LD Obligation (i.e. may be subject to liquidated damages); and/or
- a payment Milestone.

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

OTHER SERVICES

If the Contractor is supplying other services such as:

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

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

CONTRACT PERIOD

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

CONTRACT SPECIFICATIONS

List and provide details of the Contract Specifications.

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

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

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

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

Exclusions

Specify any exclusion to the Contract Specifications.

ASSUMPTIONS

Specify any assumptions to the scope of work.

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

4. Implementation

METHODOLOGY

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

ROLES AND RESPONSIBILITIES

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

DELIVERY

If the Products or Services are to be physically delivered:

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

Where work performed (Site)

Specify the Site where the work is to be performed.

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

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



Site Specification

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

If a Site Specification is required:

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

IMPLEMENTATION PLANNING STUDY

If the Contractor is to provide an implementation planning study:

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

BUSINESS CONTINGENCY PLAN

Note: A Business Contingency Plan details the nature and scope of the business contingency services to be provided by the Contractor to overcome any interruption to the Customer's business, including as applicable, information about time-frames, scheduling, service levels, methodologies, systems, processes or programs for the implementation of such services and any other requirements stated in Item 24 of the General Order Form. (**Clause 1.14 Part 3 Dictionary**)

Specify if and when a Business Contingency Plan is required.

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

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

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

5. Project Management

ISSUES LOG

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

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

RISK MANAGEMENT PLAN

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

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

CHANGE MANAGEMENT

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

Where the Customer Contract is entered into under a Head Agreement, the Customer must obtain the prior written consent of the Contract Authority and the Secretary, New South Wales Department of Finance, Services and Innovation prior to agreeing to a variation to any terms and conditions, including a variation to any Protected Clause.

6. Customer Supplied Items (CSI)

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

List of CSI's

Specify each CSI to be provided by the Customer.

CSI maintenance and support contracts

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

CSI requirements

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

CSI verification

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

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

7. Specified Personnel

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

Contractor's Specified Personnel identity, roles and responsibilities

If there are any Specified Personnel:

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

8. Customer Personnel

Customer's Personnel roles and responsibilities

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

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

Customer's Personnel times, duration and authority levels

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

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

9. Customer Assistance

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

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

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

10. Subcontractors

Note: This section only needs to include information for entities that are "Subcontractors" within the definition (See definition of Subcontractor – clause 1.116 Part 3 Dictionary)

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

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

11. Acceptance Testing

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

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

ACCEPTANCE

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

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

CONDUCTING ACCEPTANCE TESTS

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

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

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

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

Specify the methodology and process for conducting Acceptance Tests.

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

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

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

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

Acceptance Test Results

Provide a definition of the Defect severity classifications.

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

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

unless otherwise agreed in the Order Documents. (Clause 1.70 Part 3 Dictionary)

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

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

12. Project Plan

HIGH LEVEL PROJECT PLAN

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

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

If the project is being delivered in Stages:

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

DETAILED PROJECT PLAN

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

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

LIQUIDATED DAMAGES

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

Specify if LDs will apply, and if so to which Milestone (typically the final Milestone).

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

For example:

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

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

13. Payment Plan

ADDITIONAL PRODUCTS/SERVICES.

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

BUSINESS MODEL

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

Time and Materials

Note: If it is at time and materials rates:

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

Combination

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

CONTRACT PRICE

Insert the Contract Price.

Specify how this is calculated.

Here is an example table.

[illegible]

Deliverable	Price per Unit	Quantity	Extended Price
This is the Contract Price (plus GST)	Total Amount:		

PAYMENT

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

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

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

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

OR

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

TERMINATION FOR CONVENIENCE

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

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

14. Governance

AUTHORISED REPRESENTATIVE

Customer's Authorised Representative

Specify the Customer's Authorised Representative.

Contractor's Authorised Representative

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

MANAGEMENT COMMITTEE

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

Contractor's management committee membership

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

Customer's management committee membership

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

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

Management committee function

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

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

Management committee meetings

Note: Unless agreed otherwise, the members of the management committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time. **(Clause 6.7 Customer Contract)**

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

Management committee progress report

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

- a) details (including dates) of Deliverables and Milestones commenced, completed or Accepted;
- b) any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
- c) a review of any:
 - (i) minutes and actions from the last meeting;
 - (ii) issues logs;
 - (iii) risk management plan, which must be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed in writing;

- (iv) details of any outstanding invoices and any payments that are about to become due;

- d) draft updates of relevant parts of the Contract Specifications;
 - e) any new Change Requests or Contract Variations (if applicable);
 - f) reviewing progress of any draft Change Requests or Contract Variations (if applicable).
- (Clause 6.8 Customer Contract)**

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

ORGANISATION CHART

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



Exhibit 1 to General Order Form

Schedule 2 (Agreement Documents) - 604162433_1_2018_11_30 Telematics Scope of Work

604162433_1_2018_1
1_30 Telematics Scop



Telematics/GPS Upgrade

Scope of work

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1 Project background

All Sydney Trains vehicles, which comprise of Light Commercial and Heavy vehicles, are currently equipped with a Telematics system or more commonly referred to as a GPS Tracking system. This system is currently used for monitoring and tracking motor vehicle systems performance and to support safe driver behaviour through infringement management.

The current system is over 7 years old, has become obsolete and is thus in need of a replacement. The aim of this project is to source and install a new Telematics system that will support Sydney Trains with compliance with Heavy Vehicle National Law, improve Fleet Management capability and encourage safe driving of Sydney Trains Motor Vehicles.

2 Business Outcomes

The new Telematics has to support Sydney Trains in its compliance with the National Heavy Vehicle Laws and provide evidence for its eligibility to be part of the National Heavy Vehicle Accreditation Scheme (NHVAS) which focuses on the following safety management systems: mass management and driver fatigue management.

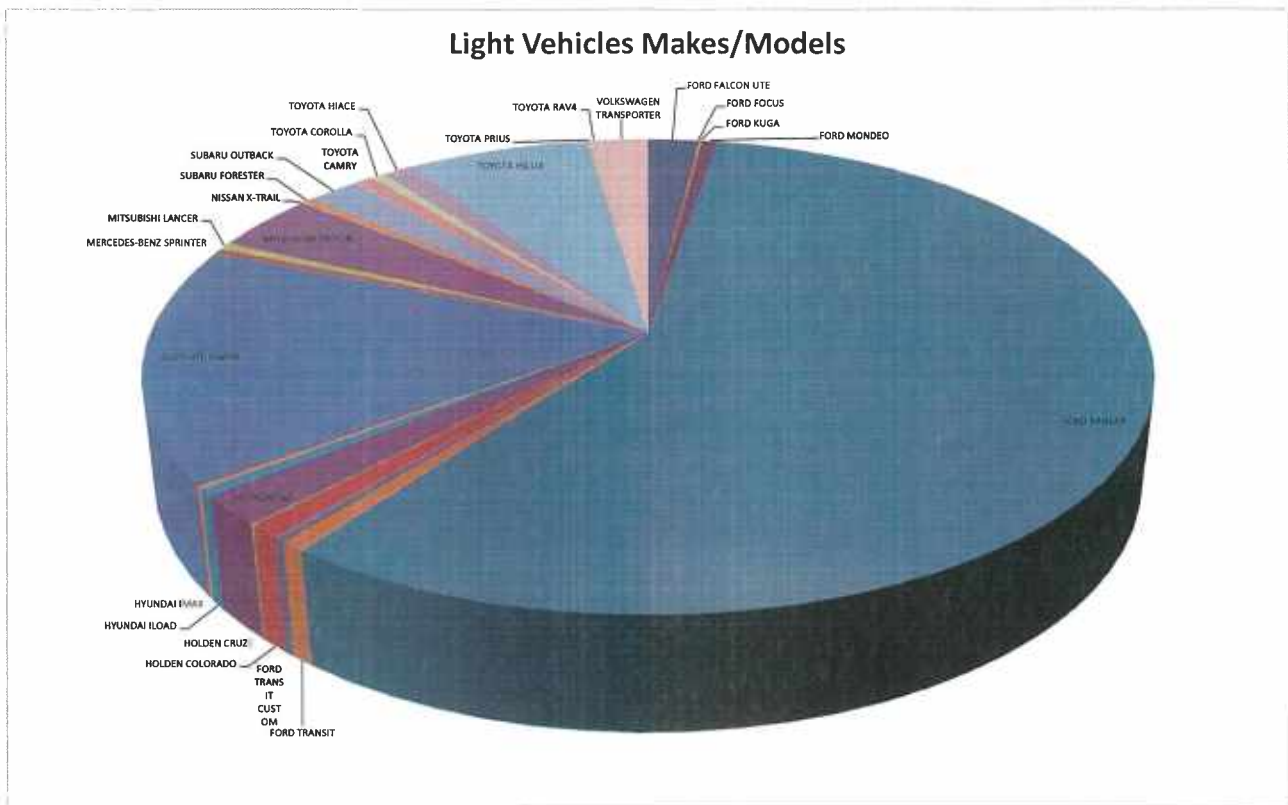
The new system has to contribute and be part of the campaign to improve driver safety by tracking the vehicles and providing various sets of data related to, but not limited to, seat belt warning, speeding and harsh driver behaviour. This data has to be accessible at all times through different customizable reports. The details can be found in Chapter 5 – Requirements of this Scope of Work.

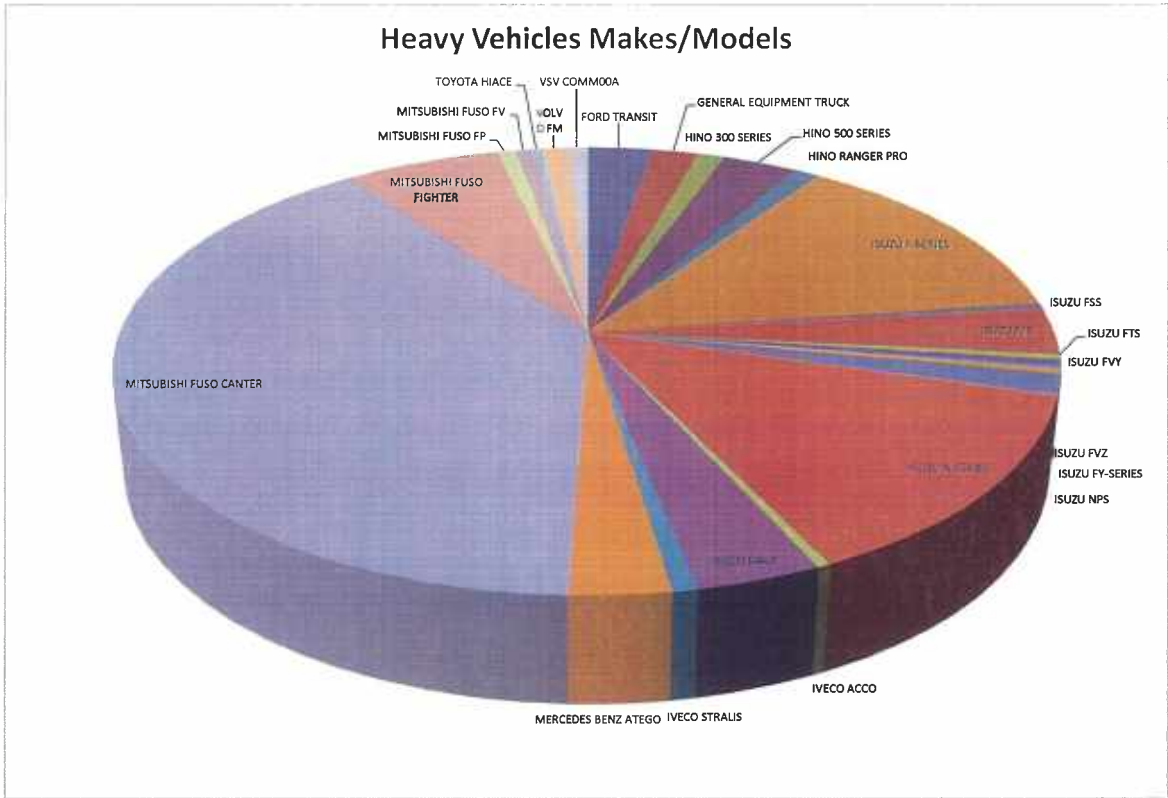
3 Motor Vehicle Assets

Sydney Trains has a fleet of approximately 950 Light Vehicles (LV) and 250 Heavy Vehicles (HV). Initially each of these 1200 vehicles will need to be equipped with a new Telematics system. When this initial phase is completed, the supplier can, for the duration of the contract term, be requested by Sydney Trains to remove and install Telematics when the need arises, for instance, in case of, but not limited to, end of vehicle lease agreements, delivery of new vehicles.

The charts below show the distribution of the vehicle makes and models. This data is an indication only and is subject to change.



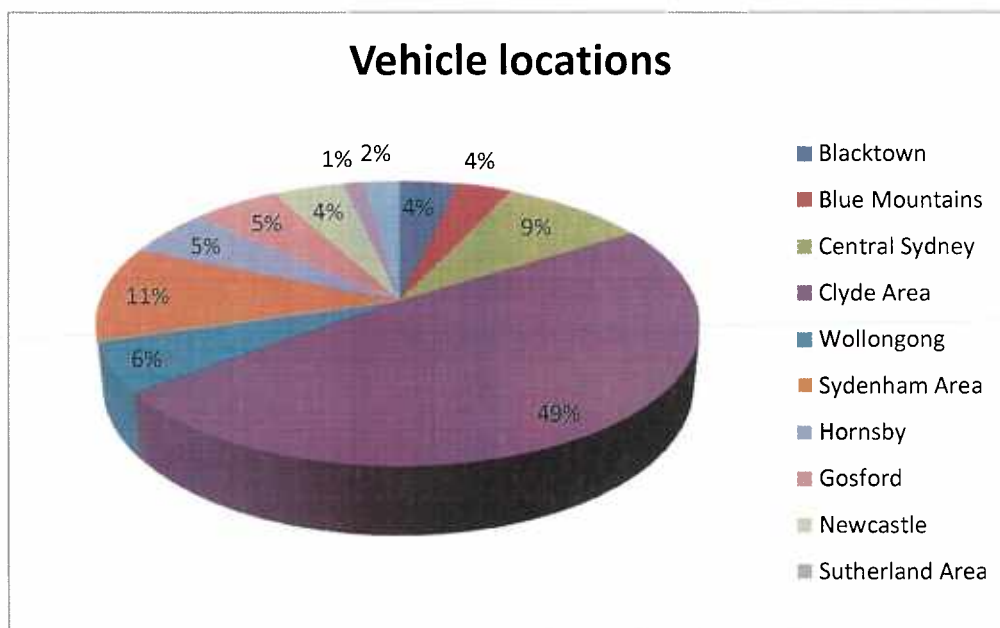




4 Location of Assets

The vehicles are spread across greater Sydney, from Wollongong to Newcastle and the Blue Mountains area in the West. Sydney Trains will require the Supplier to perform the installations (and removal of the current Telematics solution) on site but will assist with the coordination of the installations and the availability of the vehicles. Sydney Trains will manage the disposal of the currently installed Telematics.

The chart below shows an indicative distribution of the estimated 1200 vehicles:



5 Requirements

5.1 Hardware requirements

Sydney Trains requires the new solution to consist of the following components:

- A user interface which will allow the user to complete pre-trip checklists, mass management forms and which can also serve as a navigation tool
- Tracking device (black box) to track the vehicle and monitor driver behaviour (see Technical Requirements for more detail)
- Card reader: integration of the Telematics with the Sydney Trains Card Reader to allow the users to identify themselves by swiping their Sydney Trains access card
- Duress Button (HV)
- Web based application to manage the fleet and users (tracking), to access the recorded data and to generate various reports (for instance FBT reporting, reports showing compliance with Heavy Vehicle Laws, etc.)

5.2 Technical requirements

Below is the list of technical requirements the solution has to meet. The requirements in **bold** are core requirements.

5.2.1 Compliance

5.2.1.1 ATO Compliant Log Book

5.2.1.2 Electronic Work Diary (EWD) for Heavy Vehicles (NHVR approved)

5.2.1.3 Integration with Load Cells

5.2.1.4 Driver Fatigue Management

5.2.1.5 ~~Seat Belt alerts~~ **NOT REQUIRED AT THIS STAGE**

5.2.2 Driver Identification

5.2.2.1 Integration with TfNSW Card Reader technology

5.2.2.2 Driver Identification via Sydney Trains access card or via the use of a PIN (no limitations in length or other conditions)

5.2.2.3 Ability for ST staff to update driver details

5.2.2.4 Ability to block drivers without valid license **NOT REQUIRED AT THIS STAGE**

5.2.2.5 ~~No swipe, no drive~~ **NOT REQUIRED AT THIS STAGE**

5.2.2.6 Clear message of successful login – not only audible warning

5.2.2.7 Start Up, Driver Identification and Trip Purpose selection cannot take more than 20s

5.2.2.8 Configurable Auto-Log Off (x minutes after ignition off)

5.2.2.9 Manual log off function

5.2.2.10 Customizable start up message

5.2.2.11 Ability to bulk upload Sydney Trains employees

5.2.3 Trip Purpose

- 5.2.3.1 Ability to create a customized Trip Purpose List
- 5.2.3.2 Ability to have more than one Private Trip Purpose option
- 5.2.3.3 Automatic pop up of the Trip Purpose Selection list after successful login
- 5.2.3.4 Ability to change the Trip Purpose without the need to log off
- 5.2.3.5 Ability to disable Trip Purpose Selection list for certain groups of vehicles

5.2.4 Pre-start Checklist

- 5.2.4.1 Ability to create customized Pre-Start Checklists with fit for duty declaration
- 5.2.4.2 Automatic pop up of the Pre-trip Checklists after Trip Purpose selection after different driver login
- 5.2.4.3 Pop up reminder to complete Pre-Trip Checklist
- 5.2.4.4 Ability for the driver to access previously recorded Pre-Start Checklists
- 5.2.4.5 Exception reporting when Pre-Trip Checklist is not completed
- 5.2.4.6 Ability to take photos to support ~~Pre-Trip Checklist~~ comments

NOT REQUIRED
AT ALL.



5.2.5 Mass Management

- 5.2.5.1 Live streaming of split axle weights and overall vehicle weight (NHVAS Mass Management)
- 5.2.5.2 Pop up reminder to complete Mass Management forms
- 5.2.5.3 Exception reporting when Mass Management form is not completed or load is not compliant

5.2.6 Driver Management

- 5.2.6.1 Information on routes used by the vehicles
- 5.2.6.2 Real Time Positioning of the vehicle
- 5.2.6.3 Fuel Consumption ~~NOT REQUIRED~~ AT THIS STAGE
- 5.2.6.4 Ability to record and collect data on Harsh Driver Behaviour: braking, accelerating, cornering
- 5.2.6.5 Ability to record and collect data on speeding



- 5.2.6.6 Ability to send alerts to the relevant stakeholders in case of business and road rule breaches
- 5.2.6.7 Ability to send critical safety messages/news via the telematics system
- 5.2.6.8 Records Engine Start and stop, Driving time, idle time, engine time with location information
- 5.2.6.9 Two way messaging (message to vehicle with read receipt)

5.2.7 Operational

- 5.2.7.1 Alert for defective/non-operational/ tampered with telematics units
- 5.2.7.2 Record from Supply Management, Routine Maintenance, measure Up/Downtime Calc, Fleet Register, Capture Total Cost of Ownership - through Fleet Manager
- 5.2.7.3 All hardware components to operate in cold and hot weather conditions
- 5.2.7.4 Map and software updates on a regular and consistent basis
- 5.2.7.5 Capability to update maps and software over cellular network, Wifi and via SD Card and to all vehicles simultaneously
- 5.2.7.6 Ability to send service due alerts to the vehicle and escalate to line managers.
- 5.2.7.7 Ability for each user to configure the fleet they need to see (eg. Tree structure not all ST, RMS, TSS – only selected vehicles used in a program)
- 5.2.7.8 Ability to have the software/application used on different platforms such as tablets/smart phones
- 5.2.7.9 Ability to not monitor vehicle movement within 20m distance (i.e. moving vehicles within the yard)
- 5.2.7.10 Ability for Sydney Trains staff to create Geo Fences plus setting up customized alerts/pop up messages when entering/leaving Geo Fence
- 5.2.7.11 Ability to bulk upload Sydney Trains POIs (at time of installation, the devices should come pre-loaded with POIs provided in csv format by Sydney Trains)
- 5.2.7.12 Duress button (HV) ~~NOT REQUIRED~~ *AT THIS STAGE*
- 5.2.7.13 Ability to send and save forms and pdf documents to the user interface
- 5.2.7.14 Ability to disable messaging function only when driving
- 5.2.7.15 Ability to limit access to certain features of the software (for instance, only tracking and no reporting or only certain reports,...). Access to data needs to be configurable depending on the user - not all users with access to the software need to see all data



5.2.7.16 Notify next servicing due/overdue requirement for truck & Body by Km, & Engine hour

5.2.7.17 Live traffic information

5.2.7.18 Solution cannot affect car battery performance (current solution drains car battery)

5.2.7.19 Car battery status alerts

5.2.8 Reporting

5.2.8.1 Ability to generate customized reports and customize access to reporting

5.2.8.2 Ability to download reports in different formats (csv, Excel, pdf,...)

5.2.8.3 Ability to complete missing or correct information in the reporting platform (missing driver info, trip purpose, etc)

5.2.8.4 Ability to generate exception reports

5.2.8.5 Ability to generate FBT reports meeting ST requirements

5.2.8.6 Ability to automate the reporting (weekly, monthly,...) and submit to predefined ST staff

5.2.8.7 Ability to include driver type, vehicle type (FBT, FTC, Road/Rail) which is used for FBT purpose

5.2.9 User Interface

5.2.9.1 Ability to adjust brightness of screen

5.2.9.2 Ability to lock/unlock screen (switch on/off) without losing connection with the server or loss of data

5.2.9.3 Ability to disable volume adjustments of audible warnings (for instance in case of no swipe)

5.2.9.4 Ability to adjust volume of spoken instructions of navigation independently from other audible alerts

5.2.9.5 Auto shut down after ignition off for 1 minute

5.2.9.6 Auto restart of user interface when ignition on

5.2.9.7 No need to restart vehicle to reboot screen

5.2.9.8 Ability to connect with currently installed reversing cameras  NOT REQUIRED AT.

5.2.9.9 Fixed mount for the user interface (no suction mount)



5.2.10 Customer Support

- 5.2.10.1 Face to face training for drivers and other users
- 5.2.10.2 1-page instruction card for the driver on how to use the system
- 5.2.10.3 Instruction video
- 5.2.10.4 Access to online training/support portal
- 5.2.10.5 Aftermarket support
- 5.2.10.6 Replacement of faulty components within 2 days of reporting

6 Trial

Sydney Trains requires each Supplier to provide and install their proposed solution in 3 Sydney Trains vehicles including access to an online tracking and reporting platform. The solution will be tested over a period of up to 3 weeks during which Sydney Trains will evaluate the stability and behaviour of the different products. At the end of this period of trial, a report with the findings will be generated which will help determine the successful solution.

7 Project Milestones

The table below lists the project milestones:

MS	Description	Timeline
1	Develop and agree a detailed project plan	1 week after contract award
2	Commencement of Installation	1 week after MS1
3	End of Installations	10 weeks after MS2
4	Provide Final Report	1 week after MS3
5	Closeout all outstanding issues	1 week after MS4



PROJECT IT FRAMEWORK

VERSION 3.2

PART 3: DICTIONARY

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DICTIONARY

1. AGREED TERMS & INTERPRETATION

AGREED TERMS

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

(a) stated in the Head Agreement Details or otherwise approved by the Contract Authority; or

(b) where there is no Head Agreement, approved by the Customer,

but excludes the directors, officers or employees of the Approved Agent.

1.12 Authorised Representative means a person who has authority to act on behalf of a Party in accordance with the Head Agreement (Part 1) or the Customer Contract (as applicable).

1.13 Bespoke User Documentation means documents created for the Customer as a Deliverable under a Customer Contract that describe the features and functions of a Product or Service that has been created, modified or adapted for the Customer under a Customer Contract, in a hard copy, electronic or online format as stated in the Contract Specifications.

1.14 Board means the New South Wales Procurement Board established under section 164 of the PWP Act.

1.15 Business Contingency Plan means a plan detailing the nature and scope of the business contingency services to be provided by the Contractor to overcome interruptions to the Customer's business, including as applicable, information about time-frames, scheduling, service levels, methodologies, systems, processes or programs for the implementation of such services and any other requirement, as stated in Item 24 of the General Order Form.

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

1.17 Business Hours means 9.00am to 5.00pm on a Business Day.

1.18 CCA means the Competition and Consumer Act 2010 (Cth).

1.19 Change in Control means a circumstance in which control is or may be exercised over the Contractor:

(a) by virtue of the change of a direct holding of at least fifteen percent of the voting shares in the Contractor or a holding company of the Contractor; or

(b) by any other means whatsoever.

1.20 Change Request means a change requested by either Party which, if signed by the Parties, will result in a variation to any part of the Customer Contract.

1.21 Commencement Date means:

(a) the Commencement Date stated in Item 10 of the General Order Form; or

(b) if no Commencement Date is stated in the General Order Form, the date the Customer Contract is signed by the Customer and the Contractor.

1.22 Confidential Information means information that:

(a) is by its nature confidential;

(b) is communicated by the disclosing party to the confidant as confidential;

(c) the confidant knows or ought to know is confidential; or

(d) relates to:



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

but excludes any information which the **confidant** can establish was:

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

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

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

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

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

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

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

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



1.28 Contract Specifications means the totality of any technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable provided by the Contractor under the Customer Contract being only:

- (a) any specifications stated in the Customer Contract in Item 13 of the General Order Form; or
- (b) if no specifications are set out in the Customer Contract, the User Documentation.

1.29 Contract Value means:

- (a) the amount that is the maximum amount that the Customer is legally required to pay to the Contractor for the relevant:
 - (i) Non-Recurring Service and/or Product; or
 - (ii) Short Term Recurring Service,
 under the Customer Contract, calculated at the Commencement Date; or
- (b) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is an Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the greater of:
 - (i) the Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service; or
 - (ii) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
- (c) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is no Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the aggregate of:
 - (i) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
 - (ii) the average amount paid by the Customer in each month of the Contract Period for the relevant Non-Recurring Service or Product or Short Term Recurring Service prior to the date on which the claim first arises multiplied by the number of remaining months of the Contract Period during which the relevant Non-Recurring Service and/or Product or the Short Term Recurring Services were to be provided, as set out in the Order Documents.

1.30 Contract Variation means a variation to the terms and conditions of the Customer Contract that requires the consent of the Secretary, New South Wales Department of Finance, Services and Innovation in accordance with clause 26.2 of the Customer Contract.

1.31 Contractor means the person or body corporate named in Item 3 of the Head Agreement Details and/or Item 4 of the General Order Form that enters into the relevant Part. For the purpose of a Customer Contract, Contractor includes any Approved Agent who enters into the Customer Contract. Contractor does not include any of the Contractor's Personnel (other than an Approved Agent).

1.32 Contractor Information means information relating to:

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

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

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

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

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

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

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

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

1.38 Cyberterrorism means an assault on any electronic communications network.

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

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

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



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



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

1.49 Estimated Contract Price means the Parties' estimate of the amount payable under the Customer Contract for the relevant:

- (a) Non-Recurring Service or Product; or
- (b) Short Term Recurring Service,

as stated in Item 39 of the General Order Form.

1.50 Existing Material means any Licensed Software or any other Material that is developed:

- (a) prior to the Commencement Date; or
- (b) independently of the Customer Contract,

and that is incorporated into a Deliverable under the Customer Contract.

1.51 Financial Security means the security in Item 38 of the General Order Form which is in substantially the form of Schedule 10 to the Customer Contract.

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

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

1.53 Fundamental Breach means a breach of the Customer Contract by the Customer which prevents the Contractor from carrying out its obligations under the Customer Contract.

1.54 General Order Form means Schedule 1 to the Customer Contract and includes the Order Details that are relevant to that Customer Contract.

1.55 GIPA Act means the Government Information (Public Access) Act 2009 (NSW).

1.56 Government Agency means any of the following:

- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013 (NSW)*);
- (b) a NSW Government agency;
- (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation); or
- (d) any State owned corporation prescribed by regulations under the PWP Act.

1.57 GST has the same meaning as in the GST Law.

- 1.58 GST Law** means any law imposing or relating to a GST and includes the *A New Tax System (Goods & Service Tax) Act 1999* (Cth) and any regulation pursuant to such Act.
- 1.59 Hardware** means the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices.
- 1.60 Head Agreement** means an agreement between the Contract Authority and the Contractor, comprising those Parts, terms and conditions and other documents listed in clause 4.2 of Part 1.
- 1.61 Head Agreement Details** means those details stated in Annexure 1 to Part 1.
- 1.62 Head Agreement Documents** means the documentation listed in Annexure 2 to Part 1.
- 1.63 Insolvency Event** means where a Party:
- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - (b) is insolvent with the meaning of section 95A of the *Corporations Act 2001* (Cth);
 - (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act 2001* (Cth);
 - (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act 2001* (Cth);
 - (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
 - (f) has a mortgagee entitled to, or enter into, possession of any property of that Party;
 - (g) has a controller within the meaning of the section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
 - (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.
- 1.64 Install** means to set up Hardware so that the manufacturer's installation tests can be completed successfully.
- 1.65 Intellectual Property Rights** means all intellectual property rights including:
- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade names and other protected rights, or related rights, existing worldwide; and
 - (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in paragraph (a),
- but does not include the right to keep confidential information confidential, Moral Rights, business names, company names or domain names.

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

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

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

- 1.76 Nominee Purchaser** means a contractor to a Customer that is authorised to enter into the Customer Contract as the Customer's agent.
- 1.77 Non-Panel Arrangement** has the meaning given to such term in clause 1.7(b).
- 1.78 Non-Recurring Services** means Services which are provided by the Contractor under any of the following Modules:
- (a) Module 4 – Development Services; and
 - (b) Module 13 – Systems Integration Services; and
 - (c) Module 9 – Data Migration
- and, if agreed by the Parties in Item 39 of the General Order Form:
- (d) Module 6 – Contractor Services;
 - (e) Module 7 – Professional Services; and
 - (f) Module 8 - Training Services.
- 1.79 Notice in Writing** means a notice signed by a Party's authorised representative or his/her delegate or agent which must not be an email or a document scanned and sent by email.
- 1.80 Officer** has the same meaning as detailed in section 9 of the *Corporations Act 2001 (Cth)*.
- 1.81 Online Service** means cloud computing services and related Products and Services as described in the Module 10 (As a Service) Order Form and further defined in the Contract Specifications.
- 1.82 Open Source Software** means software available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>.
- 1.83 Order Details** means the details of the Customer Contract specific to the transaction contemplated by the Customer Contract which are included in the Order Documents and agreed by the Customer and the Contractor.
- 1.84 Order Documents** means the General Order Form and the documents that are stated on the General Order Form as being incorporated into the Customer Contract, which may include:
- (a) any Schedule to the Customer Contract;
 - (b) any document referred to in, or based on, any Schedule to the Customer Contract; and



(c) one or more Modules and their relevant Module Order Forms.

1.85 Panel Arrangement has the meaning given to such term in clause 1.7(a).

1.86 Part means each pro forma document that is designated as a Part of the Procure IT Framework, being:

- (a) Part 1: the Head Agreement, including its Annexures;
- (b) Part 2: the Customer Contract, including its Schedules;
- (c) Part 3: the Dictionary;
- (d) Part 4: the Modules; and
- (e) Part 5: the Module Order Forms.

1.87 Parties means:

- (a) in relation to the Head Agreement: the Contract Authority and the Contractor; and
- (b) in relation to the Customer Contract: the Customer and the Contractor.

1.88 Performance Criteria means the criteria applicable to the performance of the Contractor including the:

- (a) quality of Products or Services offered or delivered;
- (b) competitiveness of the Products or Services and pricing;
- (c) Contractor's sales and marketing performance;
- (d) Contractor's financial stability;
- (e) Contractor's management and suitability of its Personnel;
- (f) Contractor's administration of the Head Agreement, any Customer Contracts and risk;
- (g) Contractor's management of environmental issues;
- (h) Contractor's Occupational, Health, Safety and Rehabilitation (OHS&R) Management;
- (i) Contractor's industrial relations performance; and
- (j) claims on insurance and other financial assurances made in respect of the Contractor's business or the Head Agreement and any Customer Contracts.

1.89 Performance Guarantee means a document substantially in the form of Annexure 5 to the Head Agreement or Schedule 9 to the Customer Contract (as applicable).

1.90 Personal Information means information or an opinion about an identified individual (ie. a natural person), or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

1.91 Personnel means an entity's directors, officers, employees, agents and subcontractors, and:

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

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

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

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

1.94 Privacy Laws means:

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

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

1.96 Product means Hardware and Licensed Software only.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.103 Schedule means a schedule to the Customer Contract.

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

1.105 Service Address means:

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

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

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

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

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

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

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

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

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

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

INTERPRETATION

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



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

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





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Use Guidelines

This Module should be used when the Customer is buying and/or installing hardware such as computers, photocopiers and the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices such as printers, mouse and keyboard.

See the Procure IT User Guide for more details.

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

A handwritten signature in black ink, consisting of a stylized 'G' followed by a flourish.

Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 1** form part of the Customer Contract when the Parties state that the Hardware Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 6.
- 1.2 **Firmware** means fixed software code and/or data structures that internally control elements within the Hardware.
- 1.3 **Integration** or **Integrate** in respect of the Hardware means the implementation and setting to work of the Hardware with or within the Customer's existing hardware and software environment so that it is ready for use by the Customer and complies with the Contract Specifications and other requirements under the Customer Contract.
- 1.4 **Load and Performance Requirements** means, where applicable, that part of the Contract Specifications detailing the performance levels required and the anticipated memory requirements of the software application(s) that will be installed on the Hardware.
- 1.5 **Machine Code** includes any microcode, basic input/output system code (called BIOS), utility programs, device drivers, diagnostics, Firmware and any other code (all subject to any exclusions in the licence provided with it), delivered with the Hardware for the purpose of enabling the Hardware function as specified in its Contract Specifications. The term **Machine Code** excludes the operating system and any Licensed Software applications.
- 1.6 **Reseller as Facilitator** means a Reseller who uses the business model described in clause 3.1(a) to facilitate the supply of the Hardware and/or Machine Code to the Customer.
- 1.7 **Reseller with Pass Through Warranties** means a Reseller who uses the business model described in clause 3.1(b) to supply Hardware and/or Machine Code to the Customer.
- 1.8 **Spares Availability Period** means a period of three years from the AAD of the relevant Hardware, or such other period stated on the Module Order Form.

INTERPRETATION

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

2. Supply of Hardware

DELIVERY

- 2.1 Unless otherwise specified in the Order Documents, the Contractor must:
 - (a) Install the Hardware in accordance with the Contract Specifications;
 - (b) demonstrate the use of the Hardware; and

- (c) Unless otherwise specified in the Order Documents, where the Contractor has Installed the Hardware the Contractor must by the AAD for the Hardware, remove or otherwise dispose of, at its own expense, all packing materials used for the delivery of the Hardware to the Site.

RISK AND TITLE

- 2.2** Risk in each item of Hardware passes to the Customer upon delivery to the Site.
- 2.3** Unless agreed otherwise in the Order Documents, title to each item of Hardware passes to the Customer:
- (a) upon delivery to the Site; or
 - (b) where it is specified in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, upon the AAD of that item of Hardware.
- 2.4** If the Customer rejects an item of Hardware under clause 10.12(e) of the Customer Contract, title and risk in that item of Hardware reverts to the Contractor when that item of Hardware is delivered to a carrier for return.

SOFTWARE

- 2.5** The Contractor grants to the Customer, for the period that the Customer has the lawful use of the Hardware, a non-exclusive, royalty free licence to use the Machine Code on the Hardware to enable the Hardware in which it is loaded to function in accordance with its Contract Specifications and only for the capacity and capability for which Customer has acquired the Contractor's written authorisation. The Customer must use Machine Code only as specified in this Customer Contract. The Customer must not:
- (a) otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) Machine Code, except as the Contractor may authorise in the User Documentation or in writing to Customer;
 - (b) reverse assemble, reverse compile, otherwise translate, or reverse engineer Machine Code unless expressly permitted by law;
 - (c) sublicense or assign the licence for Machine Code; or
 - (d) lease Machine Code or any copy of it.
- 2.6** Any Existing Material that comprises the operating system and any application Licensed Software that is pre-installed on the Hardware, or that is provided with the Hardware at the Commencement Date, is subject to the terms and conditions of Module 3.

ANCILLARY SERVICES

- 2.7** Where any item of Hardware is provided to the Customer with additional capacity or features that can be activated by the Customer on a temporary or permanent basis and:
- (a) such additional capacity or features have not been paid for within the original Price; and
 - (b) such additional capacity or features to be set out in Annexure 3 to the Head Agreement (if any) or in the Order Documents,

the following terms apply where the Customer activates that additional capacity or features:

- (c) where the Customer first activates any of the additional capacity or features the Customer will be deemed to have permanently activated that additional capacity or feature and may use that additional capacity or feature from that date; and
 - (d) the Customer must pay to the Contractor (subject to receiving a Correctly Rendered Invoice from the Contractor) an addition to the Contract Price, plus any additional Price in respect of Hardware Maintenance and Support Services relating to the additional capacity or feature activated. These additions to the Contract Price must be specified in the Order Documents. If no such addition is specified, the Customer will not be liable for any additional Price or other charge.
- 2.8** The Parties may agree that an item of Hardware is to be used for a restricted purpose (e.g. as a test machine only) in which case the Parties will agree the scope of the restricted use and the Price for the Hardware that can be used for that restricted purpose, and such details must be set out on the Module Order Form.
- 2.9** The Contractor must Integrate the Hardware and provide training to the Customer to the extent specified in the Order Documents.

BACK UPS

- 2.10** Unless the Contractor has an obligation under another Module to take back ups of data that is loaded into a Deliverable, the Customer must take and maintain adequate backups of any data that is loaded into any Deliverable so that there is no loss of data in the event that any failure of any Deliverable causes damage to, or loss of, any data.

EXPORT

- 2.11** Export laws and regulations of Australia and the United States may apply to the Products under this Module. The Customer agrees:
- (a) that such export laws govern the use of the Products (including technical data related to them) and any other Deliverables provided under this Customer Contract;
 - (b) to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations); and
 - (c) that no data, information, Deliverable and/or materials resulting from this Customer Contract (or any direct product of any of them) will be:
 - (i) exported, directly or indirectly, in breach of these export laws; or
 - (ii) used for any purpose prohibited by these export laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

3. Acquisition through a Reseller

- 3.1** Where it is specified on the Order Documents that the Hardware or Machine Code is to be supplied via a Contractor that is a Reseller, the provisions of this clause 3 apply, and the Customer and the Contractor must agree on the Module Order Form which of the business models, Reseller as Facilitator or Reseller with Pass Through Warranties, applies to the supply of the Hardware and/or Machine Code:
- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Hardware and/or Machine Code from the original equipment provider or its authorised distributor to the Customer, in which case:

- (i) the Contractor will procure that the original equipment provider or its authorised distributor enters into a contract directly with the Customer for the supply of the Hardware and/or the licence for the Machine Code, and the provisions of the Customer Contract that relate to the supply of the Hardware and/or Machine Code, including provisions in this Customer Contract relating to passing of title, intellectual property rights and the features, capabilities, performance or other characteristics of the Hardware and/or Machine Code and the other provisions of this Module (other than clauses 2.2 to 2.8) do not apply. The terms of the contract between the original equipment provider or its authorised distributor and the Customer for the supply of the Hardware and/or the licence for the Machine Code will be attached to the Customer Contract and will be deemed accepted by the Customer when the Customer enters into the Customer Contract;
 - (ii) the Customer will pay the Contract Price for the Hardware and/or the licence for the Machine Code to the Contractor, and the Contractor shall pay the amount agreed between the Contractor and the original equipment provider or its authorised distributor for the Hardware and/or Machine Code; and
 - (iii) the Contractor will co-ordinate any warranty claim that is reported by the Customer to the Contractor and must use best efforts to ensure that all benefits of the warranty to the Customer are utilised to the benefit of the Customer, and this may include returning faulty equipment to the third party for repair under warranty rather than repairing the maintained Hardware and/or Machine Code, however the Contractor is not liable to the Customer for the supply of the Hardware and/or Machine Code in any way, including the features, capabilities, performance or other characteristics of the Hardware and/or Machine Code; or
- (b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Hardware and/or Machine Code to the Customer on the terms and conditions of the Customer Contract, except that:
- (i) clause 19.1(c) of the Customer Contract does not apply;
 - (ii) the warranties or guarantees that are provided under this Module are limited to any warranties or guarantees that cannot be excluded by law and any warranties that the original equipment provider or its authorised distributor permits the Contractor to assign to the Contractor's customers;
 - (iii) clause 2.4 of this Module does not apply and the Contractor warrants that title in the Hardware passes to the Customer on the date that the Reseller obtains title to the Hardware from its supplier, provided that such date is no later than 60 days after AAD of that Hardware (subject to the Contractor receiving payment from the Customer prior to 45 days after the AAD of the Hardware); and
 - (iv) the Contractor must use best efforts to ensure that all benefits of the warranty to the Customer for that Hardware are utilised to the benefit of the Customer; and this may include returning faulty equipment to the original equipment manufacturer or authorised distributor for repair under warranty rather than repairing the maintained Hardware.
- 3.2** The Customer warrants to the Contractor that the Customer and all of the Customer's end users of the Hardware and/or the Machine Code will comply with the terms of any contract and/or licence between the Customer and the original equipment provider or its authorised distributor.
- 3.3** The Contractor must provide any value added services that are set out in the Order Documents.



4. Availability of Hardware and Spares

- 4.1** The Contractor warrants that, for the Spares Availability Period it will, or it will procure that its supplier or the manufacturer will, offer to:
- (a) continue to supply the Hardware and any associated Machine Code (including replacements, upgrades or attachments provided by the Contractor); or
 - (b) supply appropriate substitutes for the Hardware if for any reason it is no longer available.
- 4.2** The Contractor warrants that, for the Spares Availability Period, it will, or it will procure that its supplier or the manufacturer will, offer to:
- (a) continue to provide support and spare parts for the Hardware and any Machine Code, or any replacement, upgrade or substitute for the Hardware;
 - (b) if specified in the Order Documents, provide training and such other assistance reasonably required by the Customer to enable the Customer to continue to use and maintain the Hardware; and
 - (c) maintain or ensure that there is sufficient stock of Hardware parts to enable any replacement, upgrade or substitute to be promptly made available to the Customer.
- 4.3** If the Contractor intends to cease supplying spare parts for the Hardware it must give the Customer at least 6 months' notice prior to the end of the Spares Availability Period of its intention.

5. Specific Warranties

SCOPE

- 5.1** The Contractor warrants that the Hardware and any Machine Code, during the Warranty Period, subject to any Exception, will, in all material respects:
- (a) meet the requirements of the Contract Specifications and any other requirements under the Customer Contract, including any Load and Performance Requirements;
 - (b) be free from defects or omissions in materials, workmanship, design and performance;
 - (c) be compatible and interoperable with Customer's hardware and software environment as set out in the Module Order Form;
 - (d) be compatible and interoperable with the operating system and any Licensed Software that is set out on the Module Order Form and is an application that was pre-installed on the Hardware or was provided with the Hardware at the Commencement Date; and
 - (e) be fully scalable to accommodate the Customer's changing requirements to the extent set out on the Module Order Form.
- 5.2** The Contractor warrants that the User Documentation that is to be provided by the Contractor at the time of delivery of the Hardware, will, subject to the Exceptions:
- (a) include material the Contractor usually makes available free to its other customers; and
 - (b) provide adequate instructions on how to enable an appropriately skilled IT person to operate and use the Hardware without reference to the Contractor.

- 5.3** If the Customer provides the Contractor with Notice in Writing of any Defect or suspected Defect in the Hardware, Machine Code or User Documentation within the Warranty Period, then the Contractor shall:
- (a) inspect the Hardware and/or Machine Code and, as determined by the Contractor, replace or repair the Hardware, Machine Code or its components after receiving the Notice in Writing from the Customer. This must be completed within any period agreed in a Service Level Agreement, or if no Service Level Agreement is agreed, it must be done in a reasonable time, taking into account the impact on the Customer's operations; or
 - (b) promptly rectify any User Documentation.
- 5.4** Where the Contractor replaces the Hardware or parts of the Hardware, the Contractor warrants that:
- (a) the replacement hardware or parts become the property of the Customer on installation;
 - (b) the parts will be newly manufactured (or will be warranted as if they are new); and
 - (c) the replacement Hardware or parts are provided with same warranties that apply to the Hardware for the remainder of the Warranty Period of the Hardware.
- 5.5** If the Customer requires the Contractor to deal with any replaced parts in any particular way, e.g. remove Confidential Information from the replaced part and/or dispose of the replaced part, the Parties may agree the scope and Price for such services, and such services must be documented using a Change Request.
- 5.6** The Customer must provide reasonable assistance in remedying any Defect, including installing any 'user installable parts' (as defined by the Contractor) supplied by the Contractor and running any diagnostic tests or software. Where the Contractor requires remote access to the Deliverable to provide warranty services the Customer must provide that access, subject to the Contractor complying with the Customer security and privacy policies set out in Item 8 of the Head Agreement Details and Item 30 of the General Order Form. If the Customer does not permit such access then the Customer must pay any additional costs incurred by the Contractor in attending the Customer's Site to provide the warranty services, such costs to be calculated using the rates set out in the Customer Contract, or if none are stated, using the Contractor's then current commercial rates.
- 5.7** If the Contractor is unable to rectify a Defect in accordance with the timeframes in clause 5.3, the Customer may using a third party who has been authorised by the supplier or manufacturer to be an authorised repairer of the Hardware correct any Defect. In this case:
- (a) the Contractor must provide the authorised third party whatever assistance that may reasonably be required to rectify the Defect; and
 - (b) the Contractor is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in this Customer Contract.
- 5.8** Where the Customer is seeking to rely on clause 5.7 because the Contractor is unable to rectify a Defect in accordance with the timeframes in clause 5.3, and there are no authorised third party repairers, then the Customer may arrange for another third party to correct the Defect. In this case:
- (a) the Customer must ensure that the third party complies with the manufacturer's instructions and any User Documentation in making any repair;
 - (b) the Contractor's obligations under clause 5.3 are not affected by the use of the third party, and the Contractor is not liable for any loss, damage or expense incurred or

suffered by the Customer that is caused by the third party, including damage to the Hardware or any act or omission that causes the need for subsequent repair;

- (c) the Contractor must provide the third party whatever assistance that may reasonably be required to rectify the Defect; and
 - (d) the Contractor is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in this Customer Contract;
- 5.9** The Contractor must pay for all costs incidental to the discharge of its warranty obligations including the provision of packing, freighting, disassembly, reassembly costs and Installation costs (other than any Installation costs for 'user installable parts' (as determined by the Contractor).
- 5.10** The Contractor warrants that components and materials shall not in normal operating conditions emit fumes, liquids, electromagnetic radiation or noise which could be detrimental to Personnel, the environment or the operation of other equipment.
- 5.11** If the Customer rejects the Hardware under clause 10.12(e) of the Customer Contract or the Contractor requires the Hardware to be returned to the Contractor in order to remedy a Defect, the Contractor may determine the method of return and the carrier, and in any event is liable to pay the expenses for the return and shipment of repaired or any replacement Hardware.

6. Exceptions

- 6.1** The Contractor is not liable for any breach of the Customer Contract which arises as a result of:
- (a) fair wear and tear;
 - (b) not implementing any mandatory engineering changes as specified by the Contractor;
 - (c) damage arising from the re-installation, moving, relocation or decommissioning or re-commissioning of the Hardware by a person other than the Contractor or its authorised representative;
 - (d) damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Contractor or an authorised third party repairer appointed under clause 5.7. To the extent that the Contractor permits a repair to be conducted by the Customer or any part is a 'user installable part' (as defined by the Contractor), then where that repair is conducted (or part is installed) in accordance with the Contractor's instructions this shall not affect any warranty;
 - (e) damage arising from the act, error, fault, neglect, misuse or omission of the Customer;
 - (f) damage caused by the failure of electrical power (other than power from the internal battery of the Hardware), air conditioning, humidity control or any environmental factor;
 - (g) damage caused by the operation of the Hardware other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the manufacturer or the Contractor;
 - (h) any Virus, denial of service attack or other malicious act that adversely affects the Hardware or any software installed on it or connected to it, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or

- (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
 - (i) use of consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor;
 - (j) improper use or mismanagement by the Customer; or
 - (k) a Force Majeure Event.
- 6.2** Where the Contractor has been requested to provide any warranty services and the item that was requested to be remedied is determined not to be a Defect then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.
- 6.3** The Contractor expressly excludes any warranty that the Hardware will operate with any consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor.



PROCURE IT VERSION 3.2

MODULE ORDER FORM

MODULE 1 - HARDWARE ACQUISITION AND INSTALLATION

Box 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)

Spares Availability Period is the period within which spares must be available in accordance with clause 4.

Specify if a period other than 3 years from the AAD is agreed, otherwise the default period of three years from the AAD will apply.

Not applicable.

Box 2 Delivery

Details to be included from Module 1

Order Details agreed by the Contractor and the Customer

Delivery (clause 2.1)

Specify if the Contractor is required to:

- (a) Install the Hardware; and
- (b) demonstrate its use.

[If this Box is not completed the Contractor must install the Hardware and demonstrate its use.]

The Contractor must install the Hardware and demonstrate its use.

Delivery (clause 2.1)

If the Hardware is to be installed by the Contractor, specify if the Contractor is required to remove or dispose of any packing materials.

[If this Box is not completed the Contractor must remove or dispose of any packing materials.]

The Contractor must remove or dispose of any packing materials.



Box 3 Risk and Title**Details to be included from Module 1****Order Details agreed by the Contractor and the Customer****Risk and Title (clause 2.3)**

Specify when title to the Hardware passes.

Upon payment of the Hardware

[If this Box is not completed title to the Hardware passes in accordance with clause 2.3(a).]

Box 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)**

Specify the Prices for any additional capacity or features that can be activated by the Customer.

Not applicable.

Specify if there are any additional Prices for Hardware Maintenance and Support Services for any additional capacity and features that can be activated by the Customer.

Box 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 2.8, e.g. the hardware is to be used only as a test machine.

Not applicable.

Box 6 Ancillary Services**Details to be included from Module 1****Order Details agreed by the Contractor and the Customer****Ancillary Services (clause 2.9)**

Specify the details of any Integration services the Contractor is to provide, the Prices and when payment is due.

Not applicable.

Specify the details of any training services the Contractor is to provide, the Prices and when payment is due.

Training has to be provided as per Scope of Works

Box 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)

Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller?

No

If yes:

(a) specify if the Hardware and/or Machine Code 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 3.1(a).]

OR

(b) specify if the Hardware and/or Machine Code 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 3.1(b).]

Box 8 Value Added Services

Details to be included from Module 1

Order Details agreed by the Contractor and the Customer

Acquisition through a Reseller (clause 3.3)

Specify the details of any value added services the Contractor is to provide, the Prices and when payment is due.

Not applicable

Box 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 the details of: (a) any training or other services the Contractor is to provide to assist the Customer to use and maintain the Hardware; (b) any spares provided for the Hardware during the Contract Period; and (c) the Prices and when payment is due. [If this Box is not completed no such training is provided.]	(a) The Contractor will provide training in the use and maintenance of the Hardware (b) see below list of spare parts (c) see below list of spare parts which incorporates the Prices and note that payment is due upon delivery <table border="1"> <thead> <tr> <th>Description</th> <th>Qty.</th> <th>Per unit Price</th> <th>Price (excl. GST)</th> </tr> </thead> <tbody> <tr> <td>IT300 GPS Tracking Device</td> <td>1</td> <td>\$380</td> <td>\$380</td> </tr> <tr> <td>RFID Reader as per Sydney Trains</td> <td>1</td> <td>\$250</td> <td>\$250</td> </tr> <tr> <td>Optional Duress Button</td> <td>1</td> <td>\$15</td> <td>\$15</td> </tr> <tr> <td>Optional Engine Immobiliser Relay – No Swipe No Go</td> <td>1</td> <td>\$15</td> <td>\$15</td> </tr> <tr> <td>Android Tablet/Data Terminal</td> <td>1</td> <td>\$600</td> <td>\$600</td> </tr> <tr> <td>Optional OBDII Interface for LCV*</td> <td>1</td> <td>\$60</td> <td>\$60</td> </tr> <tr> <td>Optional CanBus Interface for Heavy vehicles</td> <td>1</td> <td>\$350</td> <td>\$350</td> </tr> </tbody> </table>	Description	Qty.	Per unit Price	Price (excl. GST)	IT300 GPS Tracking Device	1	\$380	\$380	RFID Reader as per Sydney Trains	1	\$250	\$250	Optional Duress Button	1	\$15	\$15	Optional Engine Immobiliser Relay – No Swipe No Go	1	\$15	\$15	Android Tablet/Data Terminal	1	\$600	\$600	Optional OBDII Interface for LCV*	1	\$60	\$60	Optional CanBus Interface for Heavy vehicles	1	\$350	\$350
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Optional OBDII Interface for LCV*	1	\$60	\$60																														
Optional CanBus Interface for Heavy vehicles	1	\$350	\$350																														

Box 10 Specific 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 and interoperable in accordance with clause 5.1(c). [Note: Include the model and make of hardware, name and version of software.]	Software has to be compatible with Windows Operating System and the frequently used web browsers such as Google Chrome, Internet Explorer and Firefox.
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	Not applicable

additional usage over a defined time period.]

5

MODULE ORDER FORM
MODULE 1 - HARDWARE ACQUISITION AND INSTALLATION

A handwritten signature in black ink, consisting of a stylized, cursive letter 'h' or similar mark.

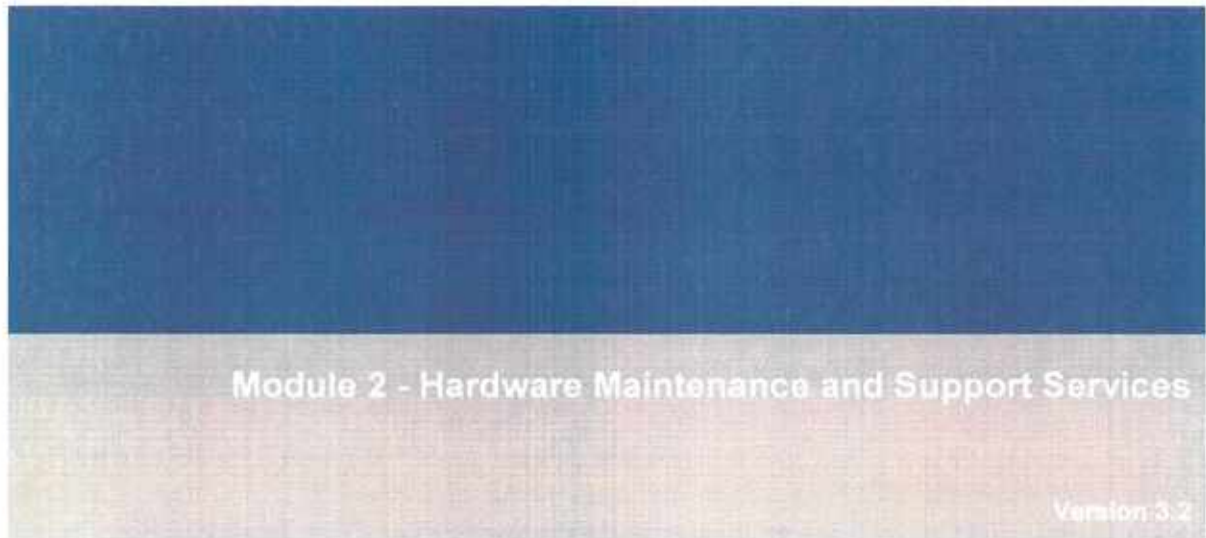


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Use Guidelines

This Module should be used when the Customer is buying preventative and remedial services that physically repair or optimize hardware, including contract maintenance and per incident repair. Hardware support also includes online and telephone technical troubleshooting and assistance for set up, and all fee based hardware warranty upgrades.

Sales of all parts are also included, exclusive of parts bundled with maintenance contracts.

See the Procure IT User Guide for more details.

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

Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 2** form part of the Customer Contract when the Parties state that the Hardware Maintenance and Support Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 6.
- 1.2 **Firmware** means fixed software code and/or data structures that internally control elements or provides functionality within the Hardware.
- 1.3 **Hardware Maintenance and Support Services** means the Services specified in the Module Order Form in respect of the Hardware and related Machine Code and consists of Preventative Maintenance, Remedial Maintenance, Help Desk Services and/or ancillary services in respect of the Hardware, all as set out on the Module Order Form.
- 1.4 **Help Desk Services** means any Services specified in clause 3.8.
- 1.5 **Machine Code** includes any microcode, basic input/output system code (called BIOS), utility programs, device drivers, diagnostics, Firmware, and any other code (all subject to any exclusions in the licence provided with it) delivered with the Hardware for the purpose of enabling the Hardware function as specified in its Contract Specifications. The term **Machine Code** excludes the operating system and any Licensed Software applications.
- 1.6 **Preventative Maintenance** means the scheduled maintenance Services that are specified by the supplier or manufacturer that are to be performed on the Hardware and related Machine Code on a scheduled basis.
- 1.7 **Remedial Maintenance** means the unscheduled maintenance Services required to be performed, whether on-site or off-site, to remedy a Defect.
- 1.8 **Reseller as Facilitator** means a Reseller who uses the business model described in clause 4.1(a) to facilitate the supply of the Hardware Maintenance and Support Services to the Customer.
- 1.9 **Reseller with Pass Through Warranties** means a Reseller who uses the business model described in clause 4.1(b) to supply Hardware Maintenance and Support Services to the Customer.

INTERPRETATION

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

2. Maintenance Period

- 2.1 Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Hardware Maintenance and Support Services must be provided for a Contract Period of 12 months commencing upon the AAD of the Hardware, unless the Customer Contract is terminated earlier in accordance with its terms. The Contract Period for the Hardware Maintenance and Support Services may be extended for such term and at such Price as may be agreed between the Parties prior to the end of the current Contract Period.

- 2.2** The Customer may at any time suspend the Hardware Maintenance and Support Services, upon 30 days Notice in Writing to the Contractor. On receipt of any such notice, the Contractor must immediately return to the Customer a pro rata amount of the Contract Price for Hardware Maintenance and Support Services prepaid (if any) by the Customer. This suspension right is additional to any rights that the Customer has to terminate the Customer Contract.
- 2.3** Unless otherwise specified in the Order Documents, at any time during the Contract Period the Customer may require the Contractor to recommence any Hardware Maintenance and Support Services that have been suspended under clause 2.2. The Customer will provide the Contractor with written notice where it requires such recommencement. The Contractor may, acting reasonably, require the equipment to undergo an inspection to verify the condition of the equipment, and:
- (a) where the inspection verifies that the equipment is in good order (fair wear and tear excepted) or the Contractor does not require an inspection, the Hardware Maintenance and Support Services shall recommence and the Customer must pay to the Contractor an amount equal to 50% of the Price (or such other amount specified in the Order Documents) that would have been payable in respect of the Hardware Maintenance and Support Services had the Customer not suspended them in accordance with clause 2.2. Such amount is due on the date that the Hardware Maintenance and Support Services recommence; or
 - (b) where the inspection determines the equipment is not in good order (fair wear and tear excepted), the Parties must agree what actions need to be taken to restore the equipment to good order and the Price for any future the Hardware Maintenance and Support Services; and
 - (c) in either event the Customer must pay the Contractor for the cost of the inspection, unless the suspension of the Hardware Maintenance and Support Services was caused by a major failure of the Contractor to provide the Hardware Maintenance and Support Services in accordance with the requirements of the Customer Contract.
- 2.4** The Price for the Hardware Maintenance and Support Services may be varied annually upon 30 days written notice by the Contractor. If the Customer does not accept the proposed variation the Customer may terminate the Hardware Maintenance and Support Services by giving the Contractor 14 days Notice in Writing.

3. Scope of Hardware Maintenance and Support

SCOPE

- 3.1** The Parties will set out in the Module Order Form the details of the Hardware Maintenance and Support Services, including:
- (a) the Contract Period;
 - (b) the Hardware and related Machine Code that is to be the subject of the Hardware Maintenance and Support Services;
 - (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; and
 - (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; and
 - (g) if the Services are to be provided by the Contractor as a Reseller, then the Module Order Form must set out details of the manufacturer's support and maintenance services that the Contractor will co-ordinate and manage under clause 4 as well as any value added services that the Reseller will provide.
- 3.2** If no Service Level Agreement is set out or referred to in the Order Documents, then if requested by the Customer, the Parties will use best efforts to promptly negotiate service levels applicable to Hardware Maintenance and Support Services, which must include, at a minimum, committed response and resolution times and availability measures, and service credits that may be imposed where the Contractor fails to meet the service levels.
- 3.3** The Customer must provide 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. The Contractor agrees that it uses such facilities at its own risk.
- 3.4** Where the performance of Hardware Maintenance and Support Services commences on the AAD for the relevant Hardware and related Machine Code or during the Warranty Period for the Hardware:
- (a) the Contractor acknowledges that there is a potential overlap between the Contractor's obligation to remedy Defects for no additional cost during the Warranty Period and the Contractor's obligations to remedy Defects as part of Hardware Maintenance and Support Services; and
 - (b) taking paragraph (a) into account, for so long as Hardware Maintenance and Support Services are being performed during the Warranty Period, the Customer will pay the Contractor for those Hardware Maintenance and Support Services an amount equal to 65% of the Contract Price applicable to such Hardware Maintenance and Support Services (or such other amount as is specified in the Order Documents).

BACK UPS

- 3.5** Unless the Contractor has an obligation under another Module to take back ups of data that is loaded into a Deliverable, the Customer must take and maintain adequate back ups of any data that is loaded into any Deliverable so that there is no loss of data in the event that any failure of any Deliverable causes damage to, or loss of, any data.

PREVENTATIVE MAINTENANCE

- 3.6** If Preventive Maintenance Services are specified in the Order Documents, the Contractor must, during the Contract Period, ensure that the Preventative Maintenance:
- (a) is carried out in accordance with a Preventative Maintenance schedule agreed between the Parties;
 - (b) is consistent with the Customer's operating requirements and the Contract Specifications; and
 - (c) includes the preservation of the Hardware in good operating condition, problem detection, systems checks, replacement of unserviceable parts (excluding consumable items), cleaning and where required lubrication, and adjustment of



mechanical and electro-mechanical devices all in accordance with the supplier's or manufacturer's instructions.

REMEDIAL MAINTENANCE

- 3.7** If Remedial Maintenance Services are specified in the Order Documents, the Contractor must, during the Contract Period, after being notified of a Defect or possible Defect in the Hardware or related Machine Code, promptly restore the Hardware and Machine Code to good working order and must, as necessary:
- (a) replace or repair parts;
 - (b) to the extent that it is practical, implement measures to minimise disruption to the Customer's operations during maintenance work and perform the Services at times likely to cause the least possible disruption to the Customer's business and in all cases only by prior arrangement with the Customer;
 - (c) comply with any requirements specified in the Contract Specifications and any other requirements of the Customer Contract, including any Service Level Agreement; and
 - (d) prior to completion of Remedial Maintenance, the Contractor must, if the Customer makes such request prior to the completion of the relevant Remedial Maintenance:
 - (i) test the Hardware by running a diagnostic program and performing any other relevant tests necessary to demonstrate the Remedial Maintenance has been successful; or
 - (ii) otherwise explain and demonstrate to the Customer the effect of the Remedial Maintenance; and
 - (iii) provide the Customer with written confirmation of such test results or such explanation.

HELP DESK

- 3.8** If Help Desk Services are specified in the Order Documents, the Contractor must, during the Contract Period, provide Help Desk Services during the times of operation and in accordance with the Contract Specifications and any other requirements of the Customer Contract, including any Service Level, all as set out in the Order Documents.

MANDATORY ENGINEERING CHANGES

- 3.9** Where the Customer has acquired Preventative Maintenance or Remedial Maintenance, the Contractor must implement any engineering changes that are classified by the supplier or the manufacturer as being mandatory changes that are necessary to ensure product safety.
- 3.10** If the Contractor determines that any Hardware requires an engineering change that is classified by the supplier or manufacturer as being mandatory in order to ensure product safety then:
- (a) the Contractor will, at its own cost, provide a 'user installable part' which the Customer must promptly Install; or
 - (b) the Customer must allow the Contractor to Install the engineering change, at the Contractor's own cost.

DISCRETIONARY ENGINEERING CHANGES

- 3.11** Where the Customer has acquired Preventative Maintenance or Remedial Maintenance and the Contractor generally makes available to its supported customers any engineering change

that is designed to improve the performance or reliability of the Hardware, then the Contractor must offer that engineering change to the Customer. If the Customer wishes to implement that engineering change, the Parties must implement the change using a Change Request and the Variation Procedures in Schedule 4 – Variation Procedures.

- 3.12** The Contractor is not liable for any costs incurred by the Customer which result directly from the Customer not implementing an engineering change offered to the Customer by the Contractor under clause 3.11.
- 3.13** Where the Contractor implements an engineering change the Contractor must perform any tests required by the supplier or the manufacturer that are necessary to demonstrate the engineering change has been successfully implemented and, if requested by the Customer prior to completing the implementation, the Contractor must:
- (a) explain and demonstrate to the Customer the effect of the engineering change; and
 - (b) provide the Customer with written confirmation of any test results or such explanation.

ASSISTANCE

- 3.14** The Customer must provide reasonable assistance in remedying any Defect, including installing any 'user installable parts' (as defined by the Contractor) supplied by the Contractor and running any diagnostic tests or software. Where the Contractor requires remote access to the Deliverable to provide Hardware Maintenance and Support Services the Customer must provide that access, subject to the Contractor complying with the Customer security and privacy policies set out in Item 8 of the Head Agreement Details and/or Item 30 of the General Order Form. If the Customer does not permit such access then Customer must pay any additional costs incurred by the Contractor in attending the Customer's Site to provide the Hardware Maintenance and Support Services.

SUPPORT FOR LICENSED SOFTWARE

- 3.15** Services for the support of any operating system or Licensed Software that is an application will be provided under Module 5. Support for any Machine Code is included under the Hardware Maintenance and Support Services.

MOVEMENT, ADDITIONS, CHANGES AND SUBSTITUTION OF HARDWARE

- 3.16** The Customer must give the Contractor at least 30 days Notice in Writing of its intention to relocate from the Site any Hardware that is being maintained under the Customer Contract, such notice to include the dates of decommissioning and re-commissioning and the new location of the Hardware.
- 3.17** The Contractor shall cease to provide any Hardware Maintenance and Support Services and the Customer ceases to be liable for the Price for the Hardware Maintenance and Support Services, from the date that the Hardware is decommissioned for relocation until the date that the Customer commences the re-commissioning of the Hardware at the new location.
- 3.18** Where the Hardware is portable and may be moved without any impact on the cost or difficulty to the Contractor of providing the Hardware Maintenance and Support Services, the Customer may move the Hardware without prior approval from the Contractor without any reduction of the Contractor's obligations under the Contract. The Contractor is not responsible for any loss or damage that occurs due to such movement.
- 3.19** If the Hardware is relocated by any person other than the Contractor, then the Customer must inform the Contractor of the new location of the Hardware and confirm that upon the Customer's Installation of the Hardware in the new location the Hardware conforms to the Contract Specifications.

- 3.20** If the Contractor dispatches any of the Hardware away from the Site for Preventative Maintenance or Remedial Maintenance then, unless otherwise agreed between the Parties or an Exception applies, the Contractor must bear all the costs, including those of packing, carriage and insurance that are incurred in the dispatch, overhaul, repair, return and reinstallation of the Hardware.
- 3.21** The Customer may, in its discretion, acquire additional equipment for attachment to or use in connection with the Hardware maintained by the Contractor, and where the Customer exercises this discretion, the Contractor must provide all reasonable assistance and co-operation to the Customer and any alternative supplier in effecting the system interfaces involved.
- 3.22** If the Customer notifies the Contractor of the attachment, or intended attachment of equipment to the Hardware, the Contractor must provide the Customer with any information which the Contractor is aware of indicating that the attachment is likely to or may be detrimental in any way to the operation of the Hardware.
- 3.23** The Customer may for any reason during the Contract Period after giving to the Contractor at least 30 days Notice in Writing:
- (a) substitute an item of Hardware of the same or similar type (provided that the Contractor provides the Hardware Maintenance and Support Services on the same basis for that substituted item of Hardware) to those covered by the Hardware Maintenance and Support Services; or
 - (b) withdraw an item of Hardware from the Hardware Maintenance and Support Services, in which case this will be agreed (including any impact on Price or Service) using a Change Request and the procedures in Schedule 4 – Variation Procedures will apply.
- 3.24** Where the Contractor replaces parts of the Hardware:
- (a) the replacement parts must be new or warranted as new, unless agreed otherwise by the Customer;
 - (b) the replacement parts become the property of the Customer on Installation; and
 - (c) the components that have been replaced remain the property of the Customer.
- 3.25** If the Customer requires the Contractor to deal with any replaced parts in any particular way, e.g. remove Confidential Information from the replaced part and/or dispose of the replaced part, the Parties may agree the scope and Price for such services, and such services must be documented using a Change Request.
- 3.26** The Contractor must not interchange parts between the Hardware and any other equipment without the prior consent of the Customer.
- 3.27** The Contractor's warranty obligations in respect of the Hardware are not reduced or extended as a result of the Contractor replacing or repairing any Hardware component during the performance of the Hardware Maintenance and Support Services.

MAINTENANCE RECORDS AND CHARGES

- 3.28** The Contractor shall maintain records of all:
- (a) issues reported by the Customer;
 - (b) remedial action taken by the Contractor; and
 - (c) parts replaced by the Contractor,



during the performance of the Hardware Maintenance and Support Services.

- 3.29** The Contractor shall make copies of such records available to the Customer at no additional cost promptly following request.

ANCILLARY SERVICES

- 3.30** The Parties may agree that other services are to be provided by the Contractor during the Contract Period. The details of those Services, including the scope of the Services and the Prices that are payable for them, must be set out in the Module Order Form or if the Services are requested after the Commencement Date, on a Change Request and the Variation Procedures in Schedule 4 – Variation Procedures will apply. Such additional Services may include:

- (a) the installation of patches, fixes and updates to the Hardware or the Machine Code;
- (b) the installation of additional software on the Hardware;
- (c) additional ad hoc Hardware Maintenance and Support Services in respect of existing Hardware;
- (d) Hardware Maintenance and Support Services for additional hardware obtained after the Commencement Date;
- (e) the implementation and update of the Customer's anti-Virus software;
- (f) providing disaster recovery from backup;
- (g) maintaining a current file library of software licences, records, source code and maintain a history log or other record for the Customer concerning installations, upgrades, patches or other services performed;
- (h) providing fully supported, minimally supported and network Hardware support; or
- (i) training.

- 3.31** The Contractor may store Contractor's Documents, tools and test equipment at the Site as required for the purposes of the Customer Contract. The Customer agrees not to use any such material without the Contractor's consent.

- 3.32** The Contractor must maintain up-to-date lists of significant spares, User Documentation, tools, test equipment, plant and engineering diagnostic routines required for the Hardware Maintenance and Support Services and have sufficient replacement parts available to effect the Hardware Maintenance and Support Services in accordance with the Customer Contract or Service Level Agreement for the Contract Period.

- 3.33** Diagnostic programs designed to check the correct functioning of specified units of Hardware must be run according to the relevant manufacturer's specifications.

4. Reseller Provision of Maintenance Services

- 4.1** Where it is specified on the Module Order Form that the Hardware Maintenance and Support Services are to be supplied via a Contractor that is a Reseller, the provisions of this clause 4 apply, and the Customer and the Contractor must agree on the Module Order Form which of the business models, Reseller as Facilitator or Reseller with Pass Through Warranties, applies to the supply of the Hardware Maintenance and Support Services:

- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Hardware Maintenance and Support Services by the original equipment provider or its authorised distributor to the Customer, in which case:
- (i) the Contractor will procure that the original equipment provider or its authorised distributor enters into a contract directly with the Customer for the supply of the Hardware Maintenance and Support Services for the Contract Period, and the provisions of the Customer Contract that relate to the supply of the Hardware Maintenance and Support Services, including provisions in this Customer Contract relating to Intellectual Property Rights and the features, capabilities, performance or other characteristics of the Hardware Maintenance and Support Services and the other provisions of this Module (other than clauses 3.1, 3.3, 3.5, 3.9, 3.10, 3.16 to 3.23 and 3.30 to 3.31) do not apply. The terms of the contract between the original equipment provider or its authorised distributor and the Customer for the supply of the Hardware Maintenance and Support Services will be attached to the Customer Contract and will be deemed accepted by the Customer when the Customer enters into the Customer Contract;
 - (ii) the Contractor will co-ordinate and manage the provision of any manufacturer's support and maintenance services that are to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Contractor;
 - (iii) the Contractor will co-ordinate and manage the provision of any services that are to be provided in respect of any movement, addition, change or substitution of the Hardware; and
 - (iv) the Customer will pay the Contract Price for the Hardware Maintenance and Support Services to the Contractor, and the Contractor shall pay the amount agreed between the Contractor and the original equipment provider or its authorised distributor for the Hardware Maintenance and Support Services; or
- (b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Hardware Maintenance and Support Services to the Customer on the terms and conditions of the Customer Contract, except that:
- (i) clause 19.1(c) of the Customer Contract does not apply;
 - (ii) clauses 2.3, 5 and 6 of this Module shall not apply;
 - (iii) the warranties or guarantees that are provided under this Module are limited to any warranties and guarantees that cannot be excluded by law and any warranties that the original equipment provider or its authorised distributor permits the Contractor to assign to the Contractor's customers; and
 - (iv) the Contractor must use best efforts to ensure that:
 - (A) all benefits of the warranty to the Customer for that Hardware are utilised to the benefit of the Customer; and
 - (B) all benefits of any original equipment provider or its authorised distributor warranty services for that Hardware are utilised to the benefit of the Customer, and this may include returning faulty equipment to the original equipment manufacturer or authorised distributor for repair under warranty rather than repairing the maintained Hardware.



- 4.2** The Customer warrants to the Contractor that the Customer and all of the Customer's end users of the Hardware and/or the Machine Code will comply with the terms of any contract between the Customer and the original equipment provider or its authorised distributor.
- 4.3** The Contractor must provide any value added services that are set out in the Order Documents.

5. Specific Warranties

- 5.1** The Contractor warrants that, subject to any Exception:
- (a) when providing the Hardware Maintenance and Support Services, it shall at all times:
 - (i) use appropriate materials of high quality;
 - (ii) employ appropriate techniques and standards; and
 - (iii) exercise due care, skill and attention;
 - (b) perform the Hardware Maintenance and Support Services in accordance with any service levels agreed in a Service Level Agreement, or if no service levels are agreed, it will perform Hardware Maintenance and Support Services in a reasonable time taking into account the impact of the Defect on the Customer's operations;
 - (c) the specific Personnel that perform the Hardware Maintenance and Support Services are appropriately qualified and experienced Personnel, and have reasonable knowledge of the Customer's hardware and software environment;
 - (d) where the Contractor replaces parts of the Hardware under this Customer Contract, the Contractor warrants that the replacement parts will be free from defects or omissions in materials, workmanship, design or performance; and
 - (e) components and materials shall not when used in accordance with the User Documentation emit fumes, liquids, electro-magnetic radiation or noise which could be detrimental to Personnel, the environment or the operation of other equipment.
- 5.2** The Contractor shall provide the Remedial Maintenance so as to ensure the Hardware and Machine Code conforms at all times to the Contract Specifications and other requirements of this Customer Contract, including any Service Level Agreement, subject to any Exceptions.
- 5.3** In the event that the Contractor fails to perform Hardware Maintenance and Support Services in accordance with this Customer Contract:
- (a) the Contractor must provide to the Customer such additional hardware or perform such services as may be necessary to mitigate and remedy the failure to perform the relevant Hardware Maintenance and Support Services;
 - (b) if the Contractor has not remedied the failure within a reasonable time taking into account the impact of the Defect on the Customer's operations, the Customer may, using a third party who has been authorised by the supplier or the manufacturer to be an authorised repairer of the Hardware, rectify the Defect. In this case:
 - (i) the Contractor must provide the authorised third party whatever assistance that may reasonably be required to rectify the Defect; and
 - (ii) the Contractor is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in this Customer Contract.



- 5.4** If the Contractor fails to meet the Service Levels as a result of its default the Price for the Hardware Maintenance and Support Services must be adjusted in accordance with any Service Credits in the manner agreed in the Service Level Agreement.
- 5.5** The Contractor must meet all its costs that are incidental to the discharge of its obligations under clause 5.1, including the provision of any packing, freighting, disassembly, reassembly costs and Installation costs (other than any Installation costs for 'user installable parts' (as determined by the Contractor)).

6. Exceptions

- 6.1** The Contractor is not liable for any breach of the Customer Contract which arises as a result of:
- (a) fair wear and tear;
 - (b) not implementing any mandatory engineering changes as specified by the Contractor;
 - (c) damage arising from the re-installation, moving, relocation or decommissioning or re-commissioning of the Hardware by a person other than the Contractor;
 - (d) damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Contractor or an authorised third party repairer appointed under clause 5.3(b). To the extent that the Contractor permits a repair to be conducted by the Customer or any part is a 'user installable part' (as defined by the Contractor), then where that repair is conducted (or part is installed) in accordance with the Contractor's instructions this shall not affect any warranty;
 - (e) damage arising from the act, error, fault, neglect, misuse or omission of the Customer;
 - (f) damage caused by the failure of electrical power (other than power from the internal battery of the Hardware), air conditioning, humidity control or any environmental factor;
 - (g) damage caused by the operation of the Hardware or Machine Code other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the manufacturer or the Contractor;
 - (h) any Virus, denial of service attack or other malicious act that adversely affects the Hardware, Machine Code or any software installed on it or connected to it, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
 - (i) use of consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor;
 - (j) improper use or mismanagement by the Customer; or
 - (k) a Force Majeure Event.
- 6.2** Where the Contractor has been requested to provide any Hardware Maintenance and Support Service and the item that was requested to be remedied is determined not to be a Defect then



the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

- 6.3** The Contractor expressly excludes any warranty that the Hardware or Machine Code will operate with any consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor.



PROCURE IT VERSION 3.2

MODULE ORDER FORM

MODULE 2 - HARDWARE MAINTENANCE AND SUPPORT SERVICES

Box 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 the consequences if the Customer exercises its right to suspend the Hardware Maintenance and Support Services during the Contract Period in accordance with clause 2.2, if the consequences are any different to those stated in clause 2.3(a).	As per clause 2.3(a).

Box 2 Details of Hardware Maintenance and Support Services

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 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;	a) As per Item 10 of the General Order Form. b) Details of hardware such as model number and serial number to be provided by the contractor. c) The details relating to any of the following Services that the Contractor is to provide: i) Remedial Maintenance: refer to Clause 3.7 ii) Preventative Maintenance: Not applicable



- | | |
|---|---|
| <ul style="list-style-type: none"> (iii) Help Desk Services, including the hours of operation; and (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; and (g) if the Services are to be provided by the Contractor as a Reseller, set out details of: <ul style="list-style-type: none"> (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. | <ul style="list-style-type: none"> iii) Help Desk Services are per the Service Level Agreement at Schedule 3 to the General Order Form. iv) Ancillary services: Not applicable. d) The Service Levels are per the Service Level Agreement at Schedule 3 to the General Order Form. e) The Contractor is responsible for the maintenance and update of the Hardware f) As per Item 11 of the General Order Form. g) Not Applicable |
|---|---|

Box 3 Price Reduction for Overlapping Warranty and Maintenance

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
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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.

Not Applicable

If this Box is not completed the reduction is 35% of the Contract Price for the first year.



Box 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.]	Training services and consulting services needed to implement the installation of patches, fixes and updates; installation of additional hardware and/or software

Box 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) Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller? If yes: (a) specify if the Hardware Maintenance and 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).] OR (b) specify if the Hardware Maintenance and 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).]	No

Box 6 Value Added Services

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
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Acquisition through a Reseller (clause 4.3)

Specify the details of any value added services the Contractor is to provide, the Prices and when payment is due.

Not Applicable



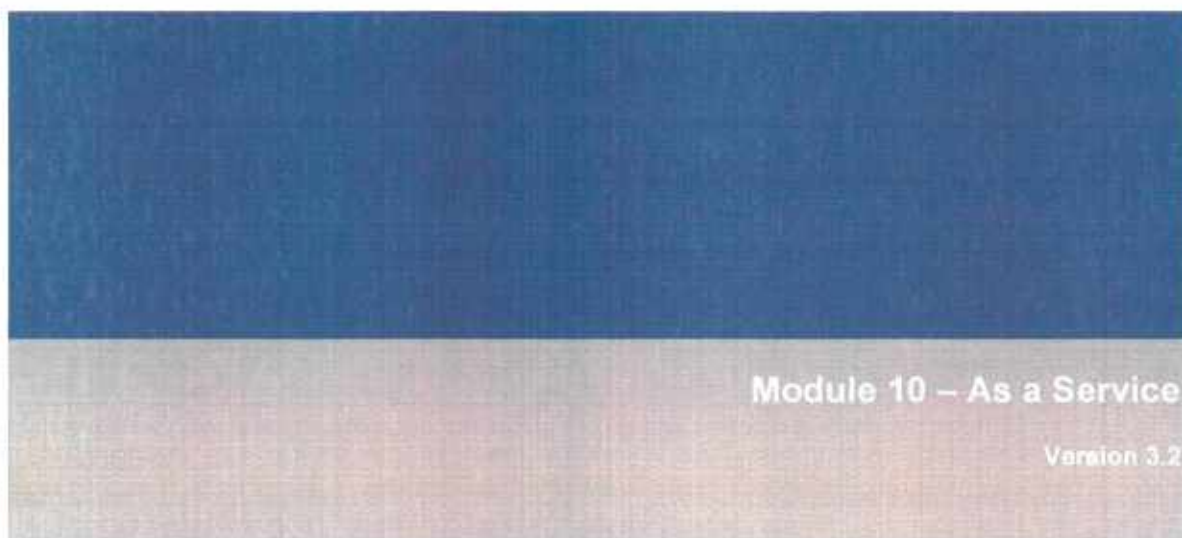


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1. AGREED TERMS AND INTERPRETATION

The terms and conditions included in this Module 10 form part of the Customer Contract and apply when the Parties state that the As a Service Module forms part of the Customer Contract.

In this Module, unless the contrary intention appears:

- 1.1 **Application** means any application software which may or may not be delivered as an Online Service, for use by Permitted Users.
- 1.2 **Approved Purpose** means the purpose agreed in the Order Documents for which the Customer and Permitted Users shall use the Service.
- 1.3 **As a Service** means Infrastructure as a Service, Platform as a Service and/or Software as a Service that is being supplied in accordance with the Order Documents, and each such As a Service is a Service for the purposes of the Customer Contract.
- 1.4 **Consolidation Period** means the first month of the provision of the As a Service (commencing on the Service Commencement Date of the relevant As a Service), or such other period, or no such period, stated in the Order Documents.
- 1.5 **Customer Access Facilities** means telecommunications, networks, systems and other facilities used, or required by, or on behalf of the Customer for accessing and making use of the Service.
- 1.6 **Customer Data** means data or information, including Personal Information, that is submitted by the Customer or Permitted Users into the As a Service to be stored or processed and made accessible from the As a Service in any form, regardless of the format, location or medium.
- 1.7 **Cutover Date** means the date when the Contractor advises the Customer that the Customer can commence loading Customer Data into the As a Service following the completion of the Transition In Services.
- 1.8 **Data Access** means the ability to retrieve, view, edit, transmit or otherwise make use of, Customer Data.
- 1.9 **Data Centre Region** means the physical location, by country or region, of the Contractor's computing Hardware and software, including any back-ups used to store, host and process Customer Data.
- 1.10 **Environment** means the entire set of technology components required for the provision of the As a Service.
- 1.11 **Infrastructure as a Service** means a computing data centre with the equipment used to support operations, including storage, hardware, servers and networking components, delivered as an Online Service.
- 1.12 **Online Service** means computing services and capabilities such as application software, software platforms, hardware platforms, infrastructure and similar capabilities, which are delivered by the Contractor to the Customer over an IP network (including the Internet), rather than provided locally or on-site. Typically, the software and hardware assets are owned by the Contractor and the Customer is billed for usage.
- 1.13 **Permitted User** means such persons that the Customer has permitted to use the As a Service for an Approved Purpose, in accordance with the Customer Contract, including individual end users.



- 1.14 **Platform as a Service** means a hosted Environment for configuring and running Applications that is delivered as an Online Service.
- 1.15 **Service Commencement Date** means the date that the Contractor states it is ready to commence the Services or such date that the Parties agree that the Contractor must commence the Services.
- 1.16 **Service Definition** means the Contractor's description of the As a Service as specified in the Order Documents and may include details of specific inclusions, exclusions, limitations and costs.
- 1.17 **Services** means the As a Service, any Support Services, Transition In Services, Transition Out Services, Training Services provided under clause 10.3 in this Module and any other Deliverables specified in the Order Documents.
- 1.18 **Software as a Service** means software or an Application that is delivered as an Online Service.
- 1.19 **Support Services** means any services specified in the Service Definition or Order Documents that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup and recovery services.
- 1.20 **Technical Specifications** means any defined characteristics of the Environment or Services in terms of functionality, performance, availability or dependencies.
- 1.21 **Third Party Application** means an Application supplied, licensed from or owned by a third party which is used by the Customer.
- 1.22 **Transition In Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor prior to the Cutover Date that may include, data migration, business continuity plans, testing of the As a Service, handover arrangements and planning to enable the Customer's operations and Customer Data to be moved to the Services and may also include development of a Transition Out Services plan.
- 1.23 **Transition Out Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor after the cessation of the As a Service to enable the Customer's operations and Customer Data to be removed from the As a Service and may include treatment of Customer's documents or materials, transitioning the As a Service to a new service provider or to the Customer, resolving issues relating to technological parity and current industry standards with other service providers and provision of technical documentation for the transfer of Customer Data, and procedures for the return/transfer or deletion of Customer Data.
- 1.24 **User Documentation** means the user manuals, installation instructions, reference material and other relevant publication and aids and any updates, replacements, revisions and additions (if any) provided or made available by the Contractor from time to time in a hard copy, electronic or online format. User Documentation excludes any document that is training material.

INTERPRETATION

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



2. TERM OF SERVICES

2.1 The Contract Period:

- (a) commences from the Services Commencement Date of the first of the Services to be provided under the Customer Contract; and
- (b) continues for the period of time stated in the Order Documents, including any period or periods of extension of the Customer Contract,

unless the Customer Contract is terminated sooner in accordance with the Customer Contract and this Module.

2.2 The Contract Period may be extended by agreement between the Parties using the procedure in Schedule 4 – Variation Procedures.

2.3 During the Contract Period, the Customer engages the Contractor to be the provider of the Services.

3. SCOPE

3.1 The Contractor shall provide all Services to the Customer for the Contract Period.

3.2 Should the Contractor employ an agent, subcontractor or third party to perform or carry out any part of the Services, the Contractor is not relieved of its liabilities and obligations arising out of, or in connection with, the Customer Contract by such employment.

4 CUSTOMER USE AND ACCESS TO THE AS A SERVICE

4.1 The Customer agrees that the access rights of any Permitted User (for example on a named or password enabled basis) cannot be shared or used by more than one individual, unless the right is reassigned in its entirety to another individual authorised user in which case the first user shall no longer have any right to access the As a Service.

4.2 The Customer acknowledges and agrees that it is the Customer's and/or Permitted Users' responsibility (unless otherwise stated in the Order documents) to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification or the Service Definition change during the Contract Period.

4.3 The Customer acknowledges and agrees that the As a Service may be provided on a shared service basis to the Customer and other clients of the Contractor from a common code base and/or common Environment and the Contractor may from time to time:

- (a) change add or delete the functions, features, performance, or other characteristics of the As a Service, and if such change, addition or deletion is made, the specifications of the As a Service shall be amended accordingly; and
- (b) correct errors or upgrade the As a Service,

provided that the functionality or availability of the As a Service used by the Customer shall not materially decrease during the Contract Period.

4.4 The Contractor will provide prior written notice via its website or email of major changes or new versions of the Service (if relevant). The Contractor does not guarantee any change, addition, deletion, error correction, patch or new version will be compatible with any application, other software or interface that connects to or interfaces with the As a Service that has been made by or on behalf of the Customer.



- 4.5 The Contractor will identify any additional guidelines and usage restrictions (if any) that may apply to the As a Service in each Customer Contract. The Customer must use the As a Service in accordance with any such guidelines and restrictions (as updated from time to time) provided that such guidelines and restrictions do not result in a material reduction in the level of performance or availability of the As a Service during the Contract Period.
- 4.6 If the Contractor's changes under clauses 4.3, 4.4, or 4.5 result in a material reduction in the level of performance or availability of the As a Service during the Contract Period the Customer may exercise its rights to terminate the Customer Contract.
- 4.7 The Customer is solely responsible for all Customer Data and it, and its Permitted Users, are solely responsible for entering Customer Data into the As a Service, maintaining Customer Data (including backing up and restoring Customer Data) and ensuring that it is accurate and not false, misleading or deceptive nor likely to mislead or deceive.
- 4.8 The Customer will comply with all applicable laws in connection with access to or use of the As a Service or the Customer Contract.

5 DATA CONTROL AND AUDIT

- 5.1 This clause 5 operates during the Contract Period and (where relevant) such period thereafter as the Contractor (including any person on the Contractor's behalf) has access to anything which embodies the Customer Data.
- 5.2 The Contractor agrees:
- (a) it shall ensure that the As a Service materially complies with the Service Definition;
 - (b) it will not vary the Data Centre Region(s) specified in the Order Documents without the prior written consent of the Customer, such consent not to be unreasonably withheld;
 - (c) to apply to the Customer Data the level of security and encryption that is specified in the Order Documents;
 - (d) it shall implement and comply with any business continuity plan that may be specified in the Order Documents;
 - (e) it shall implement and comply with the retention and disposal requirements specified in the Order Documents; and
 - (f) it shall ensure the accessibility, usability and preservation of Customer Data does not change detrimentally in any material respect as a result of any changes made by the Contractor to the As a Service and subject to any agreed downtime of the As a Service.
- 5.3 The Customer agrees that:
- (a) it shall use only the Customer Access Facilities to access the As a Service;
 - (b) it shall ensure that the Customer Access Facilities meet the security standards specified in the Order Documents; and
 - (c) it shall use its best endeavours to prevent viruses or other harmful or malicious code in the Customer Data and that the Customer Data does not infringe any third party's rights.
- 5.4 The parties agree that the Customer and/or its representative who may not be a competitor of the Contractor (including a supervisory authority of the Customer) may conduct an audit, at the Customer's cost and up to one time per year. This number of audits may be exceeded



where additional audits are required by any lawful authority. The audit shall solely involve access to Customer Data, access to all relevant documentation and access to evidence to verify the Contractor's processes and controls. Such documentation and evidence may include but is not limited to the Contractor's data and logs directly related to the Customer's use of the As a Service, the Contractor's architecture, systems and procedures, independent certifications or interviews.

- 5.5 If expressly agreed in the Order Documents, the Contractor shall facilitate an on-site visit to the facilities from where the Service is provided at the Customer's cost up to one time per year. The Customer shall give the Contractor reasonable advance written notice of not less than 14 days of any request for an on-site visit. During any on-site visit the Customer and its representatives shall observe the security procedures which the Contractor reasonably requires and ordinarily obtains from third parties. If the Customer conducts an on-site visit through a third party independently appointed representative, such representative shall be required to enter into a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in the Customer Contract to protect the Contractor's proprietary information. Any on-site visits described in this clause shall be conducted during reasonable times and shall be of reasonable duration and shall not unreasonably interfere with the Contractor's day-to-day operations.
- 5.6 The Contractor will provide production, test, and backup environments in the Data Centre Regions specified in the Order Documents. All activities or services which involve Data Access, storage, hosting or processing of Customer Data will be carried out in the Data Centre Region(s) specified in the Order Documents. The Contractor and its Related Companies may perform certain aspects of the Services from locations and/or through use of subcontractors worldwide, and those services may require access to the Customer's account details or the Contractor's logs and data relating to the Customer's use of the As a Service, but will exclude any use or retrieval of Customer Data.

6. SERVICE LEVELS

- 6.1 From the day after the Consolidation Period the Contractor must comply with the terms of the Service Level Agreement, subject to any:
- (a) Force Majeure Event;
 - (b) act or omission of the Customer or its Personnel; and
 - (c) act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer.

7. RESTRICTIONS

- 7.1 The Customer shall not:
- (a) remove, alter or obscure any disclaimer or notice, or any restricted right legend, trademark, copyright or other ownership right legend appearing in the As a Service on a screen or any print out from the As a Service;
 - (b) allow access to or use of the As a Service for any purpose other than the Approved Purpose;
 - (c) copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation, or derivative of the As a Service or the User Documentation, unless expressly permitted by the Customer Contract or the law;
 - (d) reverse engineer, reverse compile, decompile or disassemble the object code of any part of the As a Service or otherwise attempt to derive the source code of the As a Service, except to the extent permitted by law; or

- (e) use or permit the use of the As a Service for any purpose that may cause damage or injury to any person or property or breach any law.

8. LIABILITY

- 8.1 The Contractor and the Customer agree that, for the purposes of the Services provided under this Module, clause 18.5 of the Customer Contract is replaced with the following:

The Contractor has:

- (a) subject to paragraph (b) below, no financial cap on its legal liability where that liability arises from:
 - (i) bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b); or
 - (ii) loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
 - (iii) breach of the Contractor's obligation of confidence under or pursuant to clause 14; or
 - (iv) the Contractor's indemnity in respect of breach of privacy obligations as stated in clause 19.1(a); and
- (b) a financial cap on its legal liability for all claims in the aggregate arising from:
 - (i) the Contractor's indemnity for IP Claims under clause 19.1(c); or
 - (ii) liability arising from or in relation to Customer Data,

the greater of \$100,000 or three times the annual Contract Value of the affected Service provided under this Module unless a greater amount is specified in the Order Documents.

9. INFORMATION OWNERSHIP, INTEGRITY AND PRIVACY

- 9.1 The Contractor does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in this Module or the Customer Contract.
- 9.2 The Customer grants to the Contractor or to any third party associated with the Contractor, a non-exclusive, non-transferable licence over the Customer Data for the sole purpose of the Contractor performing its obligations under the Customer Contract and enabling the Customer's use of the As a Service including handling Customer Data in accordance with the Customer's instructions.
- 9.3 The Contractor will ensure continuity of accessibility and usability (in each case, in material compliance with the Service Definition) of all Customer Data regardless of any migration of data to other formats during the Contract Period. The Contractor will notify the Customer of any proposed migration and will allow the Customer to verify data integrity.
- 9.4 The Contractor may delete, purge and/or disclose Customer Data where it is required to do so under any applicable law. Where the Contractor receives a request to delete, purge and/or disclose any part of the Customer Data, if legally permitted to do so, it shall promptly notify the Customer of the request to enable the Customer to respond.
- 9.5 Subject to clause 9.4, the Contractor and any third party associated with the Contractor will not access, disclose, delete, process or otherwise use Customer Data for any purpose other than in accordance with the Customer Contract or as expressly authorised by the Customer.
- 9.6 Without limiting this clause, the Contractor agrees that, in respect of Personal Information it shall comply with Privacy Laws applicable to its provision of the As a Service.



10. ADDITIONAL SERVICES

Transition in services

- 10.1 Any Transition In Services shall be provided by the Contractor in accordance with the Order Documents.

Transition out services

- 10.2 Any Transition Out Services shall be provided by the Contractor in accordance with the Order Documents.

Training services

- 10.3 The Contractor will provide the Customer with requested training services at the time, and for the Price, set out in the Order Documents. The details of the courses, number of attendees, location for training, and which party is responsible for providing the equipment and the Price must be set out in the Order Documents.

Documentation

- 10.4 The Contractor will provide or make available to the Customer, upon request and at no cost to the Customer:
- (a) all necessary User Documentation; and
 - (b) any other Contractor documents listed in the Order Documents to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.

11. WARRANTIES

- 11.1 The Contractor warrants to the Customer that the Services will perform in accordance with the Service Definition and Technical Specifications in all material respects during the Contract Period. The Contractor does not guarantee that access to and use of the Service will be uninterrupted or error free.

12. PAYMENT AND INVOICING

- 12.1 The Customer must pay the Contractor for the Services in accordance with the Order Documents.
- 12.2 If any charge owing by the Customer is 30 days or more overdue, and is not in dispute the Contractor will issue a notice to the Customer's Authorised Representative named in Item 3 of the General Order Form requiring payment within a further 14 days of the date the notice before taking any further action including suspension of the As a Service.

13. TERMINATION

- 13.1 In addition to the Customer's right to terminate the Customer Contract in accordance with clause 25 of the Customer Contract and clause 4.6 of this Module, the Customer may immediately terminate the Customer Contract in respect of this Module for cause by providing the Contractor Notice in Writing, if the Contractor persistently breaches the warranties contained in this Module (irrespective of whether such breaches collectively constitute a Substantial Breach) in which event the Contractor will be liable for the Customer's reasonable direct costs and expenses associated with the breach including all reasonable direct costs associated with changing Contractors, subject to the applicable exclusions and limitations of liability set out in this Module and the Customer Contract.
- 13.2 On termination of this Customer Contract for any reason:



- (a) all licences granted in this Module shall immediately terminate;
- (b) other than in respect of Confidential Information which is Customer Data, each Party shall destroy or return and make no further use of any Confidential Information (and all copies of them) of the other Party;
- (c) the Contractor must delete Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification that it has been deleted; and
- (d) at the Customer's request made within 60 days of termination, the Contractor must provide the Customer with access to 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.

14. NO ASSIGNMENT OR NOVATION

- 14.1 The Contractor must not assign in whole or in part or novate the Customer Contract without obtaining the prior written consent of the Customer, and such consent may be withheld in the Customer's sole discretion except where the novation involves a Contractor Related Company.

15. INFRASTRUCTURE AS A SERVICE

- 15.1 Additional terms and conditions may be set out in the Order Documents in relation to Infrastructure as a Service.
- 15.2 Unless otherwise specified in the Order Documents, the Customer is solely responsible for:
- (a) configuring, installing, maintaining and obtaining licences to any software, applications or other materials that may be installed, located, hosted or otherwise stored on the Infrastructure as a Service;
 - (b) ensuring that all content and data stored on or otherwise retained on the Infrastructure as a Service are backed-up and that copies of back-up media are stored securely;
 - (c) restoring data or content from back-up media;
 - (d) implementing and maintaining security measures to protect the data, software, applications or other materials that are installed, located, hosted or otherwise stored on the Infrastructure as Service;
 - (e) obtaining all third party consents that are necessary to enable the Customer to store the relevant data and content on the Infrastructure as a Service; and
 - (f) all use of the Infrastructure as a Service by any person.
- 15.3 The Customer must:
- (a) ensure that all licences obtained by it in relation to software, applications or other materials that are hosted on the Infrastructure as a Service extend to permit the Contractor (and its sub-contractors) to run, execute or otherwise use each such item for the purposes of providing the Infrastructure as a Service; and
 - (b) comply with the terms of all licences referred to in paragraph (a) above and clause 15.2(a).



- 15.4 The Contractor may change the underlying infrastructure used by it to provide the Infrastructure as a Service, provided that any such change does not materially and adversely impact the Customer.

16. PLATFORM AS A SERVICE

- 16.1 Additional terms and conditions may be set out in the Order Documents in relation to Platform as a Service.

17. SOFTWARE AS A SERVICE

- 17.1 Additional terms and conditions may be set out in the Order Documents in relation to Software as a Service.
- 17.2 The Contractor or third parties may from time to time make available to the Customer (e.g., through an online exchange) third-party products or services, including but not limited to Third Party Applications. Any acquisition by the Customer of such Third Party Applications, products or services, and any exchange of data between Customer and any Third Party Application provider, is solely between the Customer and the applicable Third Party Application provider. The Contractor is not liable for, and does not warrant or support, third party products or services, whether or not they are designated by Contractor as "certified" or otherwise, except as specified in an Order Documents.
- 17.3 Any Third Party Applications supplied under Order Documents between Customer and Contractor shall be supplied by the Contractor in accordance with such Order Documents.
- 17.4 **Third Party Applications and Customer Data.** If the Customer installs or enables Third Party Applications for use with Services, the Customer acknowledges that the Contractor may allow providers of those Third Party Applications to access Customer Data as required for the interoperation and support of such Third Party Applications with the As a Service. The Contractor shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Application providers. The As a Service shall allow the Customer to restrict such access by restricting Permitted Users from installing or enabling such Third Party Applications for use with the As a Service.
- 17.5 **Reservation of Rights in Service.** Subject to the limited rights expressly granted hereunder, the Contractor reserves all rights, title and interest in and to the As a Service, including all related Intellectual Property Rights. No rights are granted to the Customer hereunder other than as expressly set out in this Module.
- 17.6 **Customer Applications and Code.** If a Customer, or a third party acting on Customer's behalf, or a Permitted User creates applications or program code using the As a Service, the Customer authorizes the Contractor to host, copy, transmit, display and adapt such applications and program code, solely to enable the Contractor to provide the Service in accordance with the Order Documents. The Contractor acquires no right, title or interest from the Customer or its licensors in or to such applications or program code, including any Intellectual Property Rights therein.



PROCURE IT VERSION 3.2
MODULE ORDER FORM
MODULE 10 – AS A SERVICE

Box 1 Services

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Contract Period (clause 2.1)	
Specify the Services Commencement Date, and, if applicable, the period of time for which the Services will be provided	In accordance with the Contract Period and any options to extend exercised under the provisions of the General Order Form.
Service definition (clause 2.3)	
Describe the Service to be provided, ie:	<u>Service to be provided</u>
a. Infrastructure as a Service; b. Platform as a Service; c. Software as a Service; and d. any Management Services (unless subject to a separate module), eg - implementation - user training - support services - ongoing system administration - monitoring and performance management - backup and recovery services.	1. The Service to be provided is Software as a Service. <u>The Service Definition</u> The services required are as per the Scope of Work. 2. There are no Transition-In Services required as part of the Software as a Service.
The Service Definition should include the strategy for the delivery of the Services that is appropriate for the Customer's needs and its user population, such as: a. identification of the Services to be performed; b. identification of Client Contracts and Third Party Contracts and how they are to be managed; c. a mechanism to determine when Transition In Services are complete and the Services can commence; and d. implementation of the Services, and Note: Module 10 expects that the Parties will enter into a Service Level Agreement. Specify any Support Services that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and	3. During the Contract Period, the Contractor shall: a. maintain the availability of the Software as a Service during the Contract Period in accordance with the Service Level Agreement and as per the Scope of Work; b. provide the Customer with support services in accordance with the Service Level Agreement and as per the Scope of Work; c. comply with the Service Levels in accordance with the Service Level Agreement and as per the Scope of Work; d. otherwise comply with all other requirements under the Service Level Agreement; and e. perform any Additional Services in accordance with any Change Requests agreed by the parties.



Details to be included from Module 10**Order Details agreed by the Contractor and the Customer**

performance management, backup and recovery services.

Training Services (clause 10.3)

Specify whether the Contractor will provide any training services associated with the Service.

If yes, specify the time when training services will be provided.

The contractor will provide training in the use of the in-vehicle Telematics device and in the use of the web based software.

The practicalities will be discussed with the contractor once an installation project schedule has been agreed.

Documentation (clause 10.4)

Specify any Contractor documents, in addition to User Documentation, to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.

On written request by the Customer, on an annual basis or other timeframe as agreed by the parties, the Contractor must prepare and submit to the Customer the following documentation to substantiate the Contractor's compliance with its privacy, security and business continuity commitments:

1. a security assessment report in a form acceptable to the Customer; and
2. a disaster recovery assessment report in a form acceptable to the Customer.

Pricing

Specify whether the Service is for a fixed Price or on a subscription basis.

If for a fixed Price, set out the pricing for the Service.

If on a subscription basis, specify how payment is made (eg monthly, yearly, etc).

Specify the Price of any training services. (clause 10.3)

Per Item 11 in the General Order Form

Approved Purpose (clauses 1.2 and 7.1(b))

Specify the purpose for which the Customer and Permitted Users shall use the Service.

Reporting on but not limited to vehicle usage, driver behavior and FBT. Refer to Scope of Work for more detail.

Box 2 Transition In**Details to be included from Module 10****Order Details agreed by the Contractor and the Customer****Specification of Transition In Services (clause 10.1)**

Specify any Transition In Services to be provided, such as:

- a. due diligence;

Details to be included from Module 10

Order Details agreed by the Contractor and the Customer

- b. data migration;
- c. Business Contingency Plans;
- d. testing of Services; and
- e. handover arrangements

Due diligence may include assessment and definition of the:

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

Data migration services should include the drafting of a Procedures Manual (if one does not exist as part of the Service Definition) for approval by the Customer (eg within 14 days). The Procedures Manual should describe the key attributes of the Services, including:

- a. the governance arrangements between the Customer and the Contractor;
- b. the governance arrangements dealing with the Contractor and any third parties;
- c. the protocols for managing security issues between the Parties;
- d. the protocols for identifying and



Details to be included from Module 10**Order Details agreed by the Contractor and the Customer**

- managing risks;
- e. how the key aspects of the Services will be provided to the Customer;
- f. the procedures for varying Services and providing Additional Services;
- g. how user complaints and disputes will be managed;
- h. updating the Procedures Manual; and
- i. data backups, if required outside of disaster recovery processes.

Note: Once the Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it.

Business Contingency Plan

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

Box 3 Customer Use and Access to the As a Service**Details to be included from Module 10****Order Details agreed by the Contractor and the Customer****Terms under which the Service is available (clause 4.1)**

Consider issues including:

- | | |
|---|---|
| <ul style="list-style-type: none"> a. authorisation to access the Service, eg individual and multi-user passwords; b. maximum Contractor Systems capacity; c. is the Customer responsible to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification of the Service Definition changes during the Contract Period; d. is the Service provided on a shared service basis to the Customer and other clients from a common code base and/or common environment; e. conditions under which the Contractor may change any characteristics of the Service, and if the specifications of the | <ul style="list-style-type: none"> a. Access to individuals has to be granted: each Sydney Trains employee will have its own login and password b. Unlimited or at least equal to the number of Sydney Trains employees c. The Customer acknowledges that the minimum system requirements are at the General Order Form, Schedule 2, as at the Commencement Date – as per clause 4.2 d. The service (web based software) is a shared service from a common code base and environment – as per clause 4.3 e. The Contractor will not materially reduce the characteristics, level or functionality of the Services provided during the Contract |
|---|---|



Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Service must be amended accordingly; and f. conditions under which the Contractor may correct errors patch or install new versions of the Service.	Period. f. The Service is updated regularly with features and fixes, including security updates. Releases are classified as major (new features or significant changes) or minor (low-impact fixes or enhancements). Immediate updates (hotfixes) may be deployed at any time but incidence is minimised to avoid unnecessary disruption. The Contractor shall ensure that the Customer can track Service availability and announcements about upcoming releases using a dedicated status page. Further, information about the release calendar, scheduled maintenance windows and upcoming features can be subscribed by registered users.
Data Centre Region (clause 5.2(b) and clause 5.6) Specify the physical location(s) by country or region of the Contractor's computing hardware and software used to store, host and process Customer Data, including production, test and backup environments. Note: the location(s) must not be changed without the prior written consent of the Customer (cl. 5.2(b)).	Data Is Stored within the Iprimus Tier 3 Data Centre in Melbourne CBD within IntelliTrac Dedicated Servers owned and managed by IntelliTrac

Box 4 Data Control and Access

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Security and Encryption (clause 5.2(c)) Specify the level of security and encryption required for the Customer Data as defined by the Customer's Information Security Management System (ISMS). Note: All NSW Government Departments,	Refer to attached Security Requirements



Statutory Bodies and Shared Service Providers are required to have an ISMS.

Business Continuity Plan (clause 5.2(d))

Detail any Business Continuity Plan, including backup and disaster recovery procedure, in place for implementation by the Contractor, if required.

Refer to attached Security Requirements

Data Retention and Disposal (clause 5.2(e))

Specify the retention period for the Customer Data and retention and disposal requirements the Contractor will implement and comply with in relation to Customer Data.

Refer to attached Security Requirements

Security Standards for Customer Access Facilities (clause 5.3(b))

Specify the security standards that the Customer Access Facilities will meet.

Not applicable

On-site visit (clause 5.5)

Specify any requirements by the Contractor for on-site visits to the facilities where the Service is provided.

As per Item 25 of the Customer Contract.

Box 5 Service Levels

Details to be included from Module 10

Order Details agreed by the Contractor and the Customer

Consolidation Period (clause 6.1)

The Consolidation Period is defined as the first month of the provision of the As a Service (cl. 1.4).

There is no Consolidation Period.

Specify if another period is required. If yes, what is the period?

Box 6 Payment and Invoicing

Details to be included from Module 10

Order Details agreed by the Contractor and the Customer

Payment for Services (clause 12.1)

Terms of payment should include details of the Services provided. Note that no payment is due where termination of the contract is occasioned by the Contractor's breach of the contract. The Contractor must send the Customer a Correctly Rendered Invoice for each payment before the relevant amount is due.

Per Item 11 in the General Order Form



Payment terms must be consistent with NSW Government policy.

Box 7 Transition Out

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Transition Out Services (clause 10.2) If required, Transition-Out Services may include: - returning or destroying documents or materials, together with any reproduction of those documents or materials; - transitioning the Service to a new service provider or to the Customer; - granting or assisting the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is the same as that being used in the System, and any software owned by the Contractor which is integral to the ongoing provision of the Service, subject to payment of licence fees by the Customer (or new service provider); - ensuring technological parity with other service providers, and the provision of sufficient technical documentation, to enable successful and cost-effective transfer of the Customer Data; and - procedures for the return/transfer or deletion of Customer Data upon termination of the Customer Contract; or in the event that the Contractor becomes subject to corporate takeover or insolvency. Consider issues relating to: - regular (eg annual) review of the Transition Out Services plan; and - how and when the Transition Out Services are brought into effect. Specific matters that may be covered in the Transition Out Services plan include that the Contractor, in consultation with the Customer and as stated in the Transition Out Services plan: - return any Customer Supplied Item(s); - freeze non-critical software changes in any of the Customer's software that is being supported as part of the Service;	Not applicable



Details to be included from Module 10**Order Details agreed by the Contractor and the Customer**

- c. provide all reasonable transition assistance for the delivery of Customer Data to the new service provider or to the Customer and the reloading of the production databases;
- d. provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties in the Transition Out Plan);
- e. provide a list of the outstanding issues detailed on any issues register;
- f. answer questions and provide such other information as may be reasonably sought by the new service provider and/or by the Customer to assist it in the transition process;
- g. surrender any remaining Customer owned reports and documents still in the Contractor's possession;
- h. the Contractor ceases to become liable to perform any part of the Service after it is transitioned to a new service provider or to the Customer;
- i. the Contractor's obligations to meet the Service Levels are not reduced and the Contractor remains liable for failing to meet any Service Levels;
- j. the Customer must continue to pay the full Services Price until the last day of the Contract Period, notwithstanding that some or all of the Service may have been transitioned to a new service provider or to the Customer (unless otherwise agreed in the Order Documents);
- k. the Contractor must, subject to clause 13.2 of the Module, return to the Customer all Customer Data within 14 days of termination of the Customer Contract and back up and secure Customer data for a further 60 days after termination of the Customer Contract;
- l. grant or assist the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is integral to the ongoing provision of the Services, subject to payment of licence fees by the Customer (or new service



Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
provider); and m. not delete any Customer Data at the end of the Customer Contract without the express prior approval of the Customer.	

Box 8 Return of Customer Data on termination

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Customer Data deletion and certification (clause 13.2(c))	
Specify the period within which the Contractor must delete the Customer Data and whether certification it has been deleted is required.	1 month
Customer Data format (clause 13.2(d))	
Specify the format that the Customer Data must be provided to the Customer.	Standard format as usually provided by the contractor

Box 9 Additional terms –Infrastructure as a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Additional terms and conditions (cl. 15.1)	
Specify any additional terms and conditions in relation to Infrastructure as a Service.	Not applicable

Box 10 Additional terms –Platform as a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Additional terms and conditions (cl. 16.1)	
Specify any additional terms and conditions in relation to Platform as a Service.	Not applicable

Box 11 Additional terms – Software as a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Additional terms and conditions (cl. 17.1)	
Specify any additional terms and conditions in relation to Software as a	Not applicable



Service.

Specify whether the Contractor warrants or supports third party products or services. (cl. 17.2).

Specify any Third Party Applications supplied by the Contractor (cl. 17.3).

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line and a small upward stroke.

Security Requirements

	Security Requirements	Yes / No	Comment
1	GENERAL Where is Sydney Trains' data the data going to be stored (location of Service Provider's Data Centre)? <i>Note: Consider the geographical location of the primary and any backup or Disaster Recovery facilities.</i>	Yes	Data is Stored within the Iprimus Tier 3 Data Centre in Melbourne CBD within IntelliTrac Dedicated Servers owned and managed by IntelliTrac
2	COMMERCIAL Does the provider acknowledge that Sydney Trains is the owner of data?	YES	
3	Does the provider access/use Sydney Trains data for any other purposes other than providing services to Sydney Trains?	NO	We do not sell or distribute any data including de-personalised data to third parties or live traffic data providers
3.1	If 'Yes', explain what purposes the data would be used <i>(e.g. meta data analysis, pattern analysis, anonymous information collection)?</i>		
4	Does the provider allow OTHERS to audit and test systems containing Sydney Trains data?	No	
4.1	If 'Yes', answer the following: What ensures that Sydney Trains data is not accessed as part of that test?		
4.2	What ensures that Sydney Trains services are not impacted as part of that test?		
4.3	How will we know when an audit/test is to occur?		
4.4	How will we know if the auditor/tester discovers a weakness that affects Sydney Trains?		
5	Does the provider agree to not to move the Sydney Trains data without Sydney Trains' permission?	Yes	
6	How will Sydney Trains know if data is moved?		Data is stored within dedicated servers (not Virtual Servers and Sydney Trains has full access to audit logs on demand)
7	Would the provider provide Sydney Trains the right to audit and test the provider's system?	Yes	
7.1	If 'Yes', what components of the system can be tested by Sydney Trains? <i>(i.e. Network infrastructure, Application)</i>		We will provide dedicated servers for Sydney trains, storing ONLY Sydney Trains data and hence Sydney Trains has full access to these servers for testing and audits
8	Would the provider clearly specify what is to occur when the contract expires or is terminated?	Yes	
	If 'Yes', does it cover the following areas?		Dedicated Services are decommissioned and all data may be packaged up and supplied to Sydney Trains on Hard Drive. Data is then erased from servers and servers are re-purposed if still within economic life
8.1	Are there clear conditions regarding the return of data?		
8.2	Are there clear conditions regarding the destruction of data?	No	Sydney Trains to provide hard drives for the return on data
8.3	Are there clear conditions regarding the return/use of any software needed to use the data?	No	Once a contract is cancelled there is no longer use of software. However Sydney Trains may be provided raw data as per section 8 above
	COMPLIANCE:		
9	Is the provider's solution accredited by DSD and ASIO for hosting of Australian government systems? <i>Note: this is not the same as Gatekeeper</i>	No	However, systems may also be hosted on ASD compliant Azure Government Cloud if required
10	Is the provider's solution certified to ISO-27001 for Information security? <i>Note: Mention if this certification is only limited to the Data Centre.</i>	No	However we do use ISO-27001 frameworks
10.1	If 'Yes', please provide the following: Scope of the certification?		
10.2	Copy of the certification?		
11	Is the provider "SOC 2 Compliant"? <i>Note: https://www.aicpa.org/interstates/jrc/assuranceadvisoryservices/downloadabledocuments/comparison-soc-1-3.pdf</i> <i>Please mention if this compliance is only limited to the Data Centre.</i>	No	
11.1	If 'Yes', please provide the following: SOC 2 Type I Report?		
11.2	SOC 2 Type II Report?		
11.3	SOC 3 Report?		
12	Does the provider "CSA STAR Compliance" (Cloud Security Alliance - Security, Trust and Assurance Registry)? <i>Note: https://cloudsecurityalliance.org/star/#_overview</i> <i>If 'Yes', please provide the following:</i>	No	
12.1	What is the level of certification (i.e. Self-Assessment, 3rd Party Certification & Continuous Auditing)		
12.2	Share Consensus Assessments Initiative Questionnaire (CAIQ) with the responses		
13	Is the provider's solution certified to an alternate standard for information security? <i>Note: Mention if this certification only limited to the Data Centre.</i>	No	
13.1	If 'Yes', what is the standard?		
14	Does the Data Centre provider have a Tier-3 certification for data centre reliability?	Yes	
	ASSET MANAGEMENT:		
15	Does the provider own the Data centre(s)?	No	We lease racks from Iprimus Tier 3 Data centre in Melbourne
16	Does the provider own the ICT infrastructure (i.e. servers, networking equipment, etc.)?	Yes	
17	How Sydney Trains data is segregated from the rest of customers? <i>(i.e. Separate physical/virtual machines, application instances or database/ tables)</i>		Separate Physical Machines
18	Explain how the data is segregated such that one customer cannot see data from the other customer?		Separate Physical Machines
19	What is the provider's procedure for disposing of physical ICT assets storing Sydney Trains data?		Machines are cleared of all data before being re-purposed or sent to Certified Technology Recyclers such as CW or MRI
	HUMAN RESOURCES SECURITY:		
20	Does the supplier have a policy for recruitment/engagement that complies with the NSW Government Personnel Handbook? <i>See: http://www.dpc.nsw.gov.au/about/publications/personnel_handbook</i>	Yes	
21	Does the supplier conduct criminal records checks on all personnel who have access to Sydney Trains Information? <i>Note: personnel includes employees, contractors and the personnel of the supplier's subcontractors</i>	Yes	
22	Does the organisation provide Security Training / Awareness (Both technical (like coding & hardening) and general security best practices) to all personnel based on their role?	Yes	
	PHYSICAL AND ENVIRONMENTAL SECURITY:		
23	Has the provider's facility been accredited under the Australian Government's Security zones and risk mitigation control measures?		Unsure as this service is provided by Iprimus Tier3 Data Centre
23.1	If 'Yes', what Zone is equipment storing Sydney Trains data? <i>See: http://www.protectionsecurity.gov.au/physicalsecurity/Pages/Supporting-Guidelines.aspx</i>		
	COMMUNICATIONS AND OPERATIONS MANAGEMENT:		
24	Is the provider able to produce certification against ISO/IEC 20000 (i.e. ITIL)? <i>Note: Mention if this certification only limited to the Data Centre.</i>		This may be a data centre matter
25	Will any other party be able to cause an outage to Sydney Trains? <i>For example, does a major customer have the right to stop or limit the service?</i>		No - Sydney Trains will have dedicated physical servers
26	Will Sydney Trains Information be backed-up?	Yes	
26.1	If 'Yes', answer the following: What is the backup retention period for all types of backups taken?		7 years
26.2	Is the backup encrypted?		No
26.3	Is the backup conducted/stored by a 3 rd -party?		Stored within Iprimus Tier 3 Data Centre
26.4	Where is the backup stored?		See above
27	Does the provider has end to end Disaster Recovery (DR) arrangements?		
27.1	If 'Yes', answer the following: Explain the DR arrangements for the each layer mentioned below: Network Layer Web Application and Application Layer Database Layer	YES	See attached DR BCP Plan
27.2	How frequently end to end DR arrangements are tested?		Annually
27.3	Does the disaster scenarios include general cyber security attacks like Malware, Defacing, DDoS, etc.?		Yes
	ACCESS CONTROL:		
28	Does the provider provide dashboard / report to monitor access to Sydney Trains services / data?	YES	
29	Will the provider be able to identify all personnel accessing all of the provider's systems that are used to store/process Sydney Trains Information?	YES	
29.1	If 'Yes', how is that information provided to Sydney Trains?		General reporting Dashboard
30	Will the provider be allowing any 3 rd -parties to access Sydney Trains data?		
30.1	If 'Yes', who and why?	NO	
	INFORMATION SYSTEMS ACQUISITION, DEVELOPMENT AND MAINTENANCE:		
31	Will the provider conduct periodic security testing on the solution?	YES	
31.1	If 'Yes', answer the following: Would the review cover Web applications?	YES	
31.2	Would the review cover Network Infrastructure?	YES	
31.3	Would the review cover Hosting Infrastructure?	YES	
31.4	Who will conduct the testing? (i.e. Provider, Sydney Trains or a 3 rd party)		Provider
31.5	Will Sydney Trains be provided with the results?		Not unless requested
32	Does the provider carry out secure code review (for both SaaS and mobile App (if available))?		
32.1	If 'Yes', is it performed manually or using tools?	YES	Various
	INFORMATION SECURITY INCIDENT MANAGEMENT:		
33	Does the provider actively monitor security events?		
33.1	If 'Yes', answer the following: Would any security event information shared with Sydney Trains?	YES	If required by Law
33.2	What kind of security events will be shared with Sydney Trains?		To be negotiated

33.3	How is that information provided to Sydney Trains?		See above
34	Does the provider have Security Incident Management Plan?		
34.1	If 'Yes', explain how a security incident will be managed (including collaborating with the customer)?	YES	
35	Does the provider have a single point-of-contact for security incident management who is available 24/7?	YES	
36	Is the provider required to notify of Sydney Trains all incidents affecting Sydney Trains data?		
	If 'Yes', answer the following	YES	
36.1	How is Sydney Trains going to be notified?		Email
36.2	When is Sydney Trains going to be notified (e.g. within 1 hour)?		As soon as a practical after breaches are known and analysed for correctness or cause, effect
36.3	Who else is going to be notified?		
	<i>Note: the provider may be in a jurisdiction that regulates data breach notification.</i>		
37	Does the provider participate in any data breach surveys?		
37.1	If 'Yes', which ones?	No	
	<i>Note: includes "anonymous" or "de-identified" surveys</i>		
38	Does the provider have a plan for Denial of Service attacks?		
	If 'Yes', answer the following:	YES	
38.1	Is 3 rd -party DDOS protection used?	No	
38.2	Does the provider's DDOS protection require configuration change by Sydney Trains?	No	
39	SaaS SECURITY:		
	Explain the following processes?		
39.1	User registration process		Handled by Systems Admin
39.2	Account unlocking process		Handled by Systems Admin
40	Is it possible to customise password settings and account lockout requirements for each customer instance?		
40.1	If 'No', Explain the current password and account lockout settings?		Yes
41	How does the SaaS manage session?		Sessions remain active until logout or midnight
42	How are SaaS passwords stored?		Hashing
	<i>(i.e. clear text, hashing and salting)</i>		
43	Does the SaaS support Multi Factor Authentication (at least for selected users like Administrators)?		Not at this stage
44	Is data encrypted in transit?	YES	
	If 'Yes', answer the following?		
44.1	Does it encrypt the full connection?	YES	Connection between Telematics Device and Server
44.2	Explain the supported protocols and ciphers?		Proprietary Binary Encryptions
44.3	Does the provider actively monitor insecure / discontinued protocols & ciphers and retire them?		Yes
45	Is data encrypted at rest?		
	If 'Yes', answer the following:		
45.1	What level encryption is done? (i.e. Data fields, Database, File System or Virtual Machine)		Selected Data Fields
45.2	What algorithm is used?		Proprietary
46	Does the provider practice Secure encryption keys storage and backup practices?	Yes	
47	Provide end to end diagram of the solution highlighting all access channels, protocols and ports? (Logical diagram)		To be provided upon short listing.
	MOBILE APPLICATION SECURITY		
48	Which mobile platforms are supported by the provider?		All
	<i>(i.e. IOS, Android, Windows)</i>		
49	Does the mobile app cache any information in the mobile?		
49.1	If 'Yes', what information is cached at the mobile app?		
50	How does mobile app manage session?		As per web based described above
51	How APIs used for data is secured?		Via User Authentication Privileges