

### List of redactions

The following table lists the basis for all redactions in the contract under section 32 of the *Government Information (Public Access) Act 2009*.

There is no intention to release any of the material redacted in this contract at a later date.

Page number(s) of redaction	Basis for redaction
56	Commercial-in-confidence
67	Commercial-in-confidence
69-70	Commercial-in-confidence
123-124	Commercial-in-confidence

**PROCURE IT FRAMEWORK**

**VERSION 3.1**

**PART 2: CUSTOMER CONTRACT**

## TABLE OF CONTENTS

<b>1.</b>	<b>RECITALS</b> .....	<b>1</b>
	Procure IT Framework.....	1
	Panel Arrangement .....	1
	Non-Panel Arrangement .....	1
	Customer Contract .....	2
	DICTIONARY .....	2
<b>2.</b>	<b>SCOPE OF CONTRACT</b> .....	<b>2</b>
	Products and Services .....	2
	Pricing .....	2
	Contract Period .....	2
	Nominee Purchaser.....	3
<b>3.</b>	<b>FORMATION OF CUSTOMER CONTRACT</b> .....	<b>3</b>
	Formation .....	3
	Compliance with Consumer laws .....	5
<b>4.</b>	<b>RELATIONSHIP</b> .....	<b>5</b>
<b>5.</b>	<b>DELIVERABLE SPECIFIC ISSUES</b> .....	<b>6</b>
	Delivery .....	6
	Documentation .....	6
	Normal Use .....	7
	product Safety .....	7
<b>6.</b>	<b>DELIVERY MANAGEMENT</b> .....	<b>7</b>
	Project Management .....	7
	Management Committee .....	7
	Performance Reviews .....	8
	Site Specifications .....	9
	implementation planning Study .....	9
	Project Schedule .....	9
	Change Control .....	9
	Staged Implementation .....	9
	Extension of Time.....	10
	Liquidated Damages .....	10
	Customer Supplied Items (CSI) .....	12
	Customer Assistance .....	12
	Escrow.....	13
	Business Contingency.....	13
<b>7.</b>	<b>ACCESS</b> .....	<b>13</b>
	Access to Customer's Site .....	13
<b>8.</b>	<b>PERSONNEL</b> .....	<b>14</b>
	Personnel - General .....	14
	Specified Personnel .....	14
	Approved Agents and SubContractors.....	14

<b>9.</b>	<b>GENERAL WARRANTIES .....</b>	<b>15</b>
	Contractor Warranties .....	15
	Customer Warranties .....	16
	Mutual Warranties .....	17
<b>10.</b>	<b>ACCEPTANCE .....</b>	<b>18</b>
	Acceptance .....	18
	Acceptance Testing .....	18
	Conducting Acceptance Tests .....	18
	Acceptance Test Outcomes .....	19
<b>11.</b>	<b>PAYMENT AND INVOICING .....</b>	<b>21</b>
	Payment .....	21
	Invoicing .....	22
<b>12.</b>	<b>TAXES .....</b>	<b>22</b>
<b>13.</b>	<b>INTELLECTUAL PROPERTY RIGHTS.....</b>	<b>22</b>
	Ownership .....	22
	Contractor owned New material .....	23
	Existing Material .....	24
	Customer Owned New Material .....	24
	Customer Material .....	25
	Know how etc .....	25
	Open Source Licence.....	25
<b>14.</b>	<b>CONFIDENTIALITY .....</b>	<b>25</b>
<b>15.</b>	<b>PRIVACY .....</b>	<b>26</b>
<b>16.</b>	<b>INSURANCE .....</b>	<b>26</b>
<b>17.</b>	<b>GUARANTEES .....</b>	<b>27</b>
	Performance Guarantees .....	28
	Financial Security .....	28
<b>18.</b>	<b>LIABILITY .....</b>	<b>29</b>
<b>19.</b>	<b>INDEMNITIES .....</b>	<b>31</b>
	Contractor Indemnity .....	31
<b>20.</b>	<b>CONFLICT OF INTEREST .....</b>	<b>33</b>
<b>21.</b>	<b>PERFORMANCE MANAGEMENT.....</b>	<b>33</b>
	Reporting .....	33
<b>22.</b>	<b>GOVERNMENT POLICY .....</b>	<b>33</b>
	Policy .....	33
<b>23.</b>	<b>CONTRACT ADMINISTRATION.....</b>	<b>33</b>
	Representatives .....	33
	Notice of Change of Control .....	34
	Record Keeping .....	34
	Notices .....	34
<b>24.</b>	<b>DISPUTE RESOLUTION .....</b>	<b>34</b>
<b>25.</b>	<b>TERMINATION .....</b>	<b>35</b>

Termination for Cause by the Customer .....	36
Termination for Convenience by the Customer .....	36
Termination for Cause by the Contractor .....	37
Consequences of Termination .....	38
<b>26. GENERAL .....</b>	<b>38</b>
Variation .....	38
Assignment and Novation .....	38
Waiver .....	39
Material Adverse Events .....	39
Unforeseen Events .....	39
Severability .....	39
Entire Agreement .....	39
Rights are Cumulative .....	40
Survival .....	40
Counterparts .....	40
Applicable Law .....	40
<b>SCHEDULE 1 : GENERAL ORDER FORM .....</b>	<b>42</b>
<b>SCHEDULE 2 : AGREEMENT DOCUMENTS .....</b>	<b>60</b>
<b>SCHEDULE 3 : SERVICE LEVEL AGREEMENT .....</b>	<b>61</b>
<b>SCHEDULE 4 : VARIATION PROCEDURES .....</b>	<b>68</b>
<b>SCHEDULE 5 : ESCROW DEED .....</b>	<b>74</b>
<b>SCHEDULE 6 : DEED POLL – APPROVED AGENTS .....</b>	<b>87</b>
<b>SCHEDULE 7 : STATUTORY DECLARATION – SUBCONTRACTOR .....</b>	<b>88</b>
<b>SCHEDULE 8 : DEED OF CONFIDENTIALITY .....</b>	<b>89</b>
<b>SCHEDULE 9 : PERFORMANCE GUARANTEE .....</b>	<b>96</b>
<b>SCHEDULE 10 : FINANCIAL SECURITY .....</b>	<b>100</b>
<b>SCHEDULE 11 : DISPUTE RESOLUTION PROCEDURES .....</b>	<b>103</b>
<b>SCHEDULE 12 : PIPP .....</b>	<b>107</b>

## 1. Recitals

### PROCURE IT FRAMEWORK

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

### PANEL ARRANGEMENT

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

### NON-PANEL ARRANGEMENT

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

## CUSTOMER CONTRACT

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

## DICTIONARY

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

## 2. Scope of Contract

### PRODUCTS AND SERVICES

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

### PRICING

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

### CONTRACT PERIOD

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

## NOMINEE PURCHASER

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

## 3. Formation of Customer Contract

### FORMATION

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



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

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

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

- (i) all other Order Documents;
  - (j) Annexure 3 to the Head Agreement (if applicable); and
  - (k) the Agreement Documents (if any).
- 3.9** To the extent that there is any conflict between any of the documents that comprise the Customer Contract, the conflict shall be resolved by giving priority to the documents in the order in which they appear in clause 3.8 (with an item higher in the list having priority over a lower item).
- 3.10** For clarity:
- (a) the terms and conditions of use of NSWBuy or any other electronic purchasing system used by the Customer are not part of the Customer Contract;
  - (b) if the Customer uses any document that has any terms and conditions on it as the basis of a General Order Form (including a purchase order) then any terms and conditions that are on that document (whether pre-printed, automatically generated or otherwise) but are not in the form and structure of the General Order Form, are expressly excluded from the Customer Contract. Any Additional Conditions must be inserted as Item 43 (Additional Conditions) of a General Order Form.

#### COMPLIANCE WITH CONSUMER LAWS

- 3.11** To the extent that the provisions of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) apply to goods or services supplied under this Customer Contract, then the provisions of this Customer Contract are subject to the provisions of the CCA.
- 3.12** To the extent that there is a failure to comply with a guarantee under sections 54 to 59 in schedule 2 of the CCA in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:
- (a) the replacement of the goods or the supply of equivalent goods;
  - (b) the repair of the goods;
  - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (d) the payment of the cost of having the goods repaired.
- 3.13** To the extent that there is a failure to comply with a guarantee in respect of the supply of services under sections 60 to 62 in schedule 2 of the CCA, then to the extent permitted by law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:
- (a) supplying the services again; or
  - (b) payment of the cost of having the services supplied again.

## 4. Relationship

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

## 5. Deliverable Specific Issues

### DELIVERY

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

### DOCUMENTATION

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

## NORMAL USE

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

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

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

## PRODUCT SAFETY

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

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

**5.10** The Customer agrees that:

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

## 6. Delivery Management

### PROJECT MANAGEMENT

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

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

### MANAGEMENT COMMITTEE

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

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

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

#### PERFORMANCE REVIEWS

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

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

#### **SITE SPECIFICATIONS**

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

#### **IMPLEMENTATION PLANNING STUDY**

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

#### **PROJECT SCHEDULE**

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

#### **CHANGE CONTROL**

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

#### **STAGED IMPLEMENTATION**

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

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

#### EXTENSION OF TIME

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

#### LIQUIDATED DAMAGES

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

- Contract, such varied Due Date, the Contractor must pay liquidated damages stated in Item 21 of the General Order Form to the Customer unless the late completion of the LD Obligation is:
- (a) caused by an Event;
  - (b) caused by the Customer or its Personnel;
  - (c) caused by the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
  - (d) permitted because an extension of time for completion of the LD Obligation has been granted by the Customer in accordance with the Customer Contract.
- 6.30** The Customer must promptly give the Contractor Notice in Writing setting out the grounds on which the Customer claims that liquidated damages are payable.
- 6.31** Each Party acknowledges that the liquidated damages stated in Item 21 of the General Order Form are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 6.32 as a result of the Contractor not completing the LD Obligation by the Due Date.
- 6.32** The Contractor must pay any liquidated damages that are due from the Due Date until the earlier of:
- (a) the date that the Contractor successfully completes the LD Obligation in relation to which the liquidated damages have been applied; or
  - (b) the date on which the maximum number of days for which liquidated damages are payable as stated in Item 21 of the General Order Form have elapsed (the **Longstop Date**).
- 6.33** Liquidated damages paid under clause 6.32:
- (a) are the Customer's sole and exclusive financial remedy for the Customer's loss, damage and expense that the Customer suffers during the period in which liquidated damages are payable under clause 6.32 out of or in connection with the Contractor not completing the LD Obligation by the Due Date, subject only to the Customer's rights under clause 6.34; but
  - (b) do not relieve the Contractor from any other liability or from meeting any other obligation under the Customer Contract.
- 6.34** The Customer may, at any time during the period in which liquidated damages are payable under clause 6.32, issue a Notice in Writing of a Substantial Breach in respect of the Contractor not completing the LD Obligation by the Due Date specifying a period during which the Contractor is required to remedy that Substantial Breach, such period to be the greater of:
- (a) 10 Business Days;
  - (b) the period during which liquidated damages are payable for that Substantial Breach; or
  - (c) such longer period stated in the Notice in Writing,
  - (d) and if the Contractor has not remedied that Substantial Breach (by completing the LD Obligation) by the end of such period, the Customer may terminate the Customer Contract immediately by Notice in Writing to the Contractor.



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

#### CUSTOMER SUPPLIED ITEMS (CSI)

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

#### CUSTOMER ASSISTANCE

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

## ESCROW

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

## BUSINESS CONTINGENCY

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

## 7. Access

### ACCESS TO CUSTOMER'S SITE

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

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

## 8. Personnel

### PERSONNEL - GENERAL

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

### SPECIFIED PERSONNEL

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

### APPROVED AGENTS AND SUBCONTRACTORS

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

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

## 9. General Warranties

### CONTRACTOR WARRANTIES

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

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

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

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

### CUSTOMER WARRANTIES

**9.3** The Customer warrants to the Contractor that:

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

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

#### MUTUAL WARRANTIES

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

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

## 10. Acceptance

### ACCEPTANCE

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

### ACCEPTANCE TESTING

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

### CONDUCTING ACCEPTANCE TESTS

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

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

#### ACCEPTANCE TEST OUTCOMES

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



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

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

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

**10.13** The Deliverables are deemed accepted if:

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

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

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

(c) semantics.

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

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

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

## 11. Payment and Invoicing

### PAYMENT

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

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

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

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

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

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

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

## INVOICING

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

## 12. Taxes

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

## 13. Intellectual Property Rights

### OWNERSHIP

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

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

#### CONTRACTOR OWNED NEW MATERIAL

- 13.2** The provisions of clauses 13.3 to 13.5 apply to New Material, unless clause 13.10 applies.
- 13.3** All Intellectual Property Rights in any New Material vests in, or, is hereby transferred or assigned to, the Contractor, immediately upon creation.
- 13.4** On the AAD of a Deliverable that incorporates the relevant New Material, the Contractor grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable licence to use, copy, adapt, translate, reproduce and in any way exploit that New Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated, subject to the restrictions set out in clause 13.5.
- 13.5** The licence to New Material in clause 13.4:
- (a) does not permit the Customer to disclose the New Material to any other person, except as stated in clauses 13.5(c) to (e);
  - (b) does not permit the Customer to manufacture, sell, license, transfer, commercialise or otherwise exploit any of the New Material or any Existing Material except as stated in clauses 13.5(c) to (e);
  - (c) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge to any Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002 (NSW)*), a NSW Government Agency (as defined in the *Interpretation Act 1987 (NSW)*), and any Public Health Organisation as defined under the *Health Services Act 1997 (NSW)*, where the Customer is a Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002 (NSW)*), a NSW Government Agency (as defined in the *Interpretation Act 1987 (NSW)*), or a Public Health Organisation as defined under the *Health Services Act 1997 (NSW)*;
  - (d) permits the Customer's subcontractors to access the New Material, without additional charge, for the internal purposes of the Customer provided that, unless otherwise required by the Contractor, the Customer's subcontractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract; and
  - (e) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge, (on one or more occasions) on a limited time basis to a contractor that is providing outsource services to the Customer that includes the operation of the New Material, provided that:
    - (i) the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; and
    - (ii) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract.

## EXISTING MATERIAL

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

## CUSTOMER OWNED NEW MATERIAL

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

## CUSTOMER MATERIAL

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

## KNOW HOW ETC

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

## OPEN SOURCE LICENCE

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

## 14. Confidentiality

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

## 15. Privacy

### 15.1 The Contractor must:

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

## 16. Insurance

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

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

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

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



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

## 17. Guarantees



## PERFORMANCE GUARANTEES

**17.1** Where the Customer Contract is entered into under a Head Agreement and the Contractor has provided a Performance Guarantee under that Head Agreement:

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

**17.2** Where:

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

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

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

## FINANCIAL SECURITY

**17.4** If reasonably required by the Customer and agreed in Item 38 of the General Order Form, the Contractor must provide a Financial Security in the amount stated in Item 38 of the General Order Form substantially in the form of the agreement stated in Schedule 10 – Financial Security, or in the standard form that is usually provided by the issuing entity. The Contractor must, following such a request, ensure that the Financial Security is provided within 14 days of the Commencement Date, or such other period as agreed in Item 38 of the General Order Form.

**17.5** The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under the Customer Contract.

**17.6** The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Customer.

**17.7** If the Contractor fails to properly perform and complete its obligations under the Customer Contract, and the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Customer may deduct its loss or damage (in so far as those losses and damages may be payable by the Contractor taking into account the terms and

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

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

## 18. Liability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 19. Indemnities

### CONTRACTOR INDEMNITY

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

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

## 20. Conflict of Interest

20.1 The Contractor must:

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

## 21. Performance Management

### REPORTING

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

## 22. Government Policy

### POLICY

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

## 23. Contract Administration

### REPRESENTATIVES

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

## NOTICE OF CHANGE OF CONTROL

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

## RECORD KEEPING

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

## NOTICES

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

## 24. Dispute Resolution

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



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

## 25. Termination



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

#### TERMINATION FOR CAUSE BY THE CUSTOMER

- 25.2** The Customer may terminate the Customer Contract immediately by providing the Contractor Notice in Writing if:

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

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

#### TERMINATION FOR CONVENIENCE BY THE CUSTOMER

- 25.3** The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice in Writing. The Contractor must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Customer Contract under this clause 25.3.

- 25.4** If the Customer exercises its right under clause 25.3, the Customer must:

- (a) indemnify the Contractor against any liabilities or expenses, which are reasonably and properly incurred by the Contractor to the extent that those liabilities or expenses were

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

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

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

#### TERMINATION FOR CAUSE BY THE CONTRACTOR

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

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

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

- (d) suffered an Insolvency Event.

#### CONSEQUENCES OF TERMINATION

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

## 26. General

#### VARIATION

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

#### ASSIGNMENT AND NOVATION

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

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

#### WAIVER

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

#### MATERIAL ADVERSE EVENTS

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

#### UNFORESEEN EVENTS

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

#### SEVERABILITY

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

#### ENTIRE AGREEMENT

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

#### RIGHTS ARE CUMULATIVE

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

#### SURVIVAL

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

#### COUNTERPARTS

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

#### APPLICABLE LAW

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

# SIGNED AS AN AGREEMENT

Signed for and on behalf of Sydney Trains (ABN 38 284 779 682)

[Redacted signature area]

By Anthony Eid but not so as to incur personal liability

[Redacted signature area]

[Redacted signature area]

Signature of Customer Representative

[Redacted signature area]

Print name

[Redacted signature area]

Date

Signed for and on behalf of Critical Room Solutions Pty Ltd (ABN 31 613 218 947)

[Redacted signature area]

[Redacted signature area]

Signature of Authorised Signatory

[Redacted signature area]

Print name

[Redacted signature area]

Date

## Schedule 1: General Order Form

### CUSTOMER

#### Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
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
<b>Formation (clause 3.4)</b>	
Specify the Customer's service/delivery address:	Sydney Trains Rail Operations Centre, corner Wyndham Street and Mandible Street, Alexandria NSW 2015.

#### Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Representatives (clause 23.1)</b>	
Specify an employee who is the Customer's Authorised Representative:	Anthony Eid (or delegate).

### CONTRACTOR

#### Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Contractor's full legal name:	Critical Room Solutions Pty Ltd (ABN 31 613 218 947).

#### Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Contractor's service/delivery	2 Discovery Way, Mawson Lakes, SA 5095.

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

### Item 6 Contractor's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Representatives (clause 23.1)</b>	
Specify an employee who is the Contractor's Authorised Representative:	Name: Lena Kimenkowski, Project Owner Tel: 0405 644 194 Email: <a href="mailto:lena@criticalrs.com.au">lena@criticalrs.com.au</a>

### 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
<b>Formation (clause 3.1)</b>	
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.
<b>Insurance (clause 16.2)</b>	
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 the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	There is no 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	There is no Head Agreement.



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>the Head Agreement.</p> <p>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.</p> <p>Specify any higher limit that is required by the Head Agreement:</p>	
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.
<b>Performance Guarantee (clause 17.1)</b>	
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	<input checked="" type="checkbox"/>	Module 11 – Telecommunications Services	<input type="checkbox"/>
Module 2 – Hardware Maintenance and Support Services	<input type="checkbox"/>	Module 12 – Managed Services	<input type="checkbox"/>
Module 3 – Licensed Software	<input checked="" type="checkbox"/>	Module 13 – Systems Integration	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 14 – Hosting Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input type="checkbox"/>	Module 15 – Satellite Services	<input type="checkbox"/>
Module 6 – Contractor Services	<input type="checkbox"/>		<input type="checkbox"/>
Module 7 – Professional Services	<input checked="" type="checkbox"/>		<input type="checkbox"/>
Module 8 – Training Services	<input checked="" type="checkbox"/>		<input type="checkbox"/>
Module 9 – Data Migration	<input type="checkbox"/>		<input type="checkbox"/>
Module 10 – X as a Service	<input type="checkbox"/>		

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

### Formation (clause 3.8(b))

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

Schedule 1 – General Order Form	Applies	Schedule 7 – Statutory Declaration - Subcontractor	<input checked="" type="checkbox"/>
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	<b>Any Other Charges:</b>	
	<b>GST:</b>	
This is the Contract Price (plus GST)	<b>Total Amount:</b>	
The Parties acknowledge and agree that the Contract Price cannot exceed the guaranteed maximum price as specified in the PIPP (excluding GST), unless the Customer Contract is varied by the parties in writing.		

## Item 12 Delivery Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Delivery (clause 5.1)</b>	
Specify the address of the Site where delivery is to be made:	Sydney Trains Rail Operations Centre, corner Wyndham and Mandible Street, Alexandria NSW 2015.
Specify any delivery instructions:	<p>Delivery instructions are to be agreed in writing between the parties. The Contractor acknowledges that it is the Contractor's responsibility to consult with the Customer's Principal Contractor prior to Site delivery.</p> <p>The Contractor must co-ordinate all Deliveries to the Site with the Key Contractor of the Site (currently AW Edwards or otherwise notified at the time of Delivery) and the Contractor must comply with all requirements of the Key Contractor, and as otherwise specified in the PIPP to this Customer Contract.</p> <p>Currently, the Key Contractor requires a minimum of one week's notice for all deliveries. The Contractor acknowledges that this timeline is subject to change and must use its best endeavours to provide a longer period than the minimum notice for any deliveries.</p>
Specify the hours during which delivery may be made to the Site:	<p>Delivery hours are to be agreed in writing between the parties.</p> <p>It is anticipated that the hours of work (including availability to accept delivery) at the Rail Operations Centre will be as follows:  Monday to Friday - 07:00 to 16:00;  Saturday - 07:00 to 14:00; and  Sunday - Closed.</p>

## Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
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 are the Agreement Documents, User Documentation and the PIPP to this Customer Contract.

## Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Payment (clauses 11.1 and 11.2)</b>	
<b>Invoicing (clause 11.7 and 11.9)</b>	
Specify the Customer's officer to receive invoices:	Invoices are to be submitted to Accounts Payable at the address below.
Specify address to which invoices should be sent:	<a href="mailto:tss.accounts payable@transport.nsw.gov.au">tss.accounts payable@transport.nsw.gov.au</a>  Invoices are to be submitted via the Sydney Trains Supplier Management System. Instructions will be included in the project kick of workshops or on request.
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.	Thirty (30) days from receipt of a Correctly Rendered Invoice, subject to clauses 8.1(c) and 9.2 of Annexure A - Additional Conditions to this General Order Form.
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.	As specified in the PIPP to this Customer Contract.
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	The maximum Contract price is fixed in accordance with Item 11.

## Item 15 User Documentation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>User Documentation (clause 5.4(b))</b>	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the Price of any additional copies of the User Documentation:	Not applicable, as User Documentation is provided in electronic format.

## Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Management Committee (clause 6.4)</b>	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	<p>Name: Lena Kimenkowski, Project Owner (CRS)            Tel: 0405 644 194            Email: <a href="mailto:lena@criticalrs.com.au">lena@criticalrs.com.au</a></p> <p>Jaroslav Kushnir, Technical Manager (CRS)</p> <p>Thomas Willetts, Project Management (Arcadis)</p>
<b>Management Committee (clause 6.6)</b>	
Specify the function to be performed by the management committee:	The management committee will review the Contractor's performance against the Customer Contract at a frequency reasonably determined by the Customer.
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	<p>Andrew Parker, Associate Director Infrastructure            Jason Galer, Contract Manager            Reuben Bowd, Senior Legal Counsel - Commercial &amp; Projects</p> <p><b>For escalation:</b>            Anthony Eid, Executive Director Future Network Delivery</p> <p>Or, as otherwise as notified by the Customer from time to time.</p>
<b>Management Committee (clause 6.8)</b>	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	<p>The Customer may request a progress report from the Contractor at any time during the Contract Period. Any such request should be made by the Customer to the Contractor in writing.</p> <p>If the Contractor receives a request from the Customer for a progress report under this Item 16, the Contractor's project manager must, within 5 Business Days of the date of the Customer's request, submit to the Customer's project manager:</p> <ul style="list-style-type: none"> <li>• a report of progress as required under clause 6.8;</li> <li>• the latest progress reports listed in Item 40; and</li> <li>• any other information reasonably requested by the Customer, provided the Customer has requested such information in writing from the Contractor at</li> </ul>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>least 5 Business Days in advance of a management committee meeting.</p> <p>All progress reports must comply with the key performance indicators including those outlined in Schedule 3 and Modules 2 and 5 Order Forms.</p>
Specify any other details:	No further details have been agreed by the Parties.

### Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Performance Reviews (clause 6.10)</b>	
Specify if a service and performance review/s of the Contractor's performance of the Customer Contract is to apply:	Yes. The management committee will review the Contractor's performance against the Customer Contract, including the requirements set out in Schedule 3 and Modules 2 and 5, Order Forms.
Specify any specific time intervals for service and performance reviews:	Performance Reviews will be held monthly until the date on which the System installation and configuration has been completed by the Contractor or as otherwise reasonably required by the Customer.

### Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Site Specifications (clause 6.12)</b>	
Specify if a Site Specification is required:	Yes and the Contractor must also comply with the PIPP.
<b>Access to Customer's Site (clause 7.1(b))</b>	
Specify any other requirements in relation to the Site access:	The Contractor acknowledges the Site will be managed by the Key Contractor of the Site, AW Edwards. Other requirements are as specified in the PIPP.
Specify any requirements for the preparation and maintenance of the Site:	The Contractor acknowledges that the Contractor will be working under the authority of the Key Contractor of the Site and must comply with all requirements of the Key Contractor with respect to the preparation and maintenance of the Site and any applicable requirements of the PIPP.

### Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Implementation Planning Study (clause 6.14)</b>	
Specify if the Contractor must provide an implementation planning study:	No.
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
<b>Project Schedule (clause 6.17)</b>	
<b>Invoicing (clause 11.7)</b>	
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.	The PIPP is in Schedule 12.
<b>Staged Implementation (clause 6.20)</b>	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the PIPP together with the period during which the Customer must give written notice to move to the next Stage (if greater than 10 Business Days):	Not applicable.

### Item 21 Liquidated Damages

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
<b>Liquidated Damages (clause 6.28 to 6.34)</b>	
Specify if Liquidated Damages (LDs) will apply:	Liquidated Damages will apply.
Specify the Milestones which are LD Obligations:	LD 1 milestone: At successful delivery of the Display Screens to the Site with FAT certification occurring on the date as specified in Item ID 22 " <i>Air freight + arrivals, clearances, move to site</i> " of the Project Schedule.  LD 2 milestone: Completion of System Integration and User Acceptance Testing occurring on the date as specified in Item ID 59 " <i>Actual Acceptance Date (AAD)</i> " of the Project Schedule.
Specify the Due Date for completion of each LD Obligation:	As specified in Item ID 22 and Item ID 59 of the Project Schedule as attached to PIPP, or as otherwise agreed with the Customer in writing.
Specify the calculation and amount of LDs for each LD obligation:	\$██████ per day with a cap for combined and LD1 and LD 2 to be 5% of Contract Price.
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
<b>Customer Supplied Items (CSI) (clause 6.36)</b>	
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].	CSI to be provided in accordance with the PIPP.
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	CSI to be provided in accordance the PIPP.



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
maintenance must be available to the Contractor:	
Specify the times when each CSI is to be provided:	To delivered in accordance with the Project Schedule, or as otherwise specified in the PIPP.
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	As specified in the PIPP.
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	Yes, the Contractor will provide a checklist as part of the Detailed Design process to be agreed by the parties.
If so, specify the verification check process for each CSI: Include: <ul style="list-style-type: none"> <li>a process to manage satisfactory and unsatisfactory verification checks;</li> <li>a process to manage 'reissued' CSI's;</li> <li>a process to manage repeat CSI verification checks:</li> <li>a process to manage 'draft' or 'incomplete' and 'updated' CSI's;</li> <li>a process to manage rejected CSI's;</li> <li>a process to manage previously satisfactory CSI which becomes defective:</li> <li>a list of required verification check forms and/or registers and a corresponding data entry process:</li> <li>a list of Customer and Contractor nominee/s for responsibility to undertake verification checks:</li> </ul>	No specific verification process will be required, except as specified in the PIPP.
Specify any amount payable by the Contractor to the Customer for any item of CSI:	Payment to be made in accordance with the payment plan set out in the PIPP.
<b>Customer Assistance (clause 6.41)</b>	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	As specified in the PIPP.

### Item 23 Escrow

NOT USED

### Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Business Contingency (clause 6.45)</b>	
Specify if a Business Contingency Plan is required:	Not applicable
Specify when the Business Contingency Plan is required:	Not applicable
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	Not applicable
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	Not applicable
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	Not applicable

## Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Access to Customer's Site (clause 7.4)</b>	
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.	<p>1) 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, computer systems and information, comply with:</p> <p>a) the Customer's policies and procedures as made available on the Customer's intranet and as amended or supplemented by the Customer, and such other 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:</p> <ul style="list-style-type: none"> <li>• NSW Government Digital Information Security Policy dated April 2015 ;</li> <li>• Transport for NSW Information Security Policy dated 8 May 2015;</li> <li>• Transport for NSW Privacy Policy dated 27 October 2014; and</li> <li>• Transport for NSW Acceptable Use of Technology Standard dated 10 August 2015;</li> </ul> <p>b) the Customer's site access sign-in procedures specified by the Customer including when accessing a Site;</p> <p>c) the Customer's site access sign-out process when leaving a Site; and</p> <p>d) 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</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>as required and complying with any obligation imposed on any person by law).</p> <p>2) 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.</p>

### Item 26 Customer's Personnel

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

### Item 27 Specified Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Specified Personnel (clause 8.8)</b>	
<p>Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:</p>	<p>Name: Lena Kimenkowski Role: Project Owner Responsibilities: First point of contact for all matters relating to the project.</p> <p>Name: Jaroslav Kushnir Role: Technical Manager Responsibilities: Design and detailed design workshops and management, report writing, site inspections.</p> <p>Name: Thomas Willets Role: Project Management. Responsibilities: Site meetings and inspections, PMP administration/management, report writing, interfacing with Key Contractor.</p>

### Item 28 Subcontractors

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Agents and Subcontractors (clause 8.17)</b>	
Specify which subcontractors are required to provide a Statutory Declaration by Subcontractor, substantially in the form of Schedule 7:	<p>Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289)  Jaroslav Kushnir (ABN 27 513 739 389)  PCB Digital Pty Ltd (ABN 11 168 712 749)  Busy Integration Pty Ltd (ABN 30 612 886 049)  Panasonic Australia Pty Ltd (ABN 93 001 592 187)  Extron Australia Pty Ltd (ABN 35 089 691 261)  Eyevis GmbH  NanoLumens</p> <p>The Contractor must arrange for all subcontractors to sign Schedule 7 - Statutory Declaration – Subcontractor.</p>

### Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(h))</b>	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	<p>The Contractor must maintain for the Contract Period ISO 9001 accreditation, or otherwise comply as required below.</p> <p>The Contractor must work under Authorised Engineering Organisation (<b>AEO</b>) accreditation. If the Contractor does not have AEO accreditation for the scope of services under the contract, the Contractor may work under Sydney Trains' AEO accreditation.</p> <p>Without limiting the Contractor's obligations above, the Contractor acknowledges that, if it does not hold the relevant accreditation, the Contractor must cooperate with the Customer or the Customer's representatives/contractors, at no additional cost to the Contractor, to meet the required standard before performing any work required.</p>

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(g))</b>	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	<p>Any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any jurisdiction other than Australia (including any industry codes of conduct) that are applicable to the Deliverables, the Customer or the Contractor (<b>Laws</b>).</p> <p>If there are any changes to Laws during the Contract Period</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>which are specific to the rail industry, and compliance with those changes requires the Contractor to incur material additional costs, the Contractor may raise a Change Request to address such additional costs.</p>
<p>Specify any codes, policies, guidelines or standards the Contractor is to comply with:</p>	<ol style="list-style-type: none"> <li>1) In this Item 30, "Policies, Codes and Standards" means the most recent version of the following policies, codes and standards, as updated from time to time: <ol style="list-style-type: none"> <li>(a) the policies, codes and standards that appear on the website: <a href="http://www.transport.nsw.gov.au/sydneytrains/commercial/contractors">http://www.transport.nsw.gov.au/sydneytrains/commercial/contractors</a>;</li> <li>(b) the policies, codes and standards that appear at <a href="https://railsafe.org.au/">https://railsafe.org.au/</a>, including but not limited to: <ol style="list-style-type: none"> <li>(i) the policy entitled "Health and Safety Policy"; and</li> <li>(ii) the applicable specifications on the safety and environment specifications page, available at: <a href="https://railsafe.org.au/safety-and-environment-specifications">https://railsafe.org.au/safety-and-environment-specifications</a>;</li> </ol> </li> <li>(c) the New South Wales Government Code of Practice for Procurement (January 2005);</li> <li>(d) in relation to work, health and safety management, the Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (September 2013);</li> <li>(e) in relation to quality management, AS/NZS ISO 9001;</li> <li>(f) in relation to environmental management, AS/NZS ISO 14001 and, if applicable, the NSW Government Environmental Management System Guidelines (Edition 3 August 2013);</li> <li>(g) if applicable, the NSW Government Policy on Aboriginal Participation in Construction; and</li> <li>(h) any other policies, codes and standards that are notified to the Contractor by the Principal from time to time.</li> </ol> </li>   <li>2) The Contractor must comply, and must ensure that the Deliverables, the Services and the System comply, with: <ol style="list-style-type: none"> <li>a) all applicable industry electrical system safety regulations and standards, including: <ol style="list-style-type: none"> <li>(i) any Australian EMC standards; and</li> <li>(ii) in relation to any cables and connectors, labelling in compliance with the Customer's standard or any standards in place at the Site;</li> </ol> </li> <li>b) any policies, standards and procedures of the Customer as listed in Item 25, made available to the Contractor, or otherwise notified to the Contractor in writing from time to time, including without limitation: <ol style="list-style-type: none"> <li>(i) the Policies, Codes and Standards;</li> <li>(ii) in relation to the control station monitors described in the Contract Specification, the Customer's ICT standard for standard desktop screens;</li> <li>(iii) the Industry Human Factor standards and the Customer's Standard, T-MU HF 00001</li> </ol> </li> </ol> </li> </ol>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>ST, Human Factors Integration - General Requirements standard; and</p> <p>(iv) the Customer's ICT security standard.</p> <p>If there are any changes to standards or codes of conduct during the Contract Period which are specific to the rail industry, and compliance with those changes requires the Contractor to incur material additional costs, the Contractor may raise a Change Request to address such additional costs.</p>

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Customer Warranties (clause 9.3(h))</b>	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	No further details have been agreed by the Parties.
Specify any codes, policies, guidelines or standards the Customer is to comply with:	No further details have been agreed by the Parties.

### Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Part 3 Dictionary (clauses 1.2 to 1.4)</b>	
<p><b>Acceptance Test Notification Period</b> 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.</p> <p>Specify this period:</p> <p>If no period is specified, the period is 2 Business Days:</p>	2 Business Days or as otherwise agreed by the Parties.
<p><b>Acceptance Test Data</b> 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.</p> <p>Specify the Acceptance Test Data:</p>	The Acceptance Test Data for the Testing Phase (as defined in the PIPP) will be developed in accordance with the PIPP).
<p><b>Acceptance Test Period</b> is the period for the performance of any Acceptance Tests for any Deliverable.</p> <p>Specify this period:</p> <p>If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.</p>	<p>20 Business Days or any other such time agreed by the parties.</p> <p>The Contractor's involvement in other tests contemplated within the PIPP shall be as required by and at the request of the Customer.</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Acceptance (clause 10.1)</b>	
<p>For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing:</p> <p>If not, the Deliverable will be Accepted under clause 10.1(a).</p>	<p>For Deliverables that are Documents, the approval procedure as specified in clause 5 of the Additional Conditions will apply.</p> <p>Licensed Software will be subject to Acceptance Testing as detailed in the PIPP.</p> <p>For clarity, initial delivery and physical receipt of the Licensed Software by the Customer does not constitute acceptance by the Customer of the Licensed Software. The Licensed Software will undergo Acceptance Testing during the Testing Phase, as set out in the PIPP.</p>
<p>If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date (AAD) for a Deliverable occurs:</p> <p>If no period is specified, then the period is 2 Business Days.</p>	<p>Approval and acceptance procedure as set out in the PIPP.</p>
<b>Conducting Acceptance Tests (clause 10.3)</b>	
<p>For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:</p>	<p>As set out in the PIPP.</p>
<p>Specify the identification of the Deliverables or part of the Deliverables to be tested:</p>	<p>As set out in the PIPP.</p>
<p>Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:</p>	<p>As set out in the Test Strategy and Test Plans (as attached to the PIPP or developed in accordance with the PIPP), or as otherwise agreed by the Parties from time to time in writing.</p>
<p>Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use:</p>	<p>Not applicable.</p>
<p>Specify the methodology and process for conducting Acceptance Tests:</p>	<p>The methodology and process for conducting Acceptance Tests will be set out in the Test Strategy and Test Plans (as attached to the PIPP or developed in accordance with the PIPP), or as otherwise agreed by the Parties from time to time in writing.</p>
<p>Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:</p>	<p>As specified in or attached to the PIPP.</p>
<p>Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:</p>	<p>As set out in the Test Strategy and Test Plans (as attached to the PIPP or developed in accordance with the PIPP), or as otherwise agreed by the Parties from time to time in writing.</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<b>Note:</b> In addition to the Acceptance Criteria expressed in the PIPP, Acceptance Criteria may be amended by agreement by the Parties prior to commencement of the relevant Acceptance Test Phase.
Specify the Acceptance Test Data required:	As per "Acceptance Test Data" row above.
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	Not applicable.

### Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Payment (clause 11.3)</b>	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	None.
Specify any fee that is applicable for payment by credit/debit card	None.

### Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Existing Material (clauses 13.7 and 13.9)</b>	
Specify any terms and condition applicable for granting a license for Existing Material owned by a third party:	<p>(a) Each party will retain its Intellectual Property Rights in Existing Material and nothing in the Customer Contract assigns or transfers the Existing Material of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party's Existing Material.</p> <p>(b) The Contractor grants to the Customer a non-exclusive, perpetual, transferable, royalty-free licence to use, reproduce, communicate to the public, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights subsisting in the Contractor's Existing Material to:</p> <p>(i) allow the Customer the full benefit and enjoyment of the Deliverables;</p> <p>(ii) use the Contractor's Existing Material:</p> <p>A. to procure any works, activities, goods or</p>



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>services for any further upgrade or refurbishment of the Deliverables;</p> <p>B. to use, install, operate and maintain the Deliverables; and</p> <p>C. to integrate the Deliverables with any other infrastructure systems owned, operated or maintained by the Customer or any Rail Transport Agency; and</p> <p>(iii) disclose the Contractor's Existing Material on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in paragraph (b)(ii) above.</p> <p>(c) To the extent that the Contractor is not able to grant the licence to Existing Material set out in this Item 34, the Intellectual Property Rights in which are owned by a third party, the Contractor must procure a licence for that Existing Material on same or equivalent terms to those set out in this Item 34:</p> <p>(i) on or before the date on which that Existing Material is supplied; and</p> <p>(ii) at no cost to the Customer.</p>
Specify any fees to be charged for any license to use any of Contractor's Existing Materials:	Any licence fees specified in the PIPP.
<b>Customer Owned New Material (clause 13.10)</b>	
Specify if clause 13.10 applies, and if so, to which items of New Material:	<p>Clause 13.10 applies to all New Material.</p> <p>The Contractor must only exercise its rights under clause 13.10(b):</p> <p>a) for the purpose of providing the Services and Deliverables to the Customer; and</p> <p>b) to fulfil its obligations under this Customer Contract, unless otherwise agreed with the Customer in writing.</p>

### Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Confidentiality (clause 14.1)</b>	
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:	Yes. If the Customer gives prior written consent to the Contractor to engage a Subcontractor under clause 8.14 of Part 2 of the Customer Contract, then the Contractor must arrange and ensure that its Subcontractor executes a Deed of Confidentiality in the form of Schedule 8 to this General Order Form before performing any Services or receiving any Confidential Information from the Customer or Contractor (as applicable).

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	For the purpose of this section, this includes a third party as well as any affiliate or related entity within the Contractor's group who assists the Contractor in performing its obligations during the Contract Period.

### Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Insurance (clause 16.7)</b>	
<p>Level of indemnity of public liability insurance in respect of each claim for the period of cover.</p> <p>The default requirement in the Customer Contract is \$10,000,000</p> <p>[Only specify if a higher limit of cover that is required by the Customer Contract:]</p>	<p>The level of public liability insurance is \$20,000,000.00 in respect of each claim.</p>
<p>Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover.</p> <p>The default requirement in the Customer Contract is \$10,000,000</p> <p>[Only specify if any higher limit of cover that is required by the Customer Contract:]</p>	<p>At least \$20,000,000.00 for the total aggregate liability for all claims and in the annual aggregate.</p>
<p>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</p> <p>[Only specify if a higher limit that is required by the Customer Contract:]</p>	<p>At least \$10,000,000 for the total aggregate liability for all claims.</p>
<p>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:</p>	<p>(a) Workers compensation insurance</p> <p><b>Cover:</b> Liability for death of or injury (including occupations disease) to all workers performing the Services and Deliverables as required by <i>Workers Compensation Act 1987</i> (NSW).</p> <p><b>Extension:</b> To be extended to cover the Contractor's statutory liability to such workers, where permitted by <i>Workers Compensation Act 1987</i> (NSW), if required.</p> <p><b>Period required:</b> Before commencing the Services and Deliverables until the Contract Period expires.</p> <p>(b) Motor vehicle insurance – third party property</p> <p><b>Cover:</b> All motor vehicles, trailers and mobile plant (whether registered or unregistered) used in connection with the Customer Contract.</p> <p>All Subcontractors must be covered by motor</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>vehicle insurance.</p> <p><b>Period required:</b> Before commencing the Services until the Service Term expires and, after that, whenever Services are performed.</p> <p>The Contractor must comply with the workers compensation insurance and motor vehicle insurance at all times. It is the responsibility of the Contractor to ensure that the policies (as currently applies through existing policies with insurance held interstate) continue to be valid (including change in law and change in the insurance policy of each respective insurer) until the Contract Period expires, or otherwise enter into a separate insurance in NSW to comply with the requirements described in this box.</p>

### Item 37 Performance Guarantee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Performance Guarantee (clause 17.2)</b>	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	Yes. The Contractor must provide a Performance Guarantee from its Parent Company, Jumbo Vision International Pty Limited (ABN 93 051 785 972), in the form specified in Schedule 9 to this Customer Contract.
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.	Within 10 Business Days after the Commencement Date, or any other such time that may be agreed by the Parties in writing.

### Item 38 Financial Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Financial Security (clause 17.4)</b>	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial Security:	<p>Yes. The Contractor must provide a Financial Security to the Customer to the value of ■■■ of the Contract Price.</p> <p>The Contractor must provide the Financial Security for the period commencing 10 Business Days after the commencement date of Phase 2 and ending 12 months from the date of AAD.</p> <p>For avoidance of doubt, the Contractor must provide the Customer with a valid invoice from the Issuer of the Financial Security clearly outlining the fees payable by the Contractor to the Issuer in relation to the Financial Security.</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Specify the date by which the Financial Security must be provided to the Customer:</p> <p>If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.</p>	<p>The Contractor must provide the Financial Security to the Customer within 10 Business Days from the commencement date of Phase 2.</p>

### Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Limitation of Liability (clause 18)</b></p> <p>If the Parties cannot agree the amount that is legally payable under the Customer Contract for the:</p> <ul style="list-style-type: none"> <li>• Non-Recurring Service or Product; and/or</li> <li>• Short Term Recurring Service</li> </ul> <p>(as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price).</p> <p>Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service.</p> <p><b>(See the definition of Contract Value in Part 3)</b></p>	<p>Liability is determined under clause 18.3.</p>

<p>If Services are being provided under any of the following Modules:</p> <p>Module 6 – IT Personnel; Module 7 – Professional Services; Module 8 – Data Management; Module 11 – Web Services; Module 16 - Project Management Services; Module 17 - Change Management Services; Module 18 - Knowledge Transfer Services; or Module 20 - Whole of Government Requirements</p> <p>specify whether the Parties regard the relevant Services as being:</p> <ul style="list-style-type: none"> <li>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</li> <li>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.</li> </ul> <p><b>(See definition of Non-Recurring Services and Recurring Services in Part 3)</b></p>	<p>The Services under Module 7 are to be classified as Non-Recurring Services for the purposes of the limitation of liability.</p>
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Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Specify the alternative cap of liability (clause 18.3):</p>	<p>Subject to any exception in Part 2 of the Customer Contract or Additional Conditions, 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 will not exceed [REDACTED] as set out in the PIPP from time to time.</p>

#### Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Reporting (clause 21.1)</b></p> <p>Specify the reports required, (if any), the time for provision and the agreed format:</p>	<p>As specified in the PIPP.</p>

### Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Dispute Resolution (clause 24.11)</b>	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7 to 24.8.	\$50,000.
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	Subject to clause 24.11, all disputes arising out of or in connection with the Customer Contract are to be determined by expert determination under clauses 24.7 to 24.8.

### Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Termination for Convenience by the Customer (clause 25.4)</b>	
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:	<p>The Customer will not have any liability to the Contractor for any termination under clause 25.3, other than the payment of the following:</p> <ul style="list-style-type: none"> <li>a) the costs incurred by the Contractor for re-deploying its own employees; and</li> <li>b) the costs of terminating a Subcontractor engaged, to perform a Service or provide a Deliverable, prior to the date on which the Termination Notice was given.</li> </ul> <p>The maximum amount the Customer will pay under clause 25.3 is capped at \$ [REDACTED]</p>

### Item 43 Additional Conditions

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

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

# SIGNED AS AN AGREEMENT

Signed for and on behalf of Sydney Trains (ABN 38 284 779 682)

[Redacted signature area]

By Anthony Eid but not so as to incur personal liability

[Redacted signature area]

[Redacted signature area]

**Signature of Customer Representative**

[Redacted signature area]

**Print name**

[Redacted signature area]

**Date**

Signed for and on behalf of Critical Room Solutions Pty Ltd (ABN 31 613 218 947)

[Redacted signature area]

[Redacted signature area]

**Signature of Authorised Signatory**

[Redacted signature area]

**Print name**

[Redacted signature area]

**Date**

## Schedule 2 : Agreement Document

Document	Date of Document
1. Specification comprising: <ul style="list-style-type: none"> <li>a) Scope of Works and Technical Specification (SWTS) or [Statement of Works (Requirements)]</li> <li>b) Contractor's WHS requirements – SMS -13-FM-1411 Safety Specification Works and Services</li> <li>c) General Safety Specifications for Contractors</li> <li>d) Environmental Management Specifications for Contractors</li> <li>e) Implement Drug and Alcohol Program</li> <li>f) Managing Fatigue Risks</li> </ul>	
2. Tender submissions incorporated into Contract: <ul style="list-style-type: none"> <li>a) OVDS Videowall- Bill of Materials V2 ( Email rom Lena K dated 20 Sep 2017</li> <li>b) Project Execution Plan V 1.1</li> <li>c) Program Critical Solutions V 4.0</li> <li>d) AFAB-2013 SUBMITTAL.PDF</li> <li>e) ST OVDS –Video Wall and Interfacing SAT v0.1 draft</li> <li>f) Assumptions – CRS</li> <li>g) WS 258271- Operational Visual Display System –LED Technical Response</li> <li>h) Busy Integration Capability Statement</li> <li>i) OVDS System Diagram Option 2 (LED and LCD).pdf</li> <li>j) CRS- OVDS Compliance Matrix</li> </ul>	20 Sep 2017  14 Sep 2017 6 Sep 2017 4 Sep 2017 18 Aug 2017 3 July 2017 29 June 2017  29 June 2017 26 May 2017 April 2017
3. Other Documents Incorporated into the contract <ul style="list-style-type: none"> <li>a) Drawing IA084200-0000-SU-DRG-0651-5 Mark Up.pdf</li> <li>b) WOW board Jacobs initial structural advice – Mark Up on drg IA084200-0000-SU-DRG-0704</li> </ul>	



### Schedule 3: Service Level Agreement

NOT USED

## Schedule 4: Variation Procedures

### 1. Procedures

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

- 1.5** If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary a Protected Clause and the Customer approves of the Change Request, the Customer must submit the Change Request to the Contract Authority and the Director General, NSW Department of Finance and Services, for approval immediately after it has notified the Contractor that it approves the Change Request.

## **2. Status**

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

### 3. Change Request Form

#### CHANGE REQUEST BRIEF DETAILS

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

#### CHANGE REQUEST HISTORY LOG

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

#### DETAILS OF CHANGE REQUEST

##### Summary

[Insert a summary of the changes, if required]

##### SCOPE

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

**EFFECT OF CHANGE ON CONTRACT SPECIFICATION**

[Insert any changes to the Contract Specification]

**EFFECT OF CHANGE ON PROJECT TIMETABLE**

[Insert changes to the project timetable]

**New PIPP (annexed)**

[Annex new PIPP if required]

**EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT**

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

**CHANGES TO CSI**

[Insert any changes to the CSI]

**CHANGES TO CUSTOMER PERSONNEL**

[Insert any changes to the Customer's Personnel]

**CHANGES TO CUSTOMER ASSISTANCE**

[Insert any changes to the Customer's Assistance]

**PLAN FOR IMPLEMENTING THE CHANGE**

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

**THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE**

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

**Responsibilities of the Contractor**

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

**Responsibilities of the Customer**

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

**EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE**

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

**EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE**

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

**EFFECT ON USERS OF THE SYSTEM/SOLUTION**

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

**EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES**

Changes will be required to the following documents:

[Add any other documents which may be affected.]

**EFFECT ON TRAINING**

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

**ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT**

[insert if there are any other matters.]

**ASSUMPTIONS**

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

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

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

**LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST**

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

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

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

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

**AUTHORISATION**

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

# SIGNED AS AN AGREEMENT

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

[Redacted signature area]

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

[Redacted signature area]

[Redacted signature area]

**Signature of Customer Representative**

[Redacted signature area]

**Print name**

[Redacted signature area]

**Date**

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

[Redacted signature area]

[Redacted signature area]

**Signature of Authorised Signatory**

[Redacted signature area]

**Print name**

[Redacted signature area]

**Date**

## Schedule 5: Escrow Deed

NOT USED



## Schedule 6: Deed Poll – Approved Agents

NOT USED

## Schedule 7: Statutory Declaration – Subcontractor

*Oaths Act (NSW), 1900 Ninth Schedule*

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

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

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

Declared at

the  day of  20

Before me,

## Schedule 8: Deed of Confidentiality

**Deed of Agreement** dated the  day of  20

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

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

### RECITALS

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

### WHAT IS AGREED

## 1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

## 2. Interpretation

### DEFINITIONS

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

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

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

**Confidential Information** means information that:

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

but excludes any information which the Subcontractor can establish was:

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

**Contractor** means [insert name of Contractor].

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

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

**Intellectual Property Rights** means all intellectual property rights including:

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

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

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

**State** means the State of New South Wales.

## GENERAL

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

## 3. Non disclosure

- 3.1** The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 3.2** The Customer may grant or withhold its consent in its discretion.
- 3.3** If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 3.4** If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.<sup>52</sup>
- 3.5** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its directors, officers, employees and contractors;
  - (b) to the Contractor and its directors, officers, employees and the Contractor’s other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,

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

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

## **4. Restriction on use**

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

## **5. Survival**

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

## 6. Rights of the Customer

### PRODUCTION OF DOCUMENTS

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

### LEGAL PROCEEDINGS

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

## 7. Indemnity and release

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

## 8. No exclusion of law or equity

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

## 9. Waiver

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

## 10. Remedies cumulative

## CUMULATIVE

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

## OTHER INSTRUMENTS

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

## 11. Variations and amendments

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

## 12. Applicable law

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

## 13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.<sup>54</sup>



**EXECUTED AS A DEED**

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

[Signature line for Customer]

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

[Signature line for Customer Representative]

In the presence of: [insert name of witness]

[Signature line for Witness]

[Signature line for Customer]

**Signature of Customer**

[Signature line for Witness]

**Signature of Witness**

[Print name line for Customer]

**Print name**

[Print name line for Witness]

**Print name**

[Date line for Customer]

**Date**

[Date line for Witness]

**Date**

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

[Signature line for Subcontractor]

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

[Signature line for Director]

**Signature Director**

[Signature line for Director/Secretary]

**Signature of Director/Secretary**

[Print name line for Director]

**Print name**

[Print name line for Director/Secretary]

**Print name**

[Date line for Director]

**Date**

[Date line for Director/Secretary]

**Date**

## Schedule 9: Performance Guarantee

Deed dated the

day of

20

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

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

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

### DEFINITIONS

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

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

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

**Insolvency Event** means where the Contractor:

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

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

**BY THIS DEED**

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

1. If the Contractor (unless relieved from the performance of the Customer Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Customer Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Customer Contract.
2. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee, and:
  - (a) where the Customer Contract is made under a Head Agreement, the Contract Authority (acting as agent of the Customer); or
  - (b) in all other cases, the Customer,may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor. *[amend this clause as applicable]*
3. The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Contractor and Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
4. The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.
5. The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed:
  - (a) the obligations and liabilities of the Contractor under the Customer Contract; and
  - (b) \$ [insert dollar amount].
6. Where the Contractor has failed to perform under the Customer Contract, the obligations of the Guarantor will continue even though the Contractor has been the subject of an Insolvency Event.
7. The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Customer Contract have been performed, observed and discharged.
8. A notice under this Deed of Guarantee must be a Notice in Writing.
9. The address for services of Notices in Writing under this Deed of Guarantee for a party is, in the case of the:

**Guarantor**

Physical address

Postal address

Fax number

**Contractor**

Physical address

Postal address

Fax number

**Customer**

Physical address

Postal address

Fax number

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

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

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

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

[Redacted signature area]

By *[insert name of Customer representative]*

[Redacted signature area]

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

[Redacted signature area]

[Redacted signature area]

**Signature of Customer representative**

[Redacted signature area]

**Print Name**

[Redacted signature area]

**Date**

[Redacted signature area]

**Signature of Customer's Witness**

[Redacted signature area]

**Print Name**

[Redacted signature area]

**Date**

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

[Redacted signature area]

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

[Redacted signature area]

**Signature Director**

[Redacted signature area]

**Print name**

[Redacted signature area]

**Date**

[Redacted signature area]

**Signature of Director/Secretary**

[Redacted signature area]

**Print name**

[Redacted signature area]

**Date**

## Schedule 10: Financial Security

Deed dated the

day of

20

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

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

### DEFINITIONS

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

### BY THIS DEED:

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

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

**Guarantor**

Physical address

Postal address

Phone number

Fax number

**Contractor**

Postal address

Phone number

Fax number

**Customer**

Postal address

Phone number

Fax number

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

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

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

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

By *[insert name of Customer representative]*

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

**Signature of Customer representative**

**Signature of Contract Witness**

**Print name**

**Print name**

**Date**

**Date**

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

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

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

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

**Signature of Director/Secretary**

**Signature of Director/Secretary**

**Print name**

**Print name**

**Date**

**Date**



## Schedule 11: Dispute Resolution Procedures

### 1. Expert Determination

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

### 2. Submissions

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

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

### 3. Conference

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

### 4. Questions to be determined by the Expert

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

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

## **5. Role of Expert**

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

## 6. Confidentiality

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

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

## Schedule 12: PIPP

### Section A - Project Overview

#### 1 INTRODUCTION

- 1.1 The Customer is establishing a new Rail Operations Centre (**ROC**).
- 1.2 The Customer wishes to procure the design, installation, testing, integration, implementation (the **Project**) and support of a new operational visual display system (**OVDS**) at the Site which will provide enhanced capability to improve key 'day of operations' processes and support the ROC Program (the **Program**).
- 1.3 The Project will be procured in three phases, consisting of entry and exit criteria for each respective phase as outlined in Section B - Scope, below.
- 1.4 The Program consists of the design and development of a new building and facility at Alexandria and four new technology systems. These systems include:
- a) Building and Facility;
  - b) Electronic Train Graph (**ETG**);
  - c) Railway Incident Management application (**REM**); and
  - d) OVDS to be provided by the Contractor.
- 1.5 By implementing the Project the Customer wishes to achieve the following objectives:

Objective	SMART Criteria
<p><b>Reduced delay times and improved confidence in rail:</b> Improved processes, systems and relationships between 'day of operations' functions resulting in faster identification and allocation of incidents, allowing faster incident resolution and service restoration.</p>	<p><b>Reduced Initial Delay:</b> Improvements to the management of incidents will reduce the time taken to get "back on the move", reducing the duration of the initial delay of incidents by an average 15% by 2018.</p>
<p><b>Increased operational performance and opportunity for timetable enhancements:</b> Providing the capability to recover services more quickly following incidents and to sustain punctuality at higher timetable frequencies and with faster running times.</p>	<p><b>Reduced Consequential Delay:</b> Improvements to the management of service disruption will reduce the contagion of perturbations of incidents and the time taken to get the services back to normal following the resolution of an incident. This will place less demands on timetable recovery margins. The Project will reduce the consequential delays caused both during and following the initial incident by 7% by 2018.</p>
<p><b>More accurate, timely, relevant and consistent customer information during delays:</b> Improving the customers' ability to make decisions about their transport options.</p>	<p><b>Reduced Customer Perceived Delay:</b> Improvements to the timeliness, relevance and consistency of customer information, particularly during disruption, will reduce the customers' perceived time of their journeys by 11% by 2018.</p>

Objective	SMART Criteria
<p><b>Better realising the benefits of future investments in rail capacity:</b> Ability to realise ongoing network efficiency strategic initiatives including North West and South West Rail Links, new rolling stock, new signalling technologies, new network configuration and increased train service levels.</p>	<p><b>Creation of a flexible, scalable network control function:</b> The ROC is sized to meet all future foreseeable colocations (i.e. all signalling control) with additional overflow area for migration and stage working during changes (e.g. parallel working, proof of concept, training etc). The ROC design uses standardised desk configurations that are moveable. Increased use of modular equipment and technology streamlining further facilitates change. This intangible benefit is encapsulated in the ROC infrastructure design requirements.</p>
<p><b>A new world-class operating centre and culture:</b> Transforming the way 'day of operations' activities are managed within the Customer, fostering a new culture of collaboration and efficient coordination.</p>	<p><b>Improved Business Environment:</b> The ROC will deliver closer collaboration, improved internal communication and the creation of a shared culture in an environment designed around key cultural goals. This intangible benefit will be measured through a Business Environment Scorecard and delivered as part of the Change Management Plan.</p>
<p><b>Improved customer service:</b> Providing the capability to support and enable a new 'customer service model' that will improve customer service and business performance.</p>	<p><b>Reduction in OPEX:</b> The implementation of a Customer Information Management System with enhanced capability for station staff. This will enable the new 'customer service model'.</p>
<p><b>Improved efficiency and sustainability:</b> Providing opportunities for 'day of operations' role re-design and consolidation.</p>	<p><b>Reduction in OPEX:</b> enabled by new systems, process improvements and colocation.</p>

- 1.6 This PIPP sets out various obligations of the parties, the time by which those obligations must be performed, and any prices payable in connection with the performance of the obligations, with respect to the Deliverables that the Contractor will supply in connection with the Project for the Customer. The Contractor is responsible for the supply of the Hardware and Licensed Software, and for coordinating the implementation, build and support and maintenance of the OVDS as set out further below.

## 2 OVERVIEW OF SCOPE OF WORK AND PROJECT DELIVERY

- 2.1 The Contractor must deliver the OVDS component of the Program to the ROC Site and deliver the Project in accordance with the 3 phases as more fully defined below.

### 2.1.1 Phase 1

- a) **Subsystem Requirements Specification:** Provision of Subsystem Requirements Specification (SSRS).
- b) **Preliminary Design:** Provision of Preliminary Design of OVDS.

### 2.1.2 Phase 2

- a) **Detailed Design:** Detailed Design for OVDS.
- b) **Supply:** Manufacture and supply of visual display screens following notification by the Customer of required screen sizes and mounting on completion and approval of the SSRS.
- c) **Build Phase:** The installation of the OVDS Solution at the Site.

- d) **Testing Phase:** Testing performed at the Contractor's site, as well as testing performed in conjunction with the Customer at the Site.
- e) **Deployment and Training:** All necessary activities required to install the Licensed Software and transition OVDS into the Customer Environment.

#### 2.1.3 Phase 3:

- a) **Maintenance and Support:** This phase commences when the Hardware and Licensed Software Goes Live in the Production Environment. The scope of Maintenance and Support is set out in Module 2 and Module 5 of this Customer Contract.

#### 2.2 The Contractor must:

- a) supply the Services and Deliverables described in this PIPP and any additional Services and Deliverables agreed by the Parties as being the responsibility of the Contractor; and
- b) perform all other services, functions, activities, tasks and responsibilities not specially identified in this PIPP but which are:
  - i) reasonably related to the Services or Deliverables described in this PIPP; or
  - ii) reasonably required for the supply of the Services and Deliverables described in this PIPP.

### 3 RESPONSIBILITIES

#### 3.1 Role of the Customer

The Customer is responsible for:

- a) establishing all necessary contractual arrangements with the Key Contractors;
- b) providing access to the input source systems reasonably required by the Contractor;
- c) providing the CSI in a timely manner (including access to any input sources reasonably required by the Contractor);
- d) arranging stakeholder consultations as reasonably required by the Contractor throughout the project life cycle; and
- e) as part of the CSI, providing hardware on which the Licensed Software will be installed as detailed in Module 3.

Customer Supplied Items to be provided by the Customer are detailed in Section 17.

#### 3.2 Role of the Contractor

The Contractor must:

- a) collaborate with the Customer and the Key Contractors;
- b) customise and/or configure the Licensed Software to comply with the Contract Specifications;
- c) provide the relevant version of the Licensed Software as applicable to the relevant Release;
- d) provide suitably experienced and qualified Personnel;
- e) provide all Services detailed in this Customer Contract; and
- f) provide all Deliverables detailed in this Customer Contract,

as further described in this PIPP.

## 4 DEFINITIONS

Any capitalised term not otherwise defined in this PIPP has the meaning given to that term in the Order Documents or otherwise in the Customer Contract. In this PIPP, unless the context requires otherwise:

<b>Actual Acceptance Date (AAD)</b>	is achieved at 45 days of Clear Running of the OVDS Solution in a Production Environment .
<b>Clear Running</b>	occurs when the OVDS Solution achieves uninterrupted performance in the Production Environment without a Severity 1 or Severity 2 Defect (as defined in the Test Strategy) arising. For the avoidance of doubt, Clear Running only applies to the performance of the Contractor's solution and not the configuration of the Customer's data, failure of the Customer's Environment nor any 3 <sup>rd</sup> party product or service not supplied by the contractor. If a qualifying defect arises the AAD period will restart from the date of rectification of the fault. If the contractor or contractors solution is shown not to have been at fault, AAD will be deemed to have run uninterrupted
<b>Customer Environment</b>	means the equipment, software, systems and other infrastructure owned, leased or licensed by the Customer with which the OVDS Solution must integrate, be compatible with and interoperate.
<b>Key Contractors</b>	means any contractors engaged by the Customer to perform key roles and functions for the Program. Currently, AW Edwards is the Key Contractor in relation to the Site.
<b>Mounting Hardware</b>	means all brackets, fastenings, fixings, hangers and the frame as outlined in the design documents and demarcation drawings.
<b>Major Release</b>	means: <ul style="list-style-type: none"> <li>• major new features, architecture changes, product components;</li> <li>• full, standalone product build;</li> <li>• localised; and</li> <li>• naming convention as follows X.0 (the naming convention may take a different format of marketing name that uses the year or some other convention).</li> </ul>
<b>Minor Release</b>	means: <ul style="list-style-type: none"> <li>• May include significant new features beyond previous minor/major version;</li> <li>• full, standalone product build;</li> <li>• will normally be localized; and</li> <li>• naming convention as follows X.Y (may also have marketing name that uses the year or some other convention).</li> </ul>
<b>OVDS Solution</b>	means the equipment, Hardware, Mounting Hardware, Licensed Software and accessories that make-up the final approved solution



as developed under Detailed Design.

<b>Project</b>	has the same meaning given to that term in Section 1.2 of this PIPP.
<b>Project Management Plan</b>	means the plan described in Schedule 2 of this Customer Contract.
<b>Project Schedule</b>	means the Project Schedule jointly developed by the Customer, the Contractor and Key Contractors detailing the activities to be performed in relation to the Program, their interdependencies and the related timeframe for those activities and as updated from time to time by the Parties, the current version of which is set out in Appendix 4.
<b>Production Environment</b>	means the infrastructure, personnel, processes, data, hardware, and software in which programs are staged in real-time to perform day-to-day operations.
<b>Site</b>	ROC, corner of Mandible Street and 177 Wyndham Street, Alexandria, NSW 2015

## Section B - Scope

### 5 PHASE 1: SUB SYSTEM REQUIREMENTS SPECIFICATION

#### 5.1 Overview

The purpose of the Sub System Requirements stage of Phase 1 is to document and confirm in the SSRS all of the OVDS system requirements (based on the Contract Specifications).

#### 5.2 Entry Criteria

The Entry Criteria for the Sub System Requirements Specification stage of Phase 1 is specified in the table below:

#	Criterion	Description
1	Execution of the Customer Contract.	(Self explanatory)

#### 5.3 Services

The Contractor must supply the following Services as part of the Sub System Requirements Specification stage of Phase 1:

#	Description
1	Implement and perform all Sub System Requirements Specification activities in accordance with the Project Schedule.

#	Description
2	Participate in all necessary workshops with the Customer and all relevant Customer stakeholders to agree the SSRS in a format agreed with the Customer.

#### 5.4 Sub System Requirements Specification Deliverable

The Contractor must supply the following Deliverable and ensure the Deliverable is fit for its purpose.

#	Deliverable	Description	Approval
1	Sub system Requirements Specification (SSRS)	<p>SSRS will reflect the Contract Specifications including all requirements of the Scope of Work and Technical Specification and all other specific technical requirements of the OVDS as specified in Schedule 2.</p> <p>For the avoidance of doubt, Contractor will ensure that any interfacing or connecting equipment has been approved by the relevant original equipment manufacturers and does not invalidate any applicable warranties.</p>	The Customer (or its nominee)

#### 5.5 Exit Criteria

The Exit Criteria for the Sub System Requirement stage of Phase 1 are:

#	Criterion	Description
1	Completion of all Sub System Requirement Deliverables	The Customer has accepted the SSRS.

## 6 PHASE 1: PRELIMINARY DESIGN

### 6.1 Overview

The purpose of the Preliminary Design stage of Phase 1 is to document and confirm in the Preliminary Design documents set out in Section 6.4 all of the OVDS system requirements and to develop the Preliminary Design Report of the OVDS.

The Contractor must ensure that:

- a) all of the Services that it is obliged to supply under the Preliminary Design stage of Phase 1 are supplied and completed; and
- b) all Deliverables that it is obliged to supply under the Preliminary Design stage of Phase 1 (as specified in this section) are approved by the Customer (or its nominee), on or before the relevant date(s) specified in the Project Schedule.

## 6.2 Entry Criteria

The Entry Criteria for the Preliminary Design stage of Phase 1 are specified in the table below:

#	Criterion	Description
1	Previous Stage discharged	The Customer has accepted the SSRS.
2	OVDS Control Room Layout	Draft OVDS Control Room Layout provided by the Customer

## 6.3 Services

The Contractor must supply the following Services as part of the Preliminary Design stage of Phase 1:

#	Description
1	Implement and perform all the Preliminary Design stage activities in accordance with the Project Schedule.
2	Participate in all necessary workshops with the Customer and all relevant Customer stakeholders: <ol style="list-style-type: none"> <li>a. to clarify the SSRS; and</li> <li>b. prepare the documents required as part of the Preliminary Design stage of Phase 1.</li> </ol>
3	Conduct a preliminary safety/human factors risk management workshop with relevant Customer stakeholders to identify and document hazards/human factor issues.
4	Prepare all of specifications and drawings showing the sizes, mounting and installation of the visual display screens and seek acceptance from the Customer.
5	Agree the format and contents of the Preliminary Design Report with the Customer
6	Develop the Preliminary Design Report and the other Preliminary Design documents set out in Section 6.4.
7	Do all things necessary (using a standard of a prudent contractor of services and deliverables similar to the Services and Deliverables to be supplied as part of the OVDS) to enable the Key Contractors to carry out their services and deliverables so that the Contractor can develop and supply the Deliverables described in this Section 6.

## 6.4 Preliminary Design Deliverables

The Contractor must supply the following Deliverables and ensure the Deliverables are fit for their intended purpose and in the agreed Customer format.

#	Deliverable	Description	Approval
1	Product Specifications and Drawings	All technical specifications for the equipment, including but not limited to, model numbers, environmental specifications, screen sizes, mounting structure, installation locations with the Customer.	The Customer (or its nominee)
2	Preliminary Design Report	The report shall cover all aspects of the design at a high-level, including but not limited to, hardware components, screens, Mounting Hardware, servers, cabling, controllers and addressing the agreed SSRS including a stakeholder consultation record.	The Customer (or its nominee)

#	Deliverable	Description	Approval
3	Risk Register	A repository using an agreed template for all risks including but not limited to, safety/hazard-related information.	The Customer (or its nominee)
4	Technical details for the Mounting Hardware	shall comprise of all necessary technical specifications and drawings to enable the mounting of the Hardware. The Contractor shall do all things necessary to ensure that the aforementioned specifications and drawings are certified by Customers AEO (Authorised Engineering Organisation).	Customer (or its nominee) and certified by Customers AEO
5	Service Design	shall detail how Support and Maintenance shall be provided in the Customer Environment, should the Customer elect to purchase Support and Maintenance. The Contractor shall collaborate with the Customers support organisation when designing the service design document.	The Customer (or its nominee)
6	Human Factor Issues Log	A repository using an agreed template for all human factors - related information identified during the Preliminary Design stage of Phase 1 following stakeholder workshops.	The Customer (or its nominee)

## 6.5 Exit Criteria

The Exit Criteria for Preliminary Design stage of Phase 1 are:

#	Criterion	Description
1	Completion of all Preliminary Design Deliverables	The Customer has accepted the Preliminary Design Report and the other Preliminary Design documents set out in Section 6.4.

## 7 PHASE 2: DETAILED DESIGN

### 7.1 Overview

The purpose of the Detailed Design stage of Phase 2 is to document and confirm in the Detailed Design Documents all of the Requirements (based on the SSRS and the Preliminary Design documents) and develop the Detailed Design Documents of the OVDS.

The Contractor must ensure that:

- a) all of the Services that it is obliged to supply under the Detailed Design stage of Phase 2 are supplied and completed; and
- b) all Deliverables that it is obliged to supply under the Detailed Design stage of Phase 2 (as specified in this section) are approved by the Customer (or its nominee), on or before the relevant date(s) specified in the Project Schedule.

### 7.2 Entry Criteria

The Entry Criteria for the Detailed Design stage of Phase 2 are specified in the table below:

#	Criterion	Description
1	Previous Stage Discharged	All Services that the Contractor is required to supply as part of Preliminary Design stage of Phase 1.
2	Previous Stage Deliverables	The Customer has accepted all Deliverables in the Preliminary Design stage of Phase 2.

### 7.3 Services

The Contractor must supply the following Services as part of the Detailed Design stage of Phase 2:

#	Description
1	Implement and perform all the Detailed Design stage activities in accordance with the Project Schedule.
2	Participate in all necessary workshops with the Customer and all relevant Customer stakeholders: <ol style="list-style-type: none"> <li>to clarify the SSRS and validate the SSRS;</li> <li>to identify any changes to the SSRS;</li> <li>to identify any changes to the Preliminary Design documents set out in Section 6.4; and</li> <li>to prepare the documents required as part of the Detailed Design stage of Phase 2.</li> </ol>
3	Review and analyse OVDS input source technology interfaces and requirements for the purpose of preparing the documents required as part of the Detailed Design stage of Phase 2.
4	Prepare an Interface Design Document for acceptance by the Customer.
5	Develop the Detailed Design Report and Implementation/Test Strategy for the OVDS.
6	Conduct a safety /human factors risk management workshop with the Customer and all relevant Customer stakeholders to identify and agree on risks to OVDS installation, configuration and operation and prepare a safety hazard / human factors issues log.
7	Provide the Key Contractors with all the necessary assistance reasonably requested by the Key Contractors during the Detailed Design stage of Phase 2.
8	Do all things necessary (using a standard of a prudent contractor of services and deliverables similar to the Services and Deliverables to be supplied as part of the System) to enable the Key Contractors to carry out their services and deliverables so that the Contractor can develop and supply the Deliverables described in Section 7.4.
9	Do all other things necessary to develop and supply the Deliverables described in Section 7.4 and as otherwise directed by the Customer.

### 7.4 Detailed Design Deliverables

The Contractor must supply the following Deliverables and ensure the Deliverables are fit for their purpose.

#	Deliverable	Description	Approval
1	Interface Design Document	A document in an agreed format covering all aspects of interface design with Sydney Trains source systems and other technology installation interfaces such as power, communications, building structure etc.	The Customer (or its nominee)

#	Deliverable	Description	Approval
2	Detailed Design Report	A document developed from the Preliminary Design Report covering all aspects of design at a detailed level targeting areas such as physical/logical architecture, identification physically of all hardware components including screens, structures, servers, cabling, controllers, and referring to other documents such as interface design document, drawings, software licence information, architecture, reports etc. as appropriate. The Detailed Design Report must also include a stakeholder consultation record/ closure of Customer review comments.	The Customer (or its nominee)
3	Updated Risk Register	A repository using an agreed template for all risks including but not limited to, safety/hazard-related information.	The Customer (or its nominee)
4	Human Factor Issues Log	A repository from initial Human Factors Issues Log for all human factors -related information relating to the scope of the ergonomic assessment or project identified during the design phase following stakeholder workshops.	The Customer (or its nominee)
5	Requirements Allocation Traceability Matrix	A document in an agreed format demonstrating how the SSRS are verified and validated in the design, product specification, drawings etc. and other supporting documents.	The Customer (or its nominee)
6	Test Strategy	The Test Strategy in an agreed format must contain, but is not limited to, the following details: <ul style="list-style-type: none"> <li>• test methodology at each phase,</li> <li>• test environment and tools used,</li> <li>• test deliverables;</li> <li>• testing schedule;</li> <li>• test resource;</li> <li>• environment requirements ;and</li> <li>• Acceptance Criteria</li> <li>• Defect severity levels defined</li> </ul>	The Customer (or its nominee)

#	Deliverable	Description	Approval
7	Training Plan	<p>The Training Plan must outline the all training sessions and training materials that must be performed and provided by the Contractor to the Customer.</p> <p>The Training Plan, at a minimum, must cover the following training:</p> <ul style="list-style-type: none"> <li>• System administrators;</li> <li>• System users;</li> <li>• Maintainers; and</li> <li>• Train-The-Trainer,</li> </ul> <p>unless otherwise varied or agreed with the Customer in writing.</p> <p>The Training Plan is to be developed in collaboration with the Customer and is to include the following:</p> <ul style="list-style-type: none"> <li>• the minimum number of participants per given session;</li> <li>• development and/or creation of training materials;</li> <li>• delivery format or training services; and</li> <li>• training schedule.</li> </ul> <p>Additional details for the Training Plan is specified in Module 8 Order Form - Training Services.</p>	The Customer (or its nominee)

## 7.5 Exit Criteria

The Exit Criteria for Detailed Design stage of Phase 2 are:

#	Criterion	Description
1	Completion of all Detailed Design Deliverables	The Customer has accepted the Detailed Design Deliverables set out in Section 7.4.

## 8 PHASE 2: PROCUREMENT AND DELIVERY

### 8.1 Overview

The purpose of the Procurement and Delivery stage of Phase 2 is to manufacture, complete factory acceptance testing and supply to Site the OVDS Solution.

The Contractor must ensure that:

- a) all of the Services that it is obliged to supply under the Procurement and Delivery stage of Phase 2 are supplied and completed; and
- b) all Deliverables that it is obliged to supply under the Procurement and Delivery stage of Phase 2 (as specified in this section) are approved by the Customer (or its nominee), on or before the relevant date(s) specified in the Project Schedule.

## 8.2 Entry Criteria

The Entry Criteria for the Procurement and Delivery stage of Phase 2 is specified in the table below:

#	Criterion	Description
1	Hardware Specification complete and accepted by Customer.	All Product Specifications and Drawings as outlined in clause 7.4 (Preliminary Design Deliverables) must be completed and accepted by the Customer.
2	Customer Hardware Procurement Notification	The Customer has provided the Supplier with written notification that it wishes to proceed with Phase 2 Procurement and Delivery.

## 8.3 Services

The Contractor must supply the following Services as part of the Procurement and Delivery Phase:

#	Description
1	Implement and perform all the Procurement and Delivery stage activities in accordance in accordance with the Project Schedule.
2	Prepare and submit Factory Acceptance Test Plan and Test results for Customer acceptance.
3	All services and deliverables that the Contractor is required to supply as part of Detail Design stage of Phase 2 is completed.

## 8.4 Procurement and Delivery Deliverables

The Contractor must supply the following Deliverables and ensure the Deliverables are fit for their purpose.

#	Deliverable	Description	Approval
1	Supply of all solution components, Mounting Hardware and Licensed Software	Delivery of all agreed deliverables as per design with supporting documentation including product specifications, Factory acceptance test plans/reports, certificates, licence documentation etc.	The Customer (or its nominee)

## 8.5 Exit Criteria

The Exit Criteria for Procurement and Delivery stage of Phase 2 are:

#	Criterion	Description
1	Completion of all Procurement and Delivery Deliverables	The Customer has accepted the Procurement and Delivery Deliverables set out in section 8.4.



## 9 PHASE 2: INSTALLATION AND CONFIGURATION PHASE

### 9.1 Overview

The purpose of the Installation and Configuration stage of Phase 2 is to install and configure all Mounting Hardware, Hardware, Licensed Software and any supporting equipment for Acceptance Testing.

### 9.2 Entry Criteria

The Entry Criteria for the Installation and Configuration stage of Phase 2 are specified in the table below:

#	Criterion	Description
1	Previous Stage Discharged	All Services that the Contractor is required to supply as part of the Procurement and Delivery stage of Phase 2.
2	Previous Stage Deliverables	The Customer has accepted all Deliverables in the Procurement and Delivery stage of Phase 2.

### 9.3 Services

The Contractor must supply the following Services as part of the Installation and Configuration stage of Phase 2:

#	Description
1	Develop all necessary documentation to satisfy Site access/permits and OH&S requirements.
2	Carry out OVDS installation and configuration in cooperation with Key Contractors and Customer Personnel.
4	Configure the Licenced Software in accordance with the Detailed Design.
5	Data Configuration of the System  The Contractor must support the Customer as required to undertake configuration of the Customer data as required to enable the Acceptance Tests to commence.
6	OVDS Installation  The Contractor must install the OVDS Solution in the Customer Environment to enable the Parties to enter Systems Acceptance Testing (SAT).
7	Do all things necessary (using a standard of a prudent contractor of services and deliverables similar to the Services and Deliverables to be supplied as part of the System) to enable the Key Contractors to carry out their services and deliverables so that the Contractor can develop and supply the Deliverables described in section 9.4.
8	Do all other things necessary to develop and supply the Deliverables described in section 9.4 and as otherwise directed by the Customer.

### 9.4 Installation and Configuration Deliverable

The Contractor must supply the following Deliverable and ensure the Deliverable are fit for purpose.

#	Deliverable	Description	Approval
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#	Deliverable	Description	Approval
1	Updated Detail Design Report with an as-built Architecture Specification	The updated Architecture Specification will reflect the design of the “as built” System developed during the Installation and Configuration stage of Phase 2.	The Customer (or its nominee)
2	Updated Detail Design Report with an as-built Implementation and Test Strategy	The updated Implementation and Test Strategy will reflect the approach agreed between the Customer and the Contractor to implement OVDS.	The Customer (or its nominee)
3	Updated Detail Design Report with an as-built Data Management Plan	The updated Data Management Plan will reflect the design of the “as built” System developed during the Build stage Phase 2.	The Customer (or its nominee)

### 9.5 Exit Criteria

The Exit Criteria for Installation and Configuration stage of Phase 2 are:

#	Criterion	Description
1	Completion of all Installation and Configuration Deliverable	The Customer has accepted the Installation and Configuration Deliverables set out in section 9.4 of this PIPP.

## 10 PHASE 2: SYSTEM IMPLEMENTATION AND USER ACCEPTANCE TESTING PHASE

### 10.1 Overview

The purpose of the System Implementation and User Acceptance Testing stage of Phase 2 is to implement the OVDS on Site and complete all SAT and User Acceptance Tests (UAT).

### 10.2 Entry Criteria

The Entry Criteria for the SAT and UAT stage of Phase 2 are specified in the table below:

#	Criterion	Description
1	Previous Stage Discharged	All Services that the Contractor is required to supply as part of Installation and Configuration stage of Phase 2.
2	Previous Stage Deliverables	The Customer has accepted all Deliverables in the Installation and Configuration stage of Phase 2.

### 10.3 Services

The Contractor must supply the following Services as part of the System Implementation and User Acceptance Testing stage of Phase 2:

#	Description
1	Prepare Inspection and Test Plans, System Acceptance Test Plans and User Acceptance Test Plans in a format agreed with the Customer in accordance with the Implementation/Test Strategy
2	Carry out testing using agreed test scripts, test tools and acceptance criteria with the Customer
3	Test Summary Report for System Test. Contractor will provide a summary of results from the System Testing for OVDS including a list of observations and defects in accordance with the Contractor's standard documentation.
4	Prepare requirement traceability matrix and validate test results against requirements
5	Do all other things necessary to develop and supply the Deliverables described in section 5 of this PIPP and as otherwise directed by the Customer.

#### 10.4 System Implementation and User Acceptance Testing Deliverable

The Contractor must supply the following Deliverables and ensure each Deliverable is fit for purpose.

#	Deliverable	Description	Approval
1	Test Plans	Test plans containing test scripts for various OVDS equipment and system in an agreed format for SAT, system integration testing and UAT inclusive of applicable test standards and acceptance criteria.	The Customer (or its nominee)
2	Test Reports	Test reports in an agreed format demonstrating satisfactory conduct of tests against the test plans and status of any outstanding defects.	The Customer (or its nominee)
3	Defects Register	Register containing up-to-date Hardware and Software defects for the OVDS system arising from the Acceptance Tests in Microsoft Excel format or other format specified by the Customer.	The Customer (or its nominee)

#### 10.5 Exit Criteria

The Exit Criteria for System Implementation and User Acceptance Testing stage of Phase 2 are:

#	Criterion	Description
1	Completion of all System Implementation and UAT Deliverables	The Customer has accepted the System Implementation and User Acceptance Testing Deliverables set out in section 10.4.

## 11 PHASE 2: DELIVERY OF TRAINING, SPARES AND USER MANUAL

### 11.1 Overview

The purpose of the Training, Spares and User Manual stage of Phase 2 is for the Contractor to provide operations and maintenance training, provision of Technical Maintenance Plans, agreed Spares and Operations and Maintenance Manuals.

## 11.2 Entry Criteria

The Entry Criteria for the Training, Spares and User Manual stage of Phase 2 are specified in the table below:

#	Criterion	Description
1	Previous Stage Discharged	All Services that the Contractor is required to supply as part of System Implementation and User Acceptance Testing stage of Phase 2.
2	Previous Stage Deliverables	The Customer has accepted all Deliverables in the System Implementation and User Acceptance Testing stage of Phase 2.

## 11.3 Services

The Contractor must supply the following Services as part of the Training, Spares and User Manual stage of Phase 2:

#	Description
1	Provide Training in accordance with the Training Plan.
2	Provide spares (including any required testing or calibration of the spares) on site or at a location agreed with the Customer.
3	Submit Technical Maintenance Plans and Operations and Maintenance Plans and obtain Customer acceptance

## 11.4 Training, Spares and User Manual Deliverable

The Contractor must supply following Deliverable and ensure the Deliverable is fit for its purpose.

#	Deliverable	Description	Approval
1	Operations and Maintenance Manual	User Manual incorporating Technical Maintenance Plans, all hardware and product information, asset register, third party support agreements, Spares, supplier and third party contact details, or other information reasonably required by the Customer.	The Customer (or its nominee)
2	Licensed Software Agreements	Software licence agreement, software versions, escrow agreements (if applicable).	The Customer (or its nominee)
3	Training Manual	Training Manual in a format specified by the Customer or otherwise stated in Module 8 of this Customer Contract.	The Customer (or its nominee)
4	As built information	All as built information including layouts, drawings, security information and any other information reasonably required by the Customer.	The Customer (or its nominee)
5	Troubleshooting Checklist	The Troubleshooting Checklist provided by Contractor and used by the Customer to resolve Level 1 Support and Maintenance related issues.	The Customer (or its nominee)

#	Deliverable	Description	Approval
6	Training Certifications	At completion of the required number of training sessions, the Contractor will issue a certification. This certification will allow the Customer's certified trainers to provide training to other members of the Customer's staff using the training and reference materials developed with the Contractor. At the completion of the required number of training sessions, they will also be provided with training certifications.	The Customer (or its nominee)

### 11.5 Exit Criteria

The Exit Criteria for Training, Spares and User Manual stage of Phase 2 are:

#	Criterion	Description
1	Completion of all Training, Spares and User Manual Deliverable	The Customer has accepted the Training, Spares and User Manual stage Deliverable set out in section 11.4.

## PHASE 3: MAINTENANCE AND SUPPORT

Phase 3 commences when the Hardware and Licensed Software Goes Live in the Production Environment and the Customer provides written notice (in the form outlined in the following paragraph) to the Contractor that it wishes to procure Support and Maintenance in accordance with this section of the PIPP. The parties have agreed that the Customer may, in its absolute discretion, elect to procure the Support and Maintenance Services as proposed in the draft Modules 2 and 5 of this the PIPP (attached as Appendices 1A and 1B).

The Customer may issue a notice in writing to the Contractor electing to purchase the Deliverables and/or Services in the drafts of Module 2 – Hardware Maintenance Services and/or Module 5— Software Support Services (and the corresponding Module Order Forms) set out in Appendix 1A and 1B respectively, whereupon the relevant Module(s) and corresponding Module Order Form(s) are incorporated into the Customer Contract. Such a notice must;

(a) specify the date upon which the applicable Module shall be effective (the *Module 2 and/or Module 5 Effective Date*); and

(b) specify the new Contract Price, taking into account the Price for those Deliverables and/or Services, whereupon the Contract Price in Section 18.3 of this PIPP will be deemed to be varied accordingly (including for the purposes of Item 39 of the General Order Form).

On and from the applicable Module 2 and/or Module 5 Effective Date, the Contractor must provide the Support and Maintenance Services specified in the relevant Modules and Module Order Forms, or as otherwise mutually agreed by the parties, and in accordance with the Customer Contract. Furthermore, Item 8 of the General Order Form to the Customer Contract will be deemed to be marked with an X, to indicate that the Module 2 and/or Module 5 forms part of the Customer Contract.

For the avoidance of doubt, the Contractor must rectify all Defects at no cost to the Customer during the Defect Liability Period including provision of labour, and provision and management of Spares. The Defect Liability Period will commence on AAD and will continue for a period of 12 months.

In addition to the Support and Maintenance Deliverables of Phase 3, the Contractor must provide the following:

- Training Services to the Customer and its representatives to enable attendees to provide Level 1 Support without compromising any original manufacturer's software and hardware warranties, including, but not limited to, NanoLumens training. For avoidance of doubt, training shall be provided pursuant to Module 8 - Training Services for train-the-trainer. The Contractor must ensure all Training Services provided by the Contractor are properly accredited and provided by appropriate certified trainers so that any warranties provided by the original hardware and software manufacturers are not invalidated;
- Develop a Service Design document as part of the Designed Design phase to outline additional details regarding support and maintenance services (including but not limited to maintenance schedules and detailed performance criteria); and
- Troubleshooting checklist (and regular updates to enable Customer to provide Level 1 Support).

## Section C - Common Terms

### 12 ACCEPTANCE

#### 12.1 Acceptance

The Contractor must:

- a) in collaboration with the Customer and Key Contractors (as required) participate in workshops and liaise with appropriate Personnel to ensure that all requirements are confirmed and understood; and
- b) liaise with the Customer and Key Contractors (as required) to ensure that all Deliverables are fit for purpose and meet the agreed Acceptance Criteria.

12.2 The Contractor must supply the Deliverables which are part of the Customer Contract in accordance with, and on or before the relevant date(s) specified in the Project Schedule.

12.3 The Contractor must ensure that the OVDS:

- a) accurately and comprehensively satisfies the Contract Specifications;
- b) when implemented, allows the Customer to achieve the Objectives set out in Section 1.5; and
- c) does not negatively impact the performance or functionality of any part of the Customer's Environment, including the Customer's current solution.

12.4 The Contractor agrees that any review, comment, approval, endorsement or election or failure to review, comment, approve, endorse or elect on the part of the Customer (or its nominee) under the Customer Contract:

- a) does not limit or affect the Services or Deliverables under this Customer Contract, including in respect of the Detailed Design;
- b) does not limit or affect the provision of the Contractor's warranties or indemnities;
- c) does not constitute any express or implied representation, election, waiver or acquiescence on the part of the Customer;
- d) does not constitute deemed approval by the Customer to any amendment or Change Request to the Services or Deliverables; and
- e) does not constitute grounds for an automatic extension of time or automatic adjustment to any payments.

## 13 CHANGE REQUESTS

### 13.1 If:

- a) during the term of the Customer Contract, the Contractor identifies that the Customer's requirements for the OVDS have materially changed from the Contract Specifications (**Variation**); and
- b) that Variation changes the manner in which the Contractor is required to perform its obligations under this PIPP to such an extent that the Contractor will incur material additional costs in performing those obligations,

the Contractor is entitled to give the Customer a Change Request to adjust the Contract Price to take into account those additional costs.

### 13.2 If:

- a) the Contractor is entitled to give the Customer a Change Request under Section 13.1; and
- b) the Contractor does not give the Customer that Change Request at the same time that the Contractor submits a Deliverable,

the Contractor will not be entitled to give the Customer a Change Request for an increase in the Contract Price as a result of the Variation.

## 14 TIMETABLE

### 14.1 Contract Period

The Commencement Date is the date as stated in the General Order Form. The Contract Period will end as specified in item 10 of the General Order Form or as otherwise terminated earlier in accordance with the terms specified in the Customer Contract.

### 14.2 Exclusions

Not applicable.

## 15 IMPLEMENTATION

### 15.1 Where work performed (Site)

All the necessary work must be carried out at the Contractor's site, as specified in Item 12 of the General Order Form, with the exception of requirements for meetings at the Customer's locations, or at nominated locations within Australia and agreed between the Parties.

## 16 PROJECT MANAGEMENT

### 16.1 Advice and knowledge transfer

The Contractor must provide all reasonable support required by the Customer to provide the Customer Supplied Items and perform the Customer's obligations.

### 16.2 Contractor assistance

If requested, the Contractor must participate in all necessary workshops with the Customer and Customer's stakeholders and subject matter experts, process owners and business analysts to verify:

- a) that the Contract Specifications are accurate and complete; and
- b) the Contractor's proposed solution.

### 16.3 Customer Assistance

The Customer will endeavour to make the necessary third party system provider representatives or internal subject matter experts available for relevant workshops to assist in the provision of third party system interface and data specifications.

### 16.4 Reporting

The Contractor must report to the Customer:

- a) any issues or risks (including any delivery risks) that it identifies that are not specified in the Issues Register immediately on becoming aware of those issues and risks; and
- b) any change in the status of the delivery risks, immediately on becoming aware of that change in status.

### 16.5 Cooperation with Key Contractors

The Contractor must, at no additional cost to the Customer:

- a) coordinate and cooperate with the Key Contractors in relation to the Project;
- b) without assuming any liability for the contents of an Key Contractor's Detailed Design documents, provide all assistance and cooperation reasonably required by the Key Contractors;
- c) comply with all other requests of the Key Contractors to the extent relevant to the Contractor's Services or Deliverables;
- d) not delay or interfere with the performance of the Key Contractors' Services or Deliverables in relation to the Project;
- e) notify the Customer as soon as reasonably possible if it becomes aware of any delay to a Key Contractor's Services or Deliverables in relation to the Project; and
- f) ensure that all information provided under this Section by the Contractor is accurate and to the extent possible, complete.

### 16.6 Communication with Key Contractors

The Contractor must not, without the Customer's prior written consent:

- a) give a Key Contractor a direction or instruction which will or is likely to vary the Key Contractor's scope in relation to the Project;
- b) give a Key Contractor a direction or instruction which will or is likely to change the amount payable by the Customer to the Key Contractor in relation to the Project;
- c) give a Key Contractor a direction or instruction which will or is likely to delay the time that the Key Contractor is obliged to complete Services or Deliverables in relation to the Project;
- d) accept directions or instructions from any Key Contractor in relation to the Services or the Deliverables; or
- e) consent to any waiver, release, variation or reduction to or of any obligation of any Key Contractor in relation to the Services or the Deliverables.



The Contractor must notify the Customer in writing as soon as reasonably possible after it becomes aware of any Dispute between the Contractor and a Key Contractor, or between Key Contractors, in connection with the Project.

#### 16.7 **Disputes between the Contractor and Key Contractors**

The Contractor must use its reasonable endeavours and act in good faith to resolve a Dispute with a Key Contractor by discussion and negotiation without the Customer's involvement.

Where the Contractor has notified the Customer under 16.7 or the Customer becomes aware of a Dispute and the Dispute remains unresolved for greater than 2 calendar days, the Customer will make a direction with respect to the Dispute and the Contractor must comply with the direction.

The Contractor acknowledges and agrees that the direction made by the Customer is final and binding.

The Contractor must continue to comply with its obligations under the Customer Contract even if a Dispute exists.

#### 16.8 **Reliance on Key Contractors' work**

The Customer does not warrant the accuracy or correctness of any reports, plans, drawings, documents or information provided by Key Contractors in relation to the Project. The Customer has no liability to the Contractor as a result of the Contractor's reliance on any such reports, plans, drawings, documents or information.

#### 16.9 **Return obligations**

The Contractor must return all Customer equipment and Customer Supplied Items provided to the Contractor for the purposes of the Project on or before the expiry of the Contract Period.

#### 16.10 **Delivery Address and Delivery Times**

The Contractor must deliver the Deliverables to the Customer at the location specified in Item 12 of the General Order Form.

The Contractor must comply with all reasonable requests of the Customer when access the delivery address as well as any requirements specified in Items 12 and 25 of the General Order Form.

### 17 **CUSTOMER SUPPLIED ITEMS (CSI) AND CUSTOMER OBLIGATIONS**

#### 17.1 **CSI (including facilities and equipment) and obligations**

The Contractor will acknowledge that the Contractor has requested and the Customer has agreed to provide the following CSI items:

- a) physical infrastructure (rack, comms, power);
- b) mounting infrastructure - refer to the drawing provided by the Customer showing the demarcation points;
- c) Site-specific requirements (inductions, logistics, requirements, restrictions);
- d) access to local IT/OT infrastructure and support;
- e) source systems (including Software as detailed in the Detailed Design);
- f) clean power as defined in the SSR; and

- g) Environmental Requirements (heating, ventilation, air conditioning).

The Parties acknowledge and agree that the Customer Supplied Items are those items specified in this clause 17.1.

Any CSI which are needed by the Contractor but are not identified above may be provided by the Customer at its discretion and in accordance with the Customer Contract.

The Customer acknowledges that the Contractor will provide a checklist as part of the Detailed Design Phase to be agreed between the parties.

#### 17.2 **CSI verification**

The Contractor acknowledges that no specific CSI verification process is required as specified in Item 22 of the General Order Form.

#### 17.3 **Personnel**

- 17.4 The Contractor must ensure that each member of the Contractor's Personnel allocated to perform the specified roles in Appendix 3 perform the roles and responsibilities described in Appendix 3.

- 17.5 Any of the Contractor's Personnel who fill the roles in Appendix 3 will be Specified Personnel for the purposes of the Customer Contract.

- 17.6 The Customer must establish the teams and provide the Personnel to fill the roles described in Appendix 3.

- 17.7 Nothing in Appendix 3 affects the scope of the obligations of either party as described in this PIPP.

#### 17.8 **Subcontractors**

- 17.9 The Contractor has engaged Subcontractors, listed in Appendix 2, to assist in the timely delivery of the Deliverables and ongoing support as required under the Project.

- 17.10 The Contractor will engage and make available relevant Subcontractor personnel to support the Contractor supply the Deliverables to the Customer, except where the Customer has engaged the Subcontractor independently.

- 17.11 The Contractor will ensure that each Subcontractor engaged by the Contractor will complete the required Subcontractor Statement before any Subcontractor performs any work for and on behalf of the Contractor for the Customer.

#### 17.12 **Approval by the Customer**

- 17.13 The Customer's approval of the Deliverables constitutes acceptance as contemplated under the Customer Contract.

## 18 PAYMENT PLAN

### 18.1 Payment Phase 1

The Price for the Contractor to undertake Payment Phase 1 of the OVDS solution is \$ [REDACTED] (exclusive of GST) and consists of the following milestones:

Milestone No	Deliverable	Price per Unit	Quantity	Extended Price
1	Sub System Requirement Specification	\$ [REDACTED]	1	\$ [REDACTED]
2	Project Management Plan	\$ [REDACTED]	1	\$ [REDACTED]
3	Preliminary Design	\$ [REDACTED]	1	\$ [REDACTED]
	<b>Sub-Total</b>			\$ [REDACTED]
	<b>GST</b>			\$ [REDACTED]
	<b>Total</b>			\$ [REDACTED]

### 18.2 Payment Phase 2

The Price for the Contractor to undertake Payment Phase 2 of the OVDS solution will not exceed \$ [REDACTED] (exclusive of GST) and consists of the following milestones:

Milestone No	Deliverable	Percentage of total Phase 2 Price per Milestone
1	Detailed Design (including physical/logical architecture, all hardware components including screens, structures, servers, cabling, controllers etc.) accepted by Sydney Trains	15%
2	Delivery of all BOM (excluding NanoLumens products) to the Site.	10%
3	NanoLumens products delivered to the Site.	40%
4	Successfully installed and configured OVDS including hardware and software (prior to system integration and user acceptance testing) at the Site.	15%
5	System Integration and Acceptance Testing completed in a satisfactory manner and approved by the Customer.	15%
6	Delivery of Training, Spares and User Manual to the Customer.	5%

### 18.3 Total Contract Price

The maximum total Contract Price for this Customer Contract is:

Deliverable	Price per Unit (excl GST)	Extended Price (excl GST)

Deliverable	Price per Unit (excl GST)	Extended Price (excl GST)
Phase 1		
Phase 2 (Maximum Price)*		
Agreed rebate for the trial cost		
<b>Total Contract Price (ex GST)</b>		
<b>GST</b>		
<b>Total (including GST)</b>		

\*The Maximum for Phase 2 shall not exceed \$ [REDACTED] unless the parties otherwise agree under a Change Request.

The Customer may exercise additional options as included in a document titled "OVDS Solution Pricing worksheet including spares and options.xlsx".

#### 18.4 Payment

The Contractor must not issue a Correctly Rendered Invoice to the Customer prior to the milestone dates specified under the Payment Plan tables.

The Customer will pay all undisputed amounts in a Correctly Rendered Invoice issued by the Contractor within 30 days of the invoice being issued to the Customer.

For avoidance of doubt, the Contractor is liable for all Taxes imposed or levied in connection with the Contractor's performance of its obligations under the Customer Contract with the exception of GST in accordance with clause 12.2 of the Customer Contract.

Pricing for Phase 3 comprises of a fixed monthly rate to be paid monthly in arrears and subject to satisfactory performance against KPI's and any applicable penalties. This will include all support and maintenance covered in Module 2 and 5 Order Forms of this Customer Contract.

For all Support and Maintenance deemed out of scope, the pricing for that support and maintenance will be on time and materials basis as calculated in accordance with the Rate Card in Schedule 2-Agreement Documents of the Contract..

#### 18.5 Termination for Convenience

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 Item 42 of the General Order Form.

#### 18.6 Liquidated Damages

Liquidated Damages will apply as specified in Item 21 of the General Order Form.

## 19 GOVERNANCE

### 19.1 Authorised Representatives

The Customer's Authorised Representative is Anthony Eid (or delegate as nominated by the Customer from time to time).

The Contractor's Authorised Representative is Lena Kimenkowski.

### 19.2 Management committee membership

The following are members of the management committee:

- a) Anthony Eid (or delegate)
- b) Andrew Parker
- c) Jason Galer
- d) Reuben Bowd
- e) Lena Kimenkowski
- f) Thomas Willets
- g) Jerry Kushnir

### 19.3 Management committee function

The function of the management committee is to:

- 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.

### 19.4 Management committee meetings

The management committee must meet no less than once a month, unless as otherwise agreed, during the Project at the times and locations specified by the Customer.

### 19.5 Management committee progress report

The Contractor must, at least 2 Business Days prior to a management committee meeting, provide the Customer with a monthly progress report which at a minimum should include the following:

- (a) details (including dates) of Deliverables and Milestones commenced and completed;
- (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); and
- (g) any other additional details the Contractor considers should be brought to the attention of the Customer.

**Appendix 1A - Draft Module 2**

# DRAFT - 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
<b>Right to suspend (clause 2.3)</b>	
Specify if clause 2.3 applies.	Not applicable.
If clause 2.3 applies, specify any percentage that is different to the percentage specified in clause 2.3(a).	

### Box 2 Details of Hardware Maintenance and Support

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
<b>Scope (clause 3.1)</b>	
Specify the Hardware Maintenance and Support Services which are to be provided, including:	As outlined below and as specified in the PIPP.
<p>(a) the Contract Period (12 months from the AAD of the relevant Hardware by default);</p> <p>(b) the Hardware and related Machine Code that is to be the subject of the Hardware Maintenance and Support Services;</p> <p>[E.g. The model and serial number of Hardware; the version of Machine Code; etc.]</p> <p>(c) the details relating to any of the following Services that the Contractor is to provide:</p> <p>(i) Remedial Maintenance;</p> <p>(ii) Preventative Maintenance;</p> <p>(iii) Help Desk Services, including the hours of</p>	<p>The Contractor must provide Hardware Maintenance and Support for the whole of the Contract Period as specified in the PIPP, or as otherwise agreed in writing with the Customer.</p> <p>Initial support period will commence at AAD for a period of 3 years thereafter.</p> <p>Additionally, the Customer may exercise, at its sole discretion, the following options to extend the period of Hardware Maintenance and Support:</p> <ul style="list-style-type: none"> <li>• 2 years;</li> <li>• 2 years;</li> <li>• 2 years; and</li> <li>• 1 year.</li> </ul> <p>The Customer may exercise all or a selection of the above options, in any order. The Customer, may at its sole discretion, terminate the additional support options by providing 90 days notice to the Contractor.</p>



<p>operation;</p> <p>(iv) any ancillary services;</p> <p>(d) any applicable Service Levels;</p> <p>(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;</p> <p>(f) the Price and any expenses or other charges that apply for each Service;</p> <p>(g) if the Services are to be provided by the Contractor as a Reseller, set out details of:</p> <p>(i) the manufacturer's support and maintenance services that the Contractor will co-ordinate and manage; and</p> <p>(ii) any value added services that the Reseller will provide.</p>	<p>The Contractor must provide Hardware Maintenance and Support Services for the Hardware and related Machine Code as part of the Deliverables listed in the PIPP for whole of the Contract Period and any additional applicable maintenance and support option exercised by the Customer.</p> <p>The Customer will log any issues experienced with the Contractor. The Contractor, as specified in the PIPP, must hold all information regarding all incidents and report as required at all review meetings.</p> <p>The Hardware Maintenance and Support Services purchased in accordance with the PIPP will not commence until after AAD. Any issues in relation to Defects in Hardware or in Spares must be resolved by the Contractor during the relevant warranty period and at no cost to the Customer.</p> <p><b>Availability of support services:</b></p> <p>The Contractor must meet, within the agreed service hours, all support and resolution times as stated in Appendix A, to 99.95%. A report must be prepared by the Contractor for the quarterly meeting analysing the Contractor's performance against the set performance criteria, including the ability to meet the response times.</p> <p>The Contractor must ensure that the support services are available 24/7/365, as required by the Customer. The Customer may request support services or log an incident, Defect or problem by telephone or email at any time.</p> <p>The ongoing Hardware Support and Maintenance Services purchased by the Customer must include the following services:</p> <ul style="list-style-type: none"> <li>• break/fix support services;</li> <li>• preventative maintenance; and</li> <li>• predictive maintenance.</li> </ul> <p><i>Break/fix support services:</i></p> <p>Break/fix support services will be provided in accordance with the agreed support performance criteria as outlined in Appendix A.</p>
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The Customer is responsible for providing Level 1 support.

Any support services required past Level 1 will be provided by the Contractor, until the issue or the error is resolved in accordance with Appendix A or as otherwise specified in this Box.

Contractor must, as part of the support services, be responsible for the management and replacement of the spares. The management of spares and organising of the replacement is part of the support services and will not incur additional costs to the support service payments made by the Customer.

Break/fix services must be provided by the Contractor as outlined below:

- at no additional cost to the Customer, upon receipt of a service request from the Customer the Contractor must resolve the issue in accordance with the support performance criteria in Appendix A;
- provide instant telephone support at no additional cost to the Customer during the coverage hours must be provided upon the receipt of a telephone call from the Customer;
- on-site response for any for any failure that cannot be resolved by telephone – the Customer shall not be charged for the first two call-outs in any 12-month support period. For the avoidance of doubt, the cost involved for any more than two call-outs will be calculated in accordance with the Rate Card in the PIPP; and
- is responsible for management of all Hardware and Spares purchased under the Customer Contract.

The Customer may direct the Contractor to provide emergency Break/Fix Services to resolve an issue after the two included visits have been consumed. Should the Customer issue such a direction the Contractor must make a claim for payment after the incident for the call-out calculated in accordance with the Rate Card provided in the PIPP.

*Preventative maintenance services:*

Preventative maintenance services for Hardware must be provided by the Contractor on the dates and times agreed by the parties as set out in the Service Design (to be developed in accordance with the PIPP). Any changes to the dates and/or times can be mutually agreed by both parties in writing (an email is sufficient).

Preventative maintenance services must be provided on quarterly visits at the agreed locations. These shall be conducted within +/- 5 Business Days of the start of the each calendar month in which a preventative maintenance services is schedule is to occur. Exact times and dates are to be agreed between the parties closer to the scheduled date. The Contractor must ensure that the preventative maintenance services must coincide with the Customer's maintenance schedules to minimise downtime.

*Predictive maintenance services:*

Predictive maintenance services for Hardware must be provided by the Contractor on the dates and times agreed by the parties.

*Warranty services:*

The Contractor must provide warranty services by managing the claim lodgment process and must be responsible for oversight of the replacement of the faulty product.

For any Hardware Maintenance and Support Services deemed out-of-scope of the services described in this Box and the PIPP, will incur additional charges calculated in accordance with the Rate Card in the PIPP, or as otherwise stated in the PIPP. All additional charges must be provided as a quote and pre-approved, unless otherwise instructed by the Customer in writing.

For all Hardware Maintenance and Support Services provided by the Contractor as specified in this Module Order Form, the PIPP or any applicable Service Design, it is the sole responsibility of the Contractor to resolve the issues and Defects in accordance with the support performance criteria provided by the Contractor in Appendix A.

	<p>Resolution of an error, an issue or a Defect is considered to be resolved upon the earlier to occur of the following:</p> <ul style="list-style-type: none"> <li>(a) the Contractor and the Customer mutually agree in writing (including via email) that the issue or problem is resolved;</li> <li>(b) the Contractor has provided a reasonable and acceptable technical work-around solution for the Customer;</li> <li>(c) any of the Customer's authorised technical contacts requests that the Contractor close the support request; or</li> <li>(d) the support request has been left open for 20 consecutive Business Days, during which period the Contractor has not received a response from any of the Customer's authorized technical contacts.</li> </ul>
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### 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
<p><b>Scope (clause 3.4)</b></p> <p>Specify if the amount by which the Price for Hardware Maintenance and Support Services is reduced because of any overlapping Warranty Period.</p> <p>If this Box is not completed the reduction is 35% of the Contract Price for the first year.</p>	<p>Not applicable.</p>

**Box 4 Ancillary Services**

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
<b>Ancillary Services (clause 3.30)</b>	
<p>Specify if other services are to be provided after the Commencement Date of the Contract, including the Prices and when payment is due.</p> <p>[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.]</p>	As specified in the PIPP.

**Box 5 Business Models of the Reseller**

Details to be included from Module 2	Order Details agreed by the Contractor and the Customer
<b>Reseller Provision (clause 4.1)</b>	
<p>Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller?</p> <p>If yes:</p> <p>(a) specify if the Hardware Maintenance and Support Services are supplied by the Contractor who is acting as Reseller as Facilitator.</p> <p>[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).]</p> <p><b>OR</b></p>	No, the Hardware Maintenance and Support Services are being supplied by the Contractor.
<p>(b) specify if the Hardware Maintenance and Support Services are supplied by the Contractor who is acting as Reseller with Pass Through Warranties.</p> <p>[Note: Reseller with Pass Through Warranties means the Contractor is acting in a particular role and has a particular set of responsibilities</p>	Not applicable.

described in clause 4.1(b).]	
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**Box 6 Value Add Services**

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

## Appendix A - Support performance criteria

Incident	Priority 1 (Urgent)	
	Response Time	System restore (incident resolved)
Category A	15 mins	<4h
Category B	15 mins	<8h
Category C	30 mins	<12h
Category D	N/A	

Criticality Classification Category	Characteristics
<b>Category A</b>	<ul style="list-style-type: none"> <li>• Critical business operations that are materially impacted thus resulting in an inability or degraded ability to manage critical incidents within the ROC;</li> <li>• business stoppage;</li> <li>• risk to safety, health and environment;</li> <li>• public, wide-spread damage to organization's reputation; and</li> <li>• non-compliance with any rail regulations.</li> </ul>
<b>Category B</b>	<ul style="list-style-type: none"> <li>• Impact on staff efficiency and potential ability to respond to incidents;</li> <li>• non-compliance with any rail regulations; and</li> <li>• damage to organisation's reputation.</li> </ul>
<b>Category C</b>	<ul style="list-style-type: none"> <li>• Impact Material employee productivity degradation.</li> </ul>
<b>Category D</b>	<ul style="list-style-type: none"> <li>• Moderate employee productivity degradation.</li> </ul>

## Module 2 - Hardware Maintenance and Support Services

Version 3.1

### TABLE OF CONTENTS

1. AGREED TERMS AND INTERPRETATION .....	2
2. MAINTENANCE PERIOD .....	2
3. SCOPE OF HARDWARE MAINTENANCE AND SUPPORT .....	3
4. RESELLER PROVISION OF MAINTENANCE SERVICES .....	8
5. SPECIFIC WARRANTIES .....	10
6. EXCEPTIONS.....	11

#### [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 Contactor 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 describe 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 describe 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 Part 3 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 on 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;
    - (iv) any ancillary services;
  - (d) any applicable Service Levels;
  - (e) the particulars of any access to the Site or the Deliverables, on-site storage of parts and equipment or other resources that may be needed in connection with the Services;
  - (f) the Price and any expenses or other charges that apply for each Service;
  - (g) if the Services are to be provided by the Contractor as a Reseller, 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; and
- (c) comply with any requirements specified in the Contract Specifications and any other requirements of the Customer Contract, including any Service Level Agreement.
- (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;
  - (iii) and 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 – Variations 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;
  - (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 9 of the Head Agreement 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 Exclusion 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 – Variations 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,



(d) 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 – Variations 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;
- (i) training.

**3.31** The Contractor may store Contractor's Documentation, 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 is 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) co-ordinate and manage any 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) co-ordinate and manage the provision of any services that are to be provided in respect of any movement, addition, change substitution of the Hardware;
  - (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 Part 2 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;
    - (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;
  - (iii) exercise due care, skill and attention;
- (b) perform the Hardware Maintenance and Support Services in accordance with any services 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;
- (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 Contractor, 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 require 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 services credits in the manner agreed in the Service Level Agreement.

- 5.5** The Contractor must meet all its costs that 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 arises 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 Specification;
  - (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;
  - (k) an 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.



# DRAFT - MODULE ORDER FORM

## MODULE 5 – SOFTWARE SUPPORT SERVICES

### Box1 Designated Equipment

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Agreed Terms (clause 1.1)</b>	
Specify the hardware platform/operating system combination upon which the Supported Software is installed. [Note: Specify the type and version number of the operating system and capacity/model of the Hardware.]	As specified in Box 3 of the Module 3 Order Form.

### Box 2 Developed Software

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

**Box 3 Installed on Contractor Equipment**

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Agreed Terms (clause 1.6)</b>	
Specify if the Supported Software is to be installed on equipment which is owned or controlled by the Contractor.	Not applicable.

**Box 4 Prices of Software Support Services**

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

**Box 5 Period of Software Support Services**

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Support Period (clause 2.2)</b>	
Specify the Contract Period during which the Software Support Services will be provided.  If this Box is not completed and the Contract Period is not specified on the General Order Form, the Software Support Services will be deemed to start on the AAD of the relevant Supported Software, and continue until terminated by either Party giving the other 30 days Notice in Writing.	The initial support period shall commence at AAD for a period of 3 years thereafter.  The Contractor must provide Software Maintenance and Support Services for the Software as part of the Deliverables listed in the PIPP for whole of the Contract Period and any additional applicable maintenance and support options exercised by the Customer.

**Box 6 Extension of Contract Notification**

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Support Period (clause 2.3)</b>	
<p>Specify</p> <p>(a) the number of days written notice prior to the end of each current Contract Period that the Contractor must give of the Price;</p> <p>(b) payment arrangements;</p> <p>(c) whether the Contract Period will be extended under this Customer Contract, or whether a new Customer Contract will be entered into, after the end of the current Contract Period.</p> <p>If no period is specified in this Box, the period is 30 days.</p>	<p>The number of days written notice prior to the end of each current Contract Period that the Customer will give the Contractor is 30 Days.</p>

**Box 7 Details of Software Support Services**

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Scope (clause 3.1)</b>	
<p>Specify the details of Software Support Services, including:</p> <p>(a) the Contract Period [Note: the default period is 12 months from AAD];</p> <p>(b) the Supported Software that is to be the subject of the Software Support Services, being:</p> <p>i. Licensed Software;</p> <p>ii. details of any Developed Software;</p> <p>(c) whether the Licensed Software is a First Release, or whether the First Release of New Release of</p>	<p>As specified in the PIPP, and as outlined below.</p> <p>The Contractor must provide Software Support Services for the whole of the Contract Period as specified in the PIPP.</p> <p>Additionally, the Customer may exercise, at its sole discretion, the following options to extend the period of Maintenance and Support:</p> <ul style="list-style-type: none"> <li>• 2 years;</li> <li>• 2 years;</li> <li>• 2 years; and</li> <li>• 1 year.</li> </ul> <p>The Customer may exercise all or a selection of the above options, in any order. The Customer,</p>

<p>any Licensed Software will be provided as part of the Software Support Services;</p> <p>(d) the details relating to any of the following Services that the Contractor is to provide:</p> <ul style="list-style-type: none"> <li>i. Help Desk Services, including the hours of operation;</li> <li>ii. whether the Customer is entitled to receive Updates and/or New Releases if and when they become available from the Contractor during the Contract Period, for: <ul style="list-style-type: none"> <li>A. the Licensed Software;</li> <li>B. any Developed Software;</li> </ul> </li> <li>iii. any ancillary services;</li> </ul> <p>(e) any applicable Service Levels;</p> <p>(f) the particulars of any access to the Site and the Supported Software, including VPN access to the Supported Software required by the Contractor to effectively perform the Software Support Services;</p> <p>(g) the Price and any expenses or other charges that apply for each Service.</p> <p>[Note: Each of the items above should be fully detailed in this Box.</p> <p>The version numbers of each item of Support Software should be included.</p> <p>If the Software Support Services are described in another document, such as the Contractor's Software Support polices, this document should be cross-referenced in this Box.]</p>	<p>may at its sole discretion, terminate the additional support options by providing 90 days notice to the Contractor.</p> <p>The Contractor must provide Software Support Services for the supported Software, being all Software that is part of the Deliverables listed in the PIPP, for whole of the Contract Period and any additional applicable Software Support Services option exercised by the Customer.</p> <p>The Customer will log any issues experienced with the Contractor. The Contractor, as specified in the PIPP, must hold all information regarding all incidents and report as required at all review meetings.</p> <p>The Software Support Services purchased in accordance with the PIPP will not commence until after AAD. Any issues in relation to Defects in the OVDS Solution must be resolved by the Contractor during the relevant Warranty Period and at no cost to the Customer.</p> <p><b>Availability of Support Services:</b></p> <p>The Contractor must meet, within the agreed service hours, all support performance criteria as stated in Appendix A, to 99.95%. A report must be prepared by the Contractor for the quarterly meeting analysing the Contractor's performance against the set performance criteria, including the ability to meet the response times.</p> <p>The Contractor must ensure that the Software Support Services are available 24/7/365, as required by the Customer. The Customer may request Software Support Services or log an incident, Defect or problem by telephone or email at any time.</p> <p>The ongoing Software Support Services purchased by the Customer must include the following Services, and further described below:</p> <ul style="list-style-type: none"> <li>• break/fix support services; and</li> <li>• Software maintenance services.</li> </ul> <p><i>Break/fix support services:</i></p> <p>Break/fix support services will be provided in accordance with the agreed support</p>
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performance criteria as outlined in Appendix A.

The Customer is responsible for providing Level 1 support.

Any Software Support Services required past Level 1 will be provided by the Contractor, until the issue or the error is resolved in accordance with the Appendix A or as otherwise specified in this Box.

*Software Support Services:*

The Software Support Services provided by the Contractor for the Customer include patches and/or updates that provide bug fixes for features of the Licensed Software that are not working correctly as well as Software Updates.

Updates will be provided by the applicable Licensors at no cost to the Customer and the Contractor has made allowances to provide the implementation of these updates at no cost to the Customer. Upgrades of applicable Licensed Software will entail testing, documentation and implementation of the updated version of the Licensed Software.

For any Software Support Services deemed out-of-scope of the services described in this Box and the PIPP, will incur additional charges in accordance with the Rate Card in the PIPP. All additional charges must be provided as a quote and pre-approved, unless otherwise instructed by the Customer in writing.

For all Software Support Services provided by the Contractor as specified in this Module Order Form, the PIPP or any applicable Service Design (to be developed in accordance with the PIPP), it is the sole responsibility of the Contractor to resolve the issues and Defects in accordance with the Resolution times provided by the Contractor in Appendix A of this Module Order Form.

Resolution of an error, an issue, a Defect or a problem is considered to be resolved upon the earlier to occur of the following:

- (a) the Contractor and the Customer mutually agree in writing (including via email) that the error, issue, Defect or the

	<p>problem is resolved;</p> <p>(b) the Contractor has provided a reasonable and mutually acceptable technical work-around solution;</p> <p>(c) any of the Customer's authorised technical contacts requests that the Contractor close the Support Request; or</p> <p>(d) the Support Request has been left open for 20 consecutive Business Days, during which period the Contractor has not received a response from any of the Customer's Technical Contacts.</p>
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### Box 8 Period of Support for each Release

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Updates and New Releases (clause 3.20(b))</b>	
Specify the period for which the Contractor will continue to offer standard support for each release.	Standard support for all Updates to the Licensed Software must be provided by the Contractor for the Contract Period or two years after the end of life of the Licensed Software or the Designated Equipment.
If this Box is not completed the period is 18 months from the date of general Release of the New Release.	

### Box 9 Transition out Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Scope (clause 3.14)</b>	
Specify if transition out services are to be provided.	Transition out Services must be provided by the Contractor, if required by the Customer.
Specify the details of the transition out services, dates, Price for such transition out services, and when payment is due.	Not applicable.

**Box 10 Business Models of the Reseller**

<b>Details to be included from Module 5</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<p><b>Reseller Provision of Software Support Services (clause 4.1)</b></p> <p>Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller? If yes:</p> <p>specify if the Software Support Services are supplied by the Contractor who is acting as Reseller as Facilitator.</p> <p>[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).]</p> <p><b>OR</b></p>	<p>No.</p> <p>Software Support Services will be provided by the Contractor.</p>
<p>specify if the Software Support Services are supplied by the Contractor who is acting as Reseller with Pass Through Warranties.</p> <p>[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).]</p>	<p>Not applicable.</p>

**Box 11 Value Add Services**

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

**Box 12 Ancillary Services**

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
<b>Ancillary Services (clause 5.1)</b>	
Specify if other services are to be provided during the Contract Period.	Support during installation of Updates to the Licensed Software.
Specify the details of these other services, the Prices and when payment is due. [E.g. Ancillary services may include the consulting services needed to implement Updates or New Releases or training services.]	Support provided to the Customer during the installation of the Updates to the Licensed Software will be at no cost to the Customer.  Customer understands there will be a cost associated with implementation any Major Release of the Licensed Software.

## Appendix A - Support performance criteria

Incident	Priority 1 (Urgent)	
	Response Time	System restore (incident resolved)
Category A	15 mins	<4h
Category B	15 mins	<8h
Category C	30 mins	<12h
Category D	N/A	

Criticality Classification Category	Characteristics
<b>Category A</b>	<ul style="list-style-type: none"> <li>• Critical business operations that are materially impacted thus resulting in an inability or degraded ability to manage critical incidents within the ROC;</li> <li>• business stoppage;</li> <li>• risk to safety, health and environment;</li> <li>• public, wide-spread damage to organization’s reputation; and</li> <li>• non-compliance with any rail regulations.</li> </ul>
<b>Category B</b>	<ul style="list-style-type: none"> <li>• Impact on staff efficiency and potential ability to respond to incidents;</li> <li>• non-compliance with any rail regulations; and</li> <li>• damage to organisation’s reputation.</li> </ul>
<b>Category C</b>	<ul style="list-style-type: none"> <li>• Impact Material employee productivity degradation.</li> </ul>
<b>Category D</b>	<ul style="list-style-type: none"> <li>• Moderate employee productivity degradation.</li> </ul>

## Module 5 – Software Support Services

Version 3.1

### TABLE OF CONTENTS

1. AGREED TERMS AND INTERPRETATION .....	2
2. SUPPORT PERIOD .....	3
3. SCOPE OF SUPPORT SERVICES .....	4
4. RESELLER PROVISION OF SOFTWARE SUPPORT SERVICES.....	8
5. ANCILLARY SERVICES .....	9
6. SPECIFIC WARRANTIES .....	9
7. EXCEPTIONS .....	10

#### [Use Guidelines

This Module should be used for software maintenance and support services which involve long term (as opposed to incident based) support contracts. It includes remote troubleshooting and support provided via the telephone and online channels, as well as installation assistance and basic usability assistance. In some cases, software support services may include new product installation services, installation of product updates, migrations for major releases of software and other types of on site services.

See the Procure IT User Guide for more details.

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

# 1. Agreed Terms and Interpretation

## AGREED TERMS

The terms and conditions included in this **Module 5** form part of the Customer Contract when the Parties state that the Software 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 Designated Equipment** means the hardware platform/operating system combination stated in the Module Order Form upon which the Supported Software is installed.
- 1.2 Developed Software** means software other than Licensed Software that is:
- (a) an adaptation, translation or derivative of the Licensed Software; or
  - (b) software that has been newly created by the Contractor under Module 4, or any other Module; or
  - (c) other software, including software that is already owned by or licensed to the Customer or open source software,
- that is stated in the Module Order Form.
- 1.3 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 7.
- 1.4 First Release** means a licence that is for a release (as denoted by the integer to the left of the decimal point in the release number e.g. release version 3.0) of the Licensed Software which is not generally available for supply to all of the Contractor's customers, but is to be licensed (or the New Release is to be made available) to the Customer in advance of general release to the market.
- 1.5 Help Desk Services** means any Services stated in clause 3.14.
- 1.6 Installed on Contractor Equipment** means where the Supported Software is to be installed on equipment (including in a virtual environment) and that equipment is owned or controlled by the Contractor, and is stated as being Installed on Contractor Equipment on the Module Order Form.
- 1.7 New Release** means software which has been produced primarily to extend, alter or improve the relevant part of Supported Software by providing additional functionality or performance enhancement (whether or not Defects in that Supported Software are also corrected) while still retaining the original designated purpose of that part of the Supported Software. New Release does not include any software that is generally licensed by the Contractor to its customers as a different product.
- 1.8 Problem Log** means a brief description of a Defect in a chronological record.
- 1.9 Reseller as Facilitator** means a Reseller who uses the business model describe in clause 4.1(a) to facilitate the supply of the Software Support Services to the Customer.
- 1.10 Reseller with Pass Through Warranties** means a Reseller who uses the business model describe in clause 4.1(b) to supply Software Support Services to the Customer.

- 1.11 Software Support Services** means the Services stated in the Module Order Form in respect of the Licensed Software and/or Developed Software and may consist of Help Desk Services, Updates, New Releases and/or ancillary services, all as set out on the Module Order Form.
- 1.12 Supported Software** means the software stated in the Module Order Form that is the subject of the Software Support Services and may include:
- (a) Licensed Software; and/or
  - (b) Developed Software.
- 1.13 Support Service Price** means the fees payable to the Contractor for supplying the Software Support Services stated in the Module Order Form, which may be on a monthly, quarterly or yearly basis or any other term that is stated in the Order Documents.
- 1.14 Technical Specifications** means the specifications relating to the performance and availability of the Supported Software, the technical requirements of any device that accesses the Supported Software and any other technical issues that relate to the Supported Software or the Customer Contract.
- 1.15 Update** means software which has been produced primarily to overcome Defects in, or to improve the operation of, the relevant part of the Supported Software without significantly altering the Contract Specifications whether or not that Supported Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

#### INTERPRETATION

- 1.16** Other capitalised words and expressions used in this Module are defined in Part 3 of the Agreement.

## 2. Support Period

- 2.1** Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Software Support Services must be provided for a Contract Period of 12 months commencing upon the AAD of the relevant Supported Software, unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2** If no Contract Period is stated in the General Order Form or the Module Order Form, then the Software Support Services will be provided from the AAD of the relevant part of the Supported Software until either party cancels the Software Support Services by providing 30 days prior Notice in Writing to the other.
- 2.3** At least 30 days or as otherwise agreed in the Module Order Form prior to the end of each Contract Period, the Contractor may at the Contractor's sole discretion either provide the Customer with written notice of the Price and the payment arrangements that will apply for the Software Support Services for the Supported Software for an extended period of the Contract Period or provide a new Customer Contract, including a new General Order Form and Module Order Form with the Price and payment arrangements that will apply for a new agreement for Software Support Services.
- 2.4** Where the Customer has been given an option to extend the Contract Period in accordance with clause 2.3 above, the Customer may elect not to extend the Contract Period or elect not to enter into a new agreement, by providing the Contractor with written notice, such notice to be received at least 15 days prior to the date when the current Contract Period expires.
- 2.5** If the Contractor does not receive written notice under clause 2.4, then the Contract Period must be extended for the extended Contract Period and the Customer must pay the Price using terms and conditions and the payment arrangements, all as stated in the notice given under clause 2.3.



- 2.6** The Price for the Software Support Services for which the Contract Period exceeds 1 year 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 Software Support Services by giving the Contractor 14 days Notice in Writing.
- 2.7** The procedures in clauses 2.3 to 2.6 will apply at the end of each Contract Period.

### 3. Scope of Support Services

#### SCOPE

- 3.1** The Parties will set out on the Module Order Form the details of the Software Support Services, including:
- (a) the Contract Period;
  - (b) the Supported Software that is to be the subject of the Software Support Services, being:
    - (i) Licensed Software;
    - (ii) details of any Developed Software;
  - (c) whether the Licensed Software is a First Release, or whether the First Release of New Release of any Licensed Software will be provided as part of the Software Support Services;
  - (d) the details relating to any of the following Services that the Contractor is to provide:
    - (i) Help Desk Services, including the hours of operation;
    - (ii) whether the Customer is entitled to receive Updates and/or New Releases if and when they become available from the Contractor during the Contract Period, for:
      - (A) the Licensed Software;
      - (B) any Developed Software;
    - (iii) any ancillary services;
  - (e) any applicable Service Levels;
  - (f) the particulars of any access to the Site and the Supported Software, including VPN access to the Supported Software required by the Contractor to effectively perform the Software Support Services;
  - (g) the Price and any expenses or other charges that apply for each Service.
- 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 reasonable efforts to promptly negotiate Service Levels applicable to the Software Support Services, which may include 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 and the Supported Software, on-site storage of parts and equipment or other resources that may be needed in connection with the Services.

- 3.4** Nothing in this Module reduces the Contractor's obligation to correct Defects during a Warranty Period as specified in another Module, including Modules 3 and 4.
- 3.5** The Contractor agrees that the Software Support Services must as a minimum ensure that:
- (a) the relevant Supported Software conform to and perform in accordance with the Contract Specifications;
  - (b) the relevant Supported Software performs in accordance with any Service Levels; and
  - (c) the User Documentation for the Supported Software is provided and maintained in accordance with the Customer Contract.
- 3.6** If the Customer identifies and notifies the Contractor of a Defect in the Supported Software during the Contract Period, the Contractor will as soon as possible and, where relevant, within the Service Levels, remedy the Defect.
- 3.7** To remedy the Defect, the Contractor shall, before the response times and/or resolution times referred to in the Service Levels have expired, take such measures as are appropriate in all the circumstances (including providing a Workaround) to enable the Customer to continue to productively use the Supported Software.
- 3.8** On receipt of notice of a Defect by the Customer under clause 3.6, the Contractor must assign an identification number to the Defect, which will be used by the Parties to identify the Defect.
- 3.9** The Contractor must maintain an accurate Problem Log for the period of the Software Support Services of all reported Defects and provide the Customer with a call tracking number for problem identification and follow-up.
- 3.10** If the Contractor does not achieve the required minimum Service Levels, then the Customer shall be entitled to any performance rebates stated in the Service Level Agreement.
- 3.11** The Customer may conduct a review of the Service Levels on an annual basis or as otherwise agreed by the Parties in writing during the Customer Contract. The Contractor must not unreasonably refuse to agree to a Change Request to the Service Levels.
- 3.12** The Customer acknowledges that the inclusion of any Service Levels after the Customer Contract has been signed, or a variation to the Service Levels during the Contract Period, may result in an increase to the Price.
- 3.13** The Customer must if practicable during the Contract Period for the Support Services provide the Contractor with:
- (a) access to the Customer's premises during normal working hours or as otherwise agreed as is necessary for the Contractor to supply the Software Support Services; and
  - (b) information, in the Customer's possession or control that the Contractor reasonably requires to supply Software Support Services.
- 3.14** Where it is stated on a Module Order Form that transition out services are to be provided, on termination and/or expiry of the Support Services, the Contractor must render any reasonable assistance to the Customer to the extent necessary to effect an orderly assumption by a replacement contractor of the performance of the Contractor's obligations under the Customer Contract. The Customer must pay any Price stated on the Module Order Form for such transition out services.

#### HELP DESK

- 3.15** If Help Desk Services are stated 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.

### UPDATES AND NEW RELEASES

- 3.16** The provisions of clauses 3.17 to 3.23 apply where it is stated that the Customer has the right to receive Updates and/or New Releases for:
- (a) the Licensed Software; and/or
  - (b) the Developed Software.
- 3.17** The Contractor must, at no additional charge to the Customer, make available to the Customer any Updates and New Releases for the relevant part of the Supported Software that the Contractor generally makes available to other of its customers during the Contract Period at no additional charge. These Updates and/or New Releases must be made available to the Customer if and when the Update or New Release becomes generally available to those other customers.
- 3.18** The Customer must provide written notice to the Contractor within 30 days from the date the Update or New Release is made available to the Customer if the Customer will not use the Update or New Release. The Customer must accept and use any Update that the Contractor advises addresses a security issue.
- 3.19** If the Customer accepts the Update or New Release:
- (a) the Contractor, if requested by the Customer, must install the Update or New Release, coordinating and scheduling such installation with the Customer. The Customer must pay the Contractor the costs for such installation at the Contractor's then current time and materials rates, unless agreed otherwise. This arrangement may be documented by way of a Change Request;
  - (b) if the Customer installs the Update or New Release, the Customer must do so in accordance with any instructions provided by the Contractor, and the Customer is responsible for all testing, including testing for interoperability with other software programs;
  - (c) the Contract Specifications of the Supported Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Contract Specifications;
  - (d) the Customer must upon request return to the Contractor all copies of the original Supported Software or the part that has been superseded by the Update or New Release or otherwise deal with all such copies in accordance with the Contractor's directions.
- 3.20** Subject to clause 3.18, if the Customer decides not to use the Update or New Release then the Customer acknowledges and agrees that:
- (a) subsequent Updates or New Releases may not operate with the Supported Software;
  - (b) the Contractor may cease to provide Software Support Services for that release of the Supported Software from the date that is 18 months (or such other period stated in the Order Documents) from the date of general release of a New Release, and thereafter:
    - (i) the Supported Software may have its usefulness reduced over time;
    - (ii) the Contractor may not be able to remedy any Defects in the Supported Software; and

- (iii) the Contractor is not responsible for any Defect in the Supported Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the latest version of the Supported Software been used.

**3.21** Where the Supported Software is Installed on Contractor Equipment and is provided from a common code base then the Customer acknowledges and agrees that:

- (a) the Supported Software is provided on a shared service basis to the Customer and other customers and the Contractor may from time to time, without the prior consent of Customer:
  - (i) at the Contractor's own cost, implement any change, addition, deletion, error correction, patch, Updates and/or New Releases and those changes, additions, deletions, error corrections, patches, Updates or New Releases may add or delete the functions, features, performance or other characteristics of the Supported Software, and when such changes, additions, deletions, error corrections, patches, Updates or New Releases are implemented the Contract Specifications of the Supported Software shall be amended accordingly;
  - (ii) amend the Technical Specifications;
- (b) the Contractor must provide prior notice (including via email) of major changes or New Releases to the relevant part of the Supported Software, and such notice may be given by posting the information on the Contractor's website;
- (c) the Contractor does not warrant or guarantee that any change, addition, deletion, error correction, patch, Update or New Release will be compatible with any data entered by the Customer or any person permitted to enter data by the Customer, third party application, other software or interface that connects to or interfaces with the Supported Software that has been made by or on behalf of Customer. The Contractor will not be liable for any loss, damage or expense which Customer may incur as the result of any change, addition, deletion, error correction, patch, Update or New Release in any circumstances.

#### ASSISTANCE

**3.22** The Customer must provide reasonable assistance in remedying any Defect, including installing any Workarounds supplied by the Contractor and running any diagnostic tests. Where the Contractor requires remote access to the Supported Software to provide Software Support Services the Customer must provide that access, subject to the Contractor complying with the Customer security and privacy policies set out in Item 9 of the Head Agreement and 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 Software Support Services.

#### FIRST RELEASE

**3.23** If the Licensed Software or a New Release is a First Release, the Parties may agree additional terms and conditions or services that are required for that First Release, such agreement to be documented in the Order Documents or on a Change Request, as applicable.

## 4. Reseller Provision of Software Support Services

4.1 Where it is specified on the Module Order Form that the Software Support Services is 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 Software Support Services:

- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Software Support Services by the original IP owner or its authorised distributor to the Customer, in which case:
- (i) the Contractor will procure that the original IP owner or its authorised distributor enters into a contract directly with the Customer for the supply of the Software Support Services, and the provisions of the Customer Contract that relate to the supply of the Software Support Services, including provisions in this Customer Contract relating to intellectual property rights and the features, capabilities, performance or other characteristics of the Software Support Services and the other provisions of this Module (other than clause 5) do not apply. The terms of the contract between the original IP owner or its authorised distributor and the Customer for the supply of the Software Support Services will be:
    - (A) attached to the Customer Contract;
    - (B) available for the Customer to accept online from a website nominated by the Contractor (including the website of the original IP owner or authorised distributor); or
    - (C) in the form of a shrinkwrap agreement that is provided with the relevant part of the Supported Software (a copy of which is available in advance of delivery, upon request from the Customer),

and such contract will be deemed to have been reviewed by the Customer and entered into by the Customer and the original IP owner or authorised distributor (as stated in the contract) on the date when the Customer enters into the Customer Contract;
  - (ii) the Contractor will co-ordinate and manage the provision of the original IP owner's or distributor's (as applicable) Software Support Service, if any, that is to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Contractor;
  - (iii) the Customer must pay the Contract Price for the Software Support Services to the Contractor, and the Contractor must pay the amount agreed between the Contractor and the original IP owner or its authorised distributor for the relevant part of the Supported Software; or
- (b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Software Support Services to the Customer on the terms and conditions of the Customer Contract, except that:
- (i) clause 19.1(c) of Part 2 does not apply;
  - (ii) clauses 3, 6 and 7 of this Module do 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 IP owner 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 in respect of any Licensed Software are utilised to the benefit of the Customer; and
  - (B) all benefits of any original IP owner or its authorised distributor warranty services in respect of any Licensed Software are utilised to the benefit of the Customer.

**4.2** The Customer warrants to the Contractor that the Customer will comply with the terms of any contract between the Customer and the original IP owner or its authorised distributor (as applicable).

**4.3** The Contractor must provide any value added services that are set out in the Order Documents.

## 5. Ancillary Services

**5.1** The Parties may agree that other services, including implementation of Updates or New Releases and training 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 – Variations Procedures will apply.

## 6. Specific Warranties

### SCOPE

**6.1** The Contractor warrants that, subject to any Exception:

- (a) when providing the Software Support Services, it must:
  - (i) use appropriate materials of high quality;
  - (ii) employ appropriate techniques and standards;
  - (iii) exercise due care, skill and attention;
- (b) perform the Software Support Services in accordance with any Services Levels agreed in a Service Level Agreement, or if no Service Levels are agreed, it will perform Software 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 Software Support Services are appropriately qualified and experienced Personnel, and have reasonable knowledge of the Supported Software;
- (d) the Software Support Services shall ensure the Supported Software conforms in all material respects to the Contract Specifications and other requirements of this Customer Contract including any Service Level Agreement.

## 7. Exceptions

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

- (a) modifications to the Supported Software that were effected or attempted by a person other than the Contractor or its authorised representative;
- (b) equipment maintenance not provided by the Contractor or its authorised representative;
- (c) software other than the Supported Software;
- (d) the act, error, fault, neglect, misuse or omission of the Customer;
- (e) the operation of the Supported Software other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the original IP owner or the Contractor;
- (f) any Virus, denial of service attack or other malicious act that adversely affects the Supported Software, 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 Specification;
- (g) improper use or mismanagement by the Customer; or
- (h) an Event.

**7.2** Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect 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.



## Appendix 2 - Roles and responsibilities of Subcontractors

Name	Role	Responsibility
Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289)	Project Management and Structural Engineering	<ul style="list-style-type: none"> <li>• Provide Project Management services</li> <li>• Local representative of the Contractor at certain project meetings</li> <li>• Provide Site inspections</li> <li>• Liaising with the Key Contractor for structural works</li> </ul>
Jaroslav Kushnir (ABN [27 513 739 389])	Technical Manager	Delivery of technical management, in relation to design and detailed design workshops and management, report writing, Site inspections.
PCB Digital Pty Ltd (ABN 11 168 712 749)	Installation, support and Maintenance	<ul style="list-style-type: none"> <li>• Provide assistance with installation of the LED video wall and be trained to support it.</li> <li>• Provide secondary support for the LCD solution.</li> </ul>
Busy Integration Pty Ltd (ABN 30 612 886 049)	Installation , support and Maintenance	<ul style="list-style-type: none"> <li>• Provide assistance with installation of the LCD video walls, and be trained to support them.</li> <li>• Provide secondary support for the LED solution.</li> </ul>
Extron Australia Pty Ltd (ABN 35 089 691 261)	Supplier of control system and cabling	Responsible for the manufacture and supply of control system and cabling.
Eyevis GmbH	Supplier of Video Wall Management System	Responsible for the manufacture and supply of video wall management system.
NanoLumens	Supplier of LED display	<ul style="list-style-type: none"> <li>• Responsible for the manufacture and supply of the LED displays.</li> <li>• Responsible for design engineering, installation and commissioning support.</li> <li>• Provide training to PCB Digital and the Customer to enable them to correctly maintain NanoLumens LED display without voiding the warranty.</li> </ul>
Panasonic Australia Pty Ltd ABN 83 001 592 187	Supplier of LCD screens	Responsible for the manufacture and supply of LCD screens.



### Appendix 3 - Roles and responsibilities and Specified Personnel

#### Contractor roles, responsibilities and Specified Personnel

Name	Role	Responsibility
Gerhard (Kim) Kimenkowski	Project Executive	<ul style="list-style-type: none"> <li>a. Overall successful performance of the project within schedule and budget;</li> <li>b. Overall project management activities (planning, organising, controlling);</li> <li>c. Attending Management Committee Meetings;</li> <li>d. Managing the Contractor team on-site/off-site;</li> <li>e. Managing Change Requests;</li> </ul>
Jaroslav (Jerry) Kushnir	Technical Manager	<ul style="list-style-type: none"> <li>a. Participation and action item processing in workshops with the Customer and System Integrator;</li> <li>b. Support of integration and integration validation.</li> </ul>
John Kimenkowski	Technical Supervisor	<ul style="list-style-type: none"> <li>a. Participation and action item processing in workshops with the Customer and System Integrator;</li> <li>b. Support of integration and integration validation.</li> <li>c. Supports development of technical and operational documentation</li> <li>d. Supports development of plans, procedures, and activities</li> <li>e. Stays current with technological developments related to computer hardware, software, and networks</li> </ul>
Lena Kimenkowski	Project Owner	<ul style="list-style-type: none"> <li>a. First point of contact for all project issues</li> <li>b. Project Management committee member</li> <li>c. Support the Project Executive to protect and enhance the commercial position of the project.</li> <li>d. Work within the commercial guidelines applicable to the project.</li> <li>e. The financial planning and monitoring of the project</li> <li>f. Lead the commercial aspects of contract negotiations and disputes</li> <li>g. Ensure that contract obligations are understood by the site team.</li> </ul>

Name	Role	Responsibility
Thomas Willetts	Project Manager	<ul style="list-style-type: none"> <li>a. Lead action item processing in workshops with the Customer and System Integrator;</li> <li>b. Plan the process and understand the timing of each stage</li> <li>c. Resource Allocation</li> <li>d. Managing and allocating tasks to relevant managers</li> <li>e. Setting benchmarks to monitor progress</li> </ul>
Chris Slater	Structural Engineer	<ul style="list-style-type: none"> <li>a. Structural Engineering Services;               <ul style="list-style-type: none"> <li>i. Detail of the framing system for the OVDS,</li> <li>ii. the hanging point centres and their reaction loads</li> <li>iii. total weight of the OVDS</li> </ul> </li> </ul>
Kathie Touton	Design Manager	<ul style="list-style-type: none"> <li>a. Managing the design process using commercial, contractual, programme/time awareness and technical expertise</li> <li>b. Supporting, understanding and advising the client</li> <li>c. Ensuring the design process recognises current legislation, standards and codes of practice</li> <li>d. Ensuring design information is of the right quality and keeps pace with project timescales</li> <li>e. Striving to eliminate health and safety risks in the design and financial risks during construction.</li> </ul>
Lenny Morrill	Project Engineer	<ul style="list-style-type: none"> <li>a. Prepare, schedule, coordinate and monitor the assigned engineering projects</li> <li>b. Monitor compliance to applicable codes, practices, QA/QC policies, performance standards and specifications</li> <li>c. Interact daily with the clients to interpret their needs and requirements and represent them in the field</li> <li>d. Assign responsibilities and mentor project team</li> <li>e. Review engineering deliverables and initiate appropriate corrective actions</li> </ul>
Stephen Rubie	DPS – Director	<ul style="list-style-type: none"> <li>a. Supporting site validation progress</li> <li>b. Partaking in meetings relating to LED (if required)</li> </ul>
Gerry Thorley	DPS – Director	<ul style="list-style-type: none"> <li>a. Supporting site validation progress</li> <li>b. Partaking in meetings relating to LED (if required)</li> </ul>

**Customer roles and responsibilities**

<b>Name</b>	<b>Role</b>	<b>Responsibility</b>
Anthony Eid	Executive Director	Oversight ROC
Andrew Parker	Associate Director Infrastructure	Oversight of Commercial negotiations and management of ROC Agreements
Jason Galer	Commercial Manager	Oversight of the Contract for the Project
Reuben Bowd	Senior Legal Counsel	Oversight of the legal issues arising from the ROC Program and the Project.

**Appendix 4 – Initial Project Schedule**

# ANNEXURE A TO THE GENERAL ORDER FORM

## ADDITIONAL CONDITIONS

### 1. Definitions

#### 1.1 In these Additional Conditions:

**Customer Environment** means the equipment, software, systems and other infrastructure owned, leased or licensed by the Customer with which the System must integrate, be compatible with and interoperate.

**Due Dates** means the date an obligation must be performed under the Customer Contract, as extended in accordance with the terms of the Customer Contract.

**Interfacing Contractor** means a person who supplies goods, services or other inputs with whom the Contractor must interface or interact to supply the Deliverables or otherwise as part of completing the project described in the PIPP or the Recurring Services.

**SOP Act** means the Building and Construction Industry Security of Payment Act 1999 (NSW).

**Subcontractor's Statement** means a "written statement" meeting the requirements of section 175B of the *Workers Compensation Act 1987* (NSW), Part 5B section 31G-31J of the *Pay-roll Tax Act 1971* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW).

**System** means the operational visual display system consisting of the Products and ancillary items as described in the Contract Specifications and includes all Updates and New Releases of any such items.

#### 1.2 All other capitalised terms in this these Additional Conditions have the meaning given to them in Part 3 of the Customer Contract.

### 2. Typographical error

#### 2.1 The Parties acknowledge that there is a typographical error in the definition of "Customer Contract" in Part 3 (Dictionary) and agree that for the purposes of the Customer Contract, the reference to 'clause 3.6' in that definition is replaced with 'clause 3.8'.

### 3. Third party warranties

#### 3.1 Where the Contractor supplies Services that it procures from third parties, or where the Products incorporate material, components, parts, items or consumables obtained from a third party, the Contractor must assign to the Customer, to the extent permitted by law, the benefits of any warranties given by such a third party.

#### 3.2 The Contractor must ensure that the warranties required under the immediately preceding paragraph 3.1 are directly enforceable by the Customer. If a warranty is not directly enforceable by the Customer, the Contractor must novate the benefit of the warranty to the Customer immediately after the warranty is granted to the Contractor.

#### 3.3 After the Customer is granted or assigned a warranty under paragraph 3.1 above:

- (a) if requested by the Customer's Representative, the Contractor must enforce the warranty on behalf of the Customer as required to perform its obligations to rectify Defects under this Contract;

- (b) the Contractor may retain any compensation it recovers from the relevant subcontractor or supplier for breach of the warranty to the extent the Contractor has paid or pays compensation to the Customer in respect of the same matter; and
- (c) to the extent permitted by law, the Contractor must indemnify the Customer from and against all claims, action, demands, or proceedings brought against, or loss suffered or incurred by, the Customer as a result of any act or omission of the Contractor on behalf of the Customer.

**3.4** Assignment of any third party warranties is in addition to the warranties given by the Contractor under the Contract and does not relieve the Contractor of its own obligations under the Contract.

## **4. Compatibility and interoperability**

**4.1** The Contractor must ensure that:

- (a) the System that it supplies meets the requirements relating to compatibility and interoperability specified for that System in the Contract Specifications;
- (b) the System that it supplies is compatible with, and is capable of being integrated and interoperating with the Customer Environment through either:
  - (i) through either standard interfaces or interfaces developed in accordance with standard industry practices and methodologies; and
  - (ii) without causing any outage, interruption or degradation of any component of the Customer Environment; and
- (c) all New Releases and Updates of any components of the System supplied by the Contractor under the Customer Contract are compatible with, and do not cause any outage of, or degradation in the performance of the other components of the System or the Customer Environment.

## **5. Personnel**

**5.1** The Contractor must:

- (a) only use Personnel who have received training on the applicable requirements for supplying the Deliverables, including compliance with all applicable Customer policies;
- (b) ensure that all Contractor Personnel involved in the supply of the Deliverables are fluent in, and communicate with the Customer in, English;
- (c) ensure that all Contractor Personnel involved in the supply of the Deliverables are properly trained, certified and accredited to supply the Services and Deliverables ; and
- (d) ensure that all Services are provided by qualified Contractor Personnel, will be performed in a manner that is diligent, professional, workman like, in accordance with good industry practice and does not void any applicable warranty provided by any manufacturer of the Deliverables.

## 6. Step in

### 6.1 If:

- (a) the Contractor ceases to, or is unable to, supply any of the Deliverables or perform any of the Services (other than as a result of expiry or termination of the Contract); or
- (b) the Contractor or any of its Personnel breaches the Contract and that breach, in the opinion the Customer, impacts the continuity of supply of the Deliverables or the Services or materially impacts the ability of the Customer to perform any of its business activities including that of the ROC Program,

the Customer may, by giving notice to the Contractor, step-in and supply any of the affected Deliverables or Services itself or procure a third party to do so (**Step In**).

### 6.2 If a Step In occurs, the Contractor must fully co-operate with the Customer, any of the Customer's representatives and any third party engaged by the Customer, at no cost to the Customer to:

- (a) ensure that access to all resources and materials that form part of the Deliverables or that are necessary for the performance of the Services are provided; and
- (b) ensure that all necessary materials in relation to warranties by any manufacturer of the Deliverable is sufficiently passed on.

### 6.3 If a Step In occurs, the Customer will not be liable to pay the Contractor any charges for the relevant Deliverables or Services to which the Step In applies for the duration of the Step In.

## 7. Co-operation

### 7.1 The Contractor must establish relationships and arrangements with all other Interfacing Contractors through which they:

- (a) work together;
- (b) co-ordinate their activities;
- (c) co-operate fully and comprehensively with each other;
- (d) interface their operations in a manner which is seamless;
- (e) integrate the services they each supply;
- (f) establish integrated processes which preserve their responsibility for the services they supply and ensure delivery of service level requirements; and
- (g) agree the scope of obligations and interactions needed to minimise the need for the Customer to be involved in resolving service problems or managing their relationships,

**(Integration Outcomes).**

### 7.2 The Contractor must:

- (a) provide the Customer and each Interfacing Contractor (as applicable) all co-operation and assistance requested by the Customer or an Interfacing Contractor (as applicable), including by:

- (i) working with the Customer and Interfacing Contractors to facilitate the discharge of end-to-end service obligations and the meeting or exceeding of end-to-end service levels; and
  - (ii) providing the Customer and each Interfacing Supplier with access to materials and other resources; and
- (b) do all other things necessary,

to achieve the Integration Outcomes and to ensure that all services and deliverables (including the Deliverables) supplied to the Customer by the Contractor and each Interfacing Contractor, are supplied in a coordinated, effective and timely manner.

## 8. Security of Payment

### PAYMENT CLAIMS

8.1 To the extent that an invoice is a 'payment claim' under the SOP Act:

- (a) that payment claim must meet the requirements of clause 11 of the Customer Contract;
- (b) the Customer must, within 10 Business Days after receiving that payment claim, give to the Contractor a 'payment schedule' or a 'notice of dispute' meeting the requirements of the SOP Act;
- (c) the due date for payment will be 15 Business Days after the date on which the Customer receives a valid payment claim which meets the requirements specified in the Customer Contract; and
- (d) if a payment schedule or notice of dispute issued by the Customer under the SOP Act disputes the amount of an invoice which is a payment claim, clause 11.11 of the Customer Contract will not apply and the parties will follow the dispute process under the SOP Act.

### SUSPENSION

8.2 If a subcontractor of the Contractor suspends supply of the whole or any part of the Services or the Deliverables pursuant to the SOP Act:

- (a) the suspension will not relieve the Contractor from its obligations to meet the Due Dates unless, and to the extent that, the Due Dates are varied in accordance with the Customer Contract; and
- (b) the Customer may (in its absolute discretion):
  - (i) direct the Contractor to omit the whole or part of the suspended work from the subcontractor's scope of work and the Contractor may engage others to supply the suspended Services or Deliverables; or
  - (ii) pay the subcontractor such money that is or may be owing to the subcontractor in respect of the applicable Services or Deliverables, and any amount paid by the Customer will be a debt due from the Contractor to the Customer.
- (c) If the Customer becomes aware that a subcontractor of the Contractor is entitled to suspend work pursuant to the SOP Act:



- (i) the Customer may (in its absolute discretion) pay that subcontractor the amount that is or may be owing to the subcontractor in respect of those Services or Deliverables; and
- (ii) any amount paid by the Customer will be a debt due from the Contractor to the Customer.

## NOTIFICATION

### 8.3 If:

- (a) a SOP Act applies to any aspect of the Contractor's (or any of its subcontractor's) performance of its obligations under the Customer Contract; and
- (b) any notice or documents are issued under or relating to the SOP Act (**SOP Documents**),

the Contractor must ensure that, within one Business Day after any SOP Documents are given by, or received by, the Contractor, a copy of those SOP Documents is given to the Customer.

- 8.4 The Contractor must notify and provide the customer with details of any notices, claims, demands and orders, applications for adjudication or any other court documentation that it receives from a subcontractor arising out of or in connection with the Services or the Deliverables or has been required to supply to a subcontractor under s 15(1) of the *Contractors Debts Act 1997* (NSW).

## SECURITY OF PAYMENT

- 8.5 For the purpose of section 17(3) of the SOP Act, the Contractor agrees to appoint the Institute of Arbitrators & Mediators Australia as the Adjudication Nominating Authority (as defined in the SOP Act).

### 8.6 The Contractor acknowledges that:

- (a) the Customer may be served with a notice purporting to be a 'payment withholding request' by any person under s 26A of the SOP Act;
- (b) if the Customer is served with a notice purporting to be a 'payment withholding request' by any person under s 26A of the SOP Act, then the Customer may withhold any payment due to the Contractor under the Customer Contract in compliance with the purported 'payment withholding request'; and
- (c) any withholding of payment as a result of clauses 8.6(a) and 8.6(b) will not constitute a breach of the Customer Contract by the Customer or a frustration of the Customer Contract and will not entitle the Contractor:
  - (i) to terminate the Customer Contract;
  - (ii) to suspend the performance of its obligations under the Customer Contract; or
  - (iii) to make any claim or take any other action,

irrespective of whether or not the 'payment withholding request' is valid.

## 9. CPI Indexation

- 9.1 Where the Schedule of Prices provides that any rate or price is subject to CPI indexation, this clause will apply.
- 9.2 A reference to "CPI Indexed" after a monetary amount in this Contract means that the amount will be indexed for movements in the CPI on and from the date following the yearly anniversary of the Award Date (CPI Adjustment Date) in accordance with the following formula:

$$A \text{ (CPI Indexed)} = A \times \frac{CPI_{q-2}}{CPI_{Base}}$$

Where:

**A** is the monetary amount originally specified in this Contract;

**CPI** means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS), or as otherwise determined in accordance with paragraph (b);

$CPI_{q-2}$  is the last CPI published prior to the CPI Adjustment Date; and

$CPI_{Base}$  is the last CPI published prior to the Award Date.

- 9.3 If the CPI 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 Principal's Representative and any necessary consequential amendments are to be made.

## 10. Subcontractor's Statement

- 10.1 The Contractor must provide the Customer with a completed Subcontractor's Statement for each calendar quarter during the Contract Period. The Subcontractor Statement is to be provided at the end of each calendar quarter during the Contract Period or as otherwise reasonably requested by the Customer.
- 10.2 For the avoidance of doubt, if the Contractor fails to comply with clause 9.1 of these Additional Conditions, the Customer may in its sole discretion, and without limiting any of its other rights under the Customer Contract, withhold making any payments which would otherwise be due and payable under the Customer Contract, until such time as the Contractor corrects or remedies such failure.

## 11. Subcontractor and Subcontractor's Personnel

- 11.1 The Contractor may, with written consent from the Customer, use suitably qualified subcontractors to supply the Deliverables.
- 11.2 For the avoidance of doubt, the Contractor is solely responsible for the supply of the Deliverables, and ensuring the suitability of the subcontractor or any of its Personnel from supplying the Deliverables.

## 12. Hardware Support and Maintenance Services and Software Support Services

- 12.1 The Contractor and the Customer have substantially agreed the terms and conditions that will govern the supply of Hardware Support and Maintenance Services and Software Support Services in drafts of Module Order Forms 2 and 5 respectively, should the Customer elect to purchase such services.
- 12.2 The parties acknowledge that, if at any time, by giving the Contractor 5 Business Days written notice, the Customer elects to procure Hardware Maintenance Services and/or Software Support Services under this Customer Contract, the relevant draft Module Order Forms will be executed by the parties whereupon Modules 2 and/or 5 respectively, and the corresponding Module Order Forms, will form part of this Customer Contract.
- 12.3 The agreed draft Module Order Forms are attached to the PIPP.

## 13. Liability under specific legislation

- 13.1 The Contractor indemnifies the Customer against all liabilities, losses, damages and expenses suffered or incurred by the Customer or any of its Personnel relating to section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) or Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) or any similar, equivalent or replacement laws, relating to the Contractor's, or any of its Personnel's failure:
- (a) to pay all necessary payroll tax;
  - (b) to pay any remuneration; or
  - (c) to pay any workers compensation insurance premiums which are payable for any work done in connection with the Customer Contract.

## 14. Delay costs

- 12.1 The parties acknowledge and agree that the Customer's total liability to pay damages, costs and expenses under clause 6.26 of the Customer Contract shall not exceed 10% of the Contract Price.

## 15. Specific Variations to Part 2 of ProcureIT

- 15.1 On and from the Commencement Date, Part 2 of ProcureIT Version 3.1 'Customer Contract' is varied as follows:
- (a) clause 12.3 is deleted and replaced with the following:

**12.3** *If there is any abolition or deduction 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.'*

# PROCURE IT FRAMEWORK

VERSION 3.1

**PART 3: 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 the Acceptance Test must provide the other Party with written notice of the result 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 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 date the Deliverable is accepted or is deemed accepted by the Customer and occurs on the date stated in 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 if they include a variation to a Protected Clause, that variation requires the approval of the Director General, NSW Department of Finance and Services in accordance with clause 3.2(b) of the Customer Contract (Part 2).
- 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 (Part 2).
- 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 (Part 2) (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 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.
- 1.15 Business Day** means any day that is not Saturday, Sunday or a public holiday in New South Wales.
- 1.16 CCA** means the *Competition and Consumer Act 2010* (Cth).
- 1.17 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.
- 1.18 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.
- 1.19 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.
- 1.20 Confidential Information** means information that:
- (a) is by its nature confidential; or
  - (b) is communicated by the disclosing party to the confidant as confidential; or
  - (c) the confidant 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 any Party;
- (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 Contractor's possession relating to the State public service,

but excludes any information which the confidant can establish was:

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

**1.21 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.

**1.22 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.

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

**1.24 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 (Part 2).

**1.25 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.

**1.26 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.

**1.27 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 (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 (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.

**1.28 Contract Variation** means a variation to the terms and conditions of the Customer Contract that requires the consent of the Director General, NSW Department of Finance and Services in accordance with clause 26.2 of the Customer Contract (Part 2).

**1.29 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).

**1.30 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.

- 1.31 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.
- 1.32 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.
- 1.33 Customer Contract** means those Parts, terms and conditions and other documents listed in clause 3.6 of Part 2.
- 1.34 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.
- 1.35 Cyberterrorism** means an assault on any electronic communications network.
- 1.36 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.
- 1.37 Defects List** means a written notice stating details of the actual results of the Acceptance Test, and for any alleged defect(s) in the specific requirement(s) of the Customer Contract that is not met and a statement as to whether the alleged defect is Minor. The Defects List is not required to include the cause of the defect.
- 1.38 Deliverable** means any Product, Service or output from any Service that is required to be provided to the Customer under the Customer Contract.
- 1.39 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.
- 1.40 Due Date** means the date by which an LD Obligation must be met, as stated in Item 21 of the General Order Form.

- 1.41 Eligible Customer** means any NSW Government Body or Eligible non-Government Body.
- 1.42 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);
  - (h) any contractor to a public authority (but only in respect of things done as such a contractor);
- 1.43 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 Part 2 unless otherwise agreed by the Parties.
- 1.44 Escrow Materials** means the source code and/or object code of any software Deliverable 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 software Deliverable and any necessary development tools to keep the Deliverables in good order and repair that are stated in Item 23 of the General Order Form.
- 1.45 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.
- 1.46 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.

- 1.47 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.
- 1.48 Financial Security** means the security in Item 38 of the General Order Form which is in substantially the form of Schedule 10 to Part 2.
- 1.49 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.
- 1.50 General Order Form** means Schedule 1 to Part 2 that includes the Order Details that are relevant to that Customer Contract.
- 1.51 Government Agency means any of the following:**
- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013*)
  - (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),
  - (d) any State owned corporation prescribed by the regulations.
- 1.52 GST** has the same meaning as in the GST Law.
- 1.53 GST Law** means any law imposing or relating to a GST and includes *A New Tax System (Goods & Service Tax) Act (Cth)*, *A New Tax System (Pay As You Go) Act 1999* and any regulation based on those Acts.
- 1.54 Hardware** means the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices.
- 1.55 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.
- 1.56 Head Agreement Details** means those details stated in Annexure 1 to Part 1.
- 1.57 Head Agreement Documents** means the documentation listed in Annexure 2 to Part 1.
- 1.58 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 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.

**1.59 Install** means to set up the Hardware so that the manufacturer's installations tests can be completed successfully.

**1.60 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.

**1.61 Information Privacy Principle or IPP** means the Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Protection Act 1998 (NSW)*.

**1.62 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.

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

**1.64 Material** means any Document or other thing in which Intellectual Property Rights subsist.

**1.65 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 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.
- 1.66 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.
- 1.67 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.
- 1.68 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 are stated in Part 4.
- 1.69 Module Order Form** means a document that includes the Order Details that are relevant to the particular Module. The Module Order Forms are stated in Part 5.
- 1.70 Moral Rights** means a person's moral rights as defined in the *Copyright Act 1968 (Cth)*.
- 1.71 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.
- 1.72 Nominee Purchaser** means a contractor to a Customer that is authorised to enter into the Customer Contract as the Customer's agent.
- 1.73 Non-Recurring Services** means Services which are provided by the Contractor under any of the following Modules:
- (a) Module 4 – Development Services;
  - (b) Module 13– Systems Integration Services; and
  - (c) Module 14 – Hosting Services

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

- (d) Module 6 – Contractor Services
- (e) Module 7 – Professional Services;
- (f) Module 8- Training Services
- (g) Module 12- Managed Services;

**1.74 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.

**1.75 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 Contractor.

**1.76 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 Part 2;
- (b) any document referred to in, or based on, any Schedule to Part 2; and
- (c) one or more Modules and their relevant Module Order Forms.

**1.77 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.

**1.78 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.

**1.79 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.
- 1.80 Performance Guarantee** means a document substantially in the form of Annexure 5 to the Head Agreement or Schedule 9 to Part 2 (as applicable).
- 1.81 Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.82 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.
- 1.83 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.
- 1.84 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.
- 1.85 Procure IT Framework** means the suite of pro forma documents described in clause 1 of the Customer Contract and clause 1 of the Head Agreement that provide the framework for the procurement Products and Services as represented by each of the Parts.
- 1.86 Product** means Hardware and Licensed Software only.
- 1.87 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.
- 1.88 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 3.6 to 3.10);
- (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 26.17).

**1.89 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 Services
- (d) Module 12– Managed Services;

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

- (e) Module 6 – Contractor Services
- (f) Module 7 – Professional Services;
- (g) Module 8- Training Services
- (h) Module 10 X as a Service
- (i) Module 14 Hosting Services

**1.90 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).

- 1.91 Reseller** means any entity who provides Products or Services but:
- (a) is not the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service; or
  - (b) is not a Related Company of the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service.
- 1.92 Schedule** means a schedule to Part 2.
- 1.93 Service** means any item or thing to be provided under a Customer Contract that is not a Product, including the services provided under the Modules that provide for Hardware Maintenance and Support Services, Development Services, Software Support Services, IT Personnel, Professional Services, Training Services, Data Migration, X as a Service, Telecommunications Services, , Managed Services, Systems Integration Services.
- 1.94 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.
- 1.95 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 Part 2.
- 1.96 Service Levels** means the minimum performance levels to be achieved by the Deliverable, as specified in a Service Level Agreement.
- 1.97 Short Tem Recurring Services** means Recurring Services that are stated to be provided for a period of 12 months or less in the Order Documents at the Commencement Date.
- 1.98 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.
- 1.99 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).
- 1.100 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.

- 1.101 Stage** means one or more Milestones that are identified as a stage in the Project, Implementation and Payment Plan.
- 1.102 State** means the State of New South Wales.
- 1.103 Statement of Requirements** means the Customer's statement of any requirements that the Contractor must fulfil in respect of the Deliverables which may include all relevant instructions, information, data, documents, specifications, plans, drawings and other materials and particulars.
- 1.104 Statutory Requirements** means the Australian laws, regulation or by-laws relating to the performance of the Party's obligations under the relevant Part.
- 1.105 Subcontractor** means a third party to which the Contractor has subcontracted the performance or supply of any Services.
- 1.106 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.
- 1.107 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.

- 1.108 Tax Invoice** has the same meaning as provided for in the GST Law.
- 1.109 Taxable Supply** has the same meaning as provided for in the GST Law.
- 1.110 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.
- 1.111 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.
- 1.112 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 Deliverable's Contract Specifications, but does not include any code, mechanism or device that is included in the software by the licensor for the purpose of managing the licensed use of the software.
- 1.113 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.
- 1.114 Workaround** means a fix or alternative procedure to temporarily address a Defect.

## INTERPRETATION

- 1.115** 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 Part 2, then this is a reference to clause 3 in Part 2 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) If an agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.
  - (c) A singular word includes the plural, and vice versa.
  - (d) The words “include(s)” and “including” are not words of limitation.
  - (e) 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.
  - (f) Where there is an obligation that requires the completion of 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.
  - (g) 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.
  - (h) 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.
- 1.116** Headings are for the purpose of convenient reference only, and do not affect interpretation of the document in which they appear.

# 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
<b>Agreed Terms (clause 1.8)</b>	
<p>Spares Availability Period is the period within which spares must be available in accordance with clause 4.</p> <p>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.</p>	<p>As specified in the PIPP and in Appendix A to this Module Order Form.</p> <p>In addition to the information contained in Appendix A to this Module Order Form, the Contractor must provide written notification to the Customer regarding the end of life of any spares that are part of the Deliverables listed in the PIPP, at the earlier of the spares reaching 12 months from end of life or the Contractor becoming aware of the end of life of the spares.</p> <p>For avoidance of doubt, spares must be available for the duration of the period for which the Hardware Maintenance and Support Services and Software Support Services are required to be provided by the Contractor under the Customer Contract.</p> <p>Contractor must, as part of the support services, be responsible for the management and replacement of the spares. The management of spares and organising of the replacement is part of the Hardware Maintenance and Support Services and will not incur additional costs to the Hardware Maintenance and Support Services payments made by the Customer.</p>

### Box 2 Delivery

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
<b>Delivery (clause 2.1)</b>	
<p>Specify if the Contractor is required to:</p> <p>(a) Install the Hardware</p>	<p>The Contractor must Install the Hardware (including the provision of relevant documentation such as product specifications and user manuals for each item of Hardware</p>

(b) demonstrate its use. [If this Box is not completed the Contractor must install the Hardware and demonstrate its use.]	listed in the PIPP and any design requirements under Deliverables as contained in the PIPP) and demonstrate its use.
<b>Delivery (clause 2.2)</b>	
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
<b>Risk and Title (clause 2.4)</b>	
Specify when title to the Hardware passes.  [If this Box is not completed title to the Hardware passes in accordance with clause 2.4(a).]	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
<b>Additional Capacity or Features (clause 2.7)</b>	
Specify the Prices for any additional capacity or features that can be activated by the Customer.  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.	All features for the Deliverables made available by the Contractor for the Customer, for the avoidance of doubt, have no applicable additional costs.

**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
<b>Additional Capacity or Features (clause 2.8)</b>	
Specify if the Hardware and/or Machine Code has a restricted use in a manner described in clause 2.9, e.g. the hardware is to be used only as a test machine.	No restrictions are applicable.

**Box 6 Ancillary Services**

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
<b>Ancillary Services (clause 2.9)</b>	
Specify if the details of any Installation services the Contractor is to provide, the Prices and when payment is due.	As specified in the PIPP.
Specify the details of any training services the Contractor is to provide, the Prices and when payment is due.	As specified in Module 8 Order Form - Training Services and the PIPP.

**Box 7 Business Models of the Reseller**

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
<b>Acquisition through a Reseller (clause 3.1)</b>	
<p>Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller?</p> <p>If yes:</p> <p>(a) specify if the Hardware and/or Machine Code are supplied by the Contractor who is acting as Reseller as Facilitator.</p> <p>[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).]</p>	Yes, the Hardware and/or Machine Code are being supplied by the Contractor in the capacity as Reseller with Pass Through Warranties.

<b>OR</b>	
<p>(b) specify if the Hardware and/or Machine Code are supplied by the Contractor who is acting as Reseller with Pass Through Warranties.</p> <p>[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).]</p>	As above.

### Box 8 Value Add Services

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
<b>Acquisition through a Reseller (clause 3.3)</b>	
Specify if the details of any value add 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
<b>Availability of Hardware and Spares (clause 4.2(b))</b>	
<p>Specify if the details of:</p> <p>(a) any training or other services the Contractor is to provide to assist the Customer use the Hardware;</p> <p>(b) any spares provided for the Hardware during the Contract Period;</p> <p>(c) the Prices and when payment is due.</p> <p>[If this Box is not completed no such training is provided.]</p>	<p>As specified in the PIPP, Module 8 Order Form and outlined below.</p> <p>Training to assist the Customer use the Hardware will be provided as specified in Module 8 Order Form, or as otherwise agreed in writing from time to time.</p> <p>The Contractor will supply the spares as specified in Box 1 of this Module Order Form.</p> <p>Additionally, the Contractor must supply and maintain the NanoLumens spares kit (as listed in Appendix B to this Module Order Form) at no cost to the Customer, for a minimum of 6 years,</p>



	or as otherwise agreed with the Customer. The Contractor must liaise with NanoLumens so that the spares kit will always be fully replenished.
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### Box 10 Warranties

Details to be included from Module 1	Order Details agreed by the Contractor and the Customer
<b>Scope (clause 5.1(c))</b>	
Specify the Customer's hardware and software environment with which the Hardware and/or Machine Code must be compatible in accordance with clause 5.1(c). [Note: Include the model and make of hardware, name and version of software.]	As specified in the PIPP, the Agreement Documents and in the Appendix C to this Module Order Form.
<b>Scope (clause 5.1(e))</b>	
Specify the extent to which the Hardware is required to be scalable. [Note: For example insert the extent to which the Hardware has to support additional usage over a defined time period.]	In addition to any scalability requirements in the Agreement Documents, the Hardware must be able to receive a minimum of number of source systems, as agreed during the Detailed Design stage of the Deliverables.

## Appendix A - Spares and Spares Availability List

Description	Supplier	Quantity recommended	Availability Period	Location of spares held
NanoLumens spares kit* see below	NanoLumens	1	6 years (70 months)	Customer's Site
Redundant netPIX chassis	Eyevis	1	24 months	As above
Output cards	Eyevis	3	24 months	As above
Input cards	Eyevis	2	24 months	As above
Spare DVI fibre extender sets	Eyevis	3	24 months	As above
Spare USB fibre extender sets	Eyevis	1	24 months	As above
Panasonic LCD screen	Panasonic	2	7 years (84 months)	As above
ECS	Eyevis	1	24 months	As above

## Appendix B - List of components of NanoLumens spares kit

Name of product	Quantity
Nixels	80
Receive cards	15
Send cards	2
Power supplies	15
Cat 5 and cat 6 shielded cables	10
Fibre transceivers	2 sets

**Appendix C - Hardware and Software environment and warranty information**

Warranties will be appended on completion of Detailed Design.

<b>Name of Hardware/Machine Code</b>	<b>Model and make of Hardware</b>	<b>Version of Software</b>	<b>Warranty information</b>
[insert]	[insert]	[insert]	[insert]

# Module 1 - Hardware Acquisition and Installation

Version 3.1

## TABLE OF CONTENTS

1. AGREED TERMS AND INTERPRETATION .....	1
2. SUPPLY OF HARDWARE .....	1
3. ACQUISITION THROUGH A RESELLER .....	3
4. AVAILABILITY OF HARDWARE AND SPARES .....	5
5. SPECIFIC WARRANTIES .....	5
6. EXCEPTIONS.....	7

### [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]

## 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 Contactor 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 describe 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 describe 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 Part 3 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; and
  - (b) demonstrate the use of the Hardware.

- (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 on 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 Part 2, 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;
  - (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 in 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 2.9 to 2.12) 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;
  - (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 Part 2 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);
  - (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 month's 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 Services Level Agreement, or if no Service Level Agreement is agreed, it must be done in a reasonable time, taking in 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 9 of the Head Agreement and 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 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 require 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, but 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, but 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 require to rectify the Defect;
- (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 Part 2 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 the result of:

- (a) fair wear and tear;
- (b) not implementing any mandatory engineering changes as specified by the Contractor;
- (c) damage arises 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 Specification;
  - (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;
  - (k) an 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.

# MODULE ORDER FORM

## MODULE 3 – LICENSED SOFTWARE

### Box 1 Approved Purpose

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Agreed Terms (clause 1.1)</b>	
<p>Specify what purpose is the Licensed Software used for.</p> <p>If no other purpose is specified in this Box the Approved Purpose is the internal processing of the Customer's own data.</p>	<p>The purpose that the Licensed Software is used for is contained in the table in Appendix A to this Module Order Form.</p> <p>The Approved Purpose is the use of the Licensed Software for the Customer's operational and business purposes, including the purposes contained in the table in Appendix A.</p>

### Box 2 Class of Licence

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Agreed Terms (clause 1.2)</b>	
<p>Specify the specific rights that are granted by the Contractor to the Customer to use the Licensed Software.</p> <p>The Class of Licence defines the Price, e.g. If the Licensed Software is licensed for X "Named Users", the Class of Licence must define what a "Named User" is.</p> <p>Examples of the types of issues that are included in the Class of Licence include:</p> <ul style="list-style-type: none"> <li>(a) the Licence Period;</li> <li>(b) number and type of user;</li> <li>(c) number, type or capacity of Hardware; or</li> <li>(d) any other licence restriction/right.</li> </ul> <p>Also specify whether the Customer is granted the right to transfer the Licensed Software to an outsourcer in accordance</p>	<p>The Contractor grants to the Customer an irrevocable, perpetual, royalty-free, non-exclusive, sub-licensable right to use the Licensed Software for the Approved Purpose</p> <p>The Customer may make a reasonable number of copies of the Licensed Software and Documentation including for the specific purposes of ordinary use, testing, training and/or backup of the Licensed Software.</p> <p>The Customer may transfer the Licensed Software in accordance with clause 2.17.</p> <p>Further details relating to the Licensed Software are set out in the PIPP.</p>

with clause 2.17.

[Note: If this Box is not completed then the Contractor grants the Customer the default rights to use the Licensed Software and User Documentation as described in clauses 2.2 and 2.9 of Module 3.]

### Box 3 Designated Equipment

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Agreed Terms (clause 1.3)</b>	
<p>Specify the hardware platform/operating system combination upon which the Licensed Software is installed.</p> <p>[Note: Specify the type and version number of the operating system and capacity/model of the Hardware, especially if the Class of Licence is based on type or size of capacity of the Hardware.]</p>	<p>Hardware platform and operating system combination are outlined in Appendix B.</p> <p>In addition to the table in Appendix B, as part of the Deliverables, the Contractor must provide to the Customer 6 tablets. The Customer may only use these tablets for the purposes of operating the OVDS. The Contractor must ensure all tablets provided are fit for purpose and have the required Licensed Software pre-installed.</p>

### Box 4 Third Party Components

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Agreed Terms (clause 1.14)</b>	
<p>Third Party Components</p> <p>Specify if the details of any software components, plug-ins and other programs are owned by third parties.</p> <p>This should include name and version number of each Third Party Component.</p> <p>Specify if the Third Party Components are supplied by the Contractor:</p> <p>(a) as part of the Licensed Software; or</p> <p>(b) as a Reseller (in which case Box 11 must be completed)</p> <p>[Note: See clause 2.7 for details.]</p>	<p>Eyevis eyeCON V5</p>

[Note: Open source software is not included within the definition of Third Party Component.]

### Box 5 Extension of Period to Notice to Renew Licence

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

### Box 6 Installation

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Installation (clause 3.1)</b>	
<p>Specify if the Contractor is responsible to install the Licensed Software.</p>	<p>The Contractor, if required by the Customer, will install the Licensed Software on the Designated Equipment and/or the Customer's hardware (including computers). The Contractor must support the installation of the Licensed Software on the Designated Equipment, if the Customer is performing the installation process.</p> <p>For the Nominated Software, EyeCON, will be pre-installed on the supplied equipment (Netpix).</p> <p>Extron link licence will be pre-installed on the tablets supplied by the Contractor.</p>
<p>If the Contractor is responsible for installation of the Licensed Software:</p> <p>(a) specify the details of the</p>	<p>If the Customer requires the Contractor to install the Licensed Software, the Contractor will perform the Installation process in accordance with the Project Schedule or as otherwise</p>



<p>Installation and the date of installation; and</p>	<p>agreed with the Customer in writing.</p> <p>During the Project, if the Customer chooses to perform the installation of the Licensed Software, the Contractor must be available as support at the Site during the whole of the installation process, at no cost to the Customer.</p> <p>The Contractor must give to the Customer all the required files, access codes, names and passwords without delay during the installation process.</p>
<p>(b) specify the Price for the installation, and when the Price is due.</p>	<p>No cost applies for the installation or support during installation of the Licensed Software.</p>
<p><b>Installation (clause 3.3)</b></p>	
<p>Specify the date by which the access codes must be made available, if applicable.</p> <p>If a date is not specified, the access codes must be provided promptly following the date the Parties enter into the Customer Contract.</p>	<p>Access codes will be provided at the time of delivery of the Hardware to the Site, or as otherwise agreed in writing with the Customer.</p>

### Box 7 First Release

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<p><b>First Release (clause 3.9)</b></p>	
<p>Specify if the Licensed Software or any New Release will be a First Release.</p> <p>If so, specify the any additional terms and conditions that apply to the First Release.</p> <p>If this Box is not completed, the Licensed Software and each New Release is deemed not to be a First Release.</p>	<p>No.</p>

**Box 8 Right to Receive Updates and/or Major or Minor Releases**

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Updates and New Release (clause 4.1)</b>	
<p>Specify if the Contractor provides the Customer the rights to receive:</p> <p>(a) Updates;</p> <p>(b) and/or New Releases,</p> <p>as part of the Licence (as opposed to part of a separate Software Support Service under Module 5).</p>	<p>Updates and/or Major or Minor Releases will be provided as part of the Software Licence as required under Module 5, if applicable.</p> <p>For the avoidance of doubt, the Customer may at its sole discretion elect whether to install any Updates and/or Major or Minor Releases, as specified in the Module 5 Order Form.</p>
<b>Updates and New Release (clause 4.4(c))</b>	
<p>Specify the increased Licence Price when the Customer accepts the Update or New Release.</p> <p>If an increased Price is not specified, the Licence Price must not be increased for any Update or New Release provided during the Licence Period.</p>	<p>Updates and Minor Releases will be provided at no cost to the Customer.</p> <p>The Contractor must provide a comprehensive version regime and relevant pricing of any Updates and New Release at the request of the Customer during the Contract Period.</p>

**Box 9 Warranties for Open Source Code**

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Open Source Software (clause 5.2(b))</b>	
<p>If the software is Open Source Software:</p> <p>(a) specify the Open Source Licence that governs the use of the open source software;</p> <p>(b) specify whether the open source software is provided with the warranties that the Contractor provides in respect of Licensed Software, or whether the Contractor provides the open source software without any warranty (to the extent permitted by law)</p>	<p>The Software is not Open Source Software.</p>

**Box 10 Ancillary Services**

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Training (clause 6.1)</b>	
Specify if training services are to be provided.	Training Services will be provided as specified in Module 8 Order Form - Training Services and the PIPP.
If so, specify details, dates and the Prices of the training services, and when payment is due.	All training related to Licensed Software is to be provided by the Contractor to the Customer at no cost to the Customer as specified in the Module 8 Order Form and the PIPP.
<b>Other Services (clause 6.2)</b>	
Specify the details, times, Prices for ad hoc issue resolution or support service for the Licensed Software, and when payment is due. [Note: If Software Support Services are being provided for the Licensed Software under Module 5, do not complete this Box.]	As specified in Module 5 Order Form - Software Support Services.

**Box 11 Business Models of the Reseller**

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
<b>Reseller Provision of Licensed Software (clause 7.1)</b>	
Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller?  If yes:  (a) specify if the Licensed Software is supplied by the Contractor who is acting as Reseller as Facilitator.  [Note: Reseller as Facilitator means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 7.1(a).]	No.

<b>OR</b>	
<p>(b) specify if the Licensed Software is supplied by the Contractor who is acting as Reseller with Pass Through Warranties.</p> <p>[Note: Reseller with Pass Through Warranties means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 7.1(b).]</p>	As above.

### Box 12 Value Add Services

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

### Box 13 Customer Maintains Records

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

## Appendix A - Purpose of the Licensed Software

Licensed Software	Purpose	Maximum users
Eyevis eyeCON V5	Provide the users with control of the individual video wall processors that make up the OVDS Solution. One instance includes all the features of the eyeCON software per user.	250 concurrent users
Extron Link Licence	Enables third party devices such as iPad and Android tablets to be used as a touch screen interface rather than Extron's own touch screen controllers.	Unlimited
Extron Control app	This app installs on the iPad and Android devices respectively and allows the device to use the control layout of the OVDS system. This may not be required depending on whether we use the app or create a web interface which can be viewed on any device with a web browser. This will be decided in detailed design.	Unlimited

**Appendix B - Hardware platform and operating system combination**

<b>Licensed Software</b>	<b>Hardware platform/operating system combination</b>
Eyevis eyeCON	Windows 7, 8, 8.1, 10, server
Extron Link Licence	Operates on Extron's control processors only
Extron Control App	iOS, Android (all releases)

## Module 3 – Licensed Software

Version 3.1

### TABLE OF CONTENTS

1. AGREED TERMS AND INTERPRETATION .....	2
2. LICENSE TERMS.....	3
3. SUPPLY OF LICENSED SOFTWARE.....	8
4. UPDATES AND NEW RELEASES .....	9
5. OPEN SOURCE SOFTWARE.....	10
6. ANCILLARY SERVICES.....	11
7. RESELLER PROVISION OF LICENSED SOFTWARE.....	11
8. SPECIFIC WARRANTIES .....	12
9. EXCEPTIONS.....	13
10. AUDIT .....	14

#### [\[Use Guidelines](#)

This Module should be used when the Customer is buying and/or installing both proprietary and open source software which is to be used either without modification or some minor modification to suit the Customer's business requirements. There are a variety of different types of software licences. Some are based on the number of machines on which the licensed programme can be run or based on the number of users that can use the programme.

Licences may be able to be sublicensed to outsourcers. If software is to be adapted or customized for the Customer's use Module 4 should be used.

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 3** form part of the Customer Contract and apply when the Parties state that the Licensed Software 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 Approved Purpose** means to use the Licensed Software for a purpose described in the Module Order Form and in absence of a purpose being stated on the Module Order Form, for the internal processing of the Customer's own data.
- 1.2 Class** means specific rights that are granted by the Contractor to the Customer to use the Licensed Software that are stated in the Module Order Form, and may include the License Period, number and type of Permitted Users, number, type or capacity of any hardware on which the Licensed Software may be used, or other attribute which defines the Customer's right to use the Licensed Software.
- 1.3 Designated Equipment** means the hardware platform/operating system combination stated in the Module Order Form upon which the Licensed Software is installed.
- 1.4 Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Licensed Software and Services provided under this Module, as stated in clause 9.
- 1.5 First Release** means a license that is for a release (as denoted by the integer to the left of the decimal point in the release number e.g. release version 3.0) of the Licensed Software, which although is generally available for supply to all of the Contractor's customers in the Australian market, that release has not been licensed (or the New Release has not been made available) to any other customer in the Australian market at the time the license is granted to the Customer for that release of the Licensed Software or New Release.
- 1.6 License** means the license granted by the Contractor to the Customer in respect of the Licensed Software under this Module 3 to the Customer Contract.
- 1.7 License Period** means the period that the License is granted and is:
  - (a) stated in the Class of License; or
  - (b) in absence of a Class of License, perpetual.
- 1.8 New Release** means software which has been produced primarily to extend, alter or improve the Licensed Software by providing additional functionality or performance enhancement (whether or not Defects in that Licensed Software are also corrected) while still retaining the original designation of the Licensed Software. New Release does not include any software that is generally licensed by the Contractor to its customers as a different product.
- 1.9 Open Source License** means a license that governs the use of open source code, which is included with the open source code, examples of which include the GNU General Public License v2.
- 1.10 Permitted User** means each person the Customer has permitted to use the Licensed Software for the Approved Purpose, in accordance with the Customer Contract.
- 1.11 Reseller as Facilitator** means a Reseller who uses the business model described in clause 7.1(a) to facilitate the supply of the Licensed Software to the Customer.



- 1.12 Reseller with Pass Through Warranties** means a Reseller who uses the business model describe in clause 7.1(b) to supply Licensed Software to the Customer.
- 1.13 Software Support Services** means the Services the Contractor agrees to provide for the Licensed Software under Module 5 when the Parties agree that Module 5 forms part of the Customer Contract.
- 1.14 Third Party Component** means software components, plug-ins and other programs that are owned by third parties and are stated on the Module Order Form as being Third Party Components. The term **Third Party Component** does not include open source software.
- 1.15 Update** means software which has been produced primarily to overcome Defects in, or to improve the operation of, the relevant part of the Licensed Software without significantly altering the Contract Specifications whether or not that Licensed Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

#### INTERPRETATION

- 1.16** Other capitalised words and expressions used in this Module are defined and interpreted in Part 3 of the Procure IT Framework.

## 2. Licence Terms

#### CLASS OF LICENSE

- 2.1** The Contractor grants to the Customer a non-exclusive License to use the Licensed Software on the Designated Equipment on the terms of the Class of License stated in the Module Order Form.
- 2.2** If there is no Class of License stated in the Module Order Form, the Contractor grants the Customer a non-exclusive License to:
- (a) install the Licensed Software on the Designated Equipment in accordance with the User Documentation;
  - (b) if the General Order Form states that the Licensed Software is to undergo Acceptance Tests; to carry out Acceptance Tests in respect of the Licensed Software;
  - (c) run (but not modify or adapt) the Licensed Software from the AAD on the Designated Equipment and use the Licensed Software solely for the Approved Purpose for the License Period;
  - (d) use, adapt and/or reproduce the Licensed Software to the extent permitted under the *Copyright Act 1968* (Cth) ("**the Act**"), including rights granted under sections 47B(3) and sections 47C, 47D, 47E or 47F of the Act;
  - (e) allow the use of the Licensed Software and User Documentation by the Customer's contractors solely for the Approved Purpose for the License Period, provided that:
    - (i) the use of the Licensed Software and User Documentation is restricted to the same Class of usage granted to the Customer. For clarity, any usage by such persons must be included within the Class of License (by way of example, if the Class of License is based on the number of users then the number of contractor's users is included in the number of users acquired by the Customer); and

- (ii) unless otherwise required by the Contractor, the Customer's contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the Licensed Software in the same manner as stated in the Customer Contract;
- (f) make such number of copies of the Licensed Software as are reasonably required for operational use, backup, archive and security.

### SUBSTITUTION, CHANGE AND TRANSFER

**2.3** If the License restricts the use of the Licensed Software to specific Designated Equipment, the Customer may:

- (a) transfer the Licensed Software to alternative equipment of substantially the same purpose, capacity and performance standards; and
- (b) install and run the Licensed Software on any back-up hardware while the Designated Equipment is for any reason temporarily inoperable,

with the Contractor's prior written consent, such consent not to be unreasonably withheld. Any transfer, change or substitution may be documented using a Change Request.

**2.4** If the Customer requires the Contractor to assist with the transfer of the Licensed Software to other equipment, then a Change Request must be agreed by the Parties.

### LICENSE PERIOD

**2.5** Unless earlier terminated in accordance with the Customer Contract or otherwise surrendered by the Customer, the License remains in force for the duration of the License Period.

**2.6** Where the License Period is not perpetual then:

- (a) at least 30 days or as otherwise agreed in the Module Order Form prior to the end of each License Period, the Contractor may at the Contractor's sole discretion either provide the Customer with written notice of the Price and the payment arrangements that will apply for the License for the Licensed Software for an extended period of License Period or provide a new Customer Contract, including a new General Order Form and Module Order Form with the Price and payment arrangements that will apply for a new License;
- (b) where the Customer has been given an option to extend the License in accordance with clause 2.6(a), the Customer may elect not to extend the License or elect not to enter into a new License by providing the Contractor with written notice, such notice to be received at least 15 days prior to the date when the current License Period expires;
- (c) if the Contractor does not receive written notice under clause 2.6(a), then the License Period must be extended for the extended License Period and the Customer must pay the Price using the terms and conditions and the payment arrangements, all as stated in the notice given under clause 2.6(a); and
- (d) the procedures in clause 2.6 will apply at the end of each License Period.

### THIRD PARTY COMPONENTS

**2.7** If Third Party Components are associated with the Licensed Software then:

- (a) the Contractor is acting as a Reseller for the Third Party Components and the provisions of clause 7 apply; or

- (b) if stated on the Module Order Form, the Third Party Components are licensed as part of the Licensed Software, in which case they will be deemed to be part of the Licensed Software and the provisions of the Customer Contract, including the warranties and indemnities in this Module 3 and in Part 2 will apply to the Third Party Components to the same extent as they apply to Licensed Software.

## INTELLECTUAL PROPERTY RIGHTS

- 2.8** The Customer acknowledges that ownership in the Licensed Software does not pass to the Customer and the Customer must use the Licensed Software only in accordance with the Customer Contract.
- 2.9** Unless stated otherwise in the Class of License, the Customer must not itself, nor permit any other person to:
- (a) copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation or derivative of the Licensed Software or the User Documentation, unless expressly permitted by law;
  - (b) disclose or sub-license, lease, rent, loan, assign or otherwise transfer the Licensed Software or User Documentation to any third person (other than as permitted under clauses 2.2(e), 2.14 and 2.17);
  - (c) reverse engineer, reverse compile, de-compile or disassemble the object code of any part of the Licensed Software, or otherwise attempt to derive the source code of the Licensed Software, except to the extent permitted by law; or
  - (d) do anything that would prejudice the Contractor's right, title or interest in the Licensed Software. For clarity, use in accordance with this Customer Contract is not prejudicial to the Contractor's rights, title or interest in the Licensed Software.
- 2.10** All Intellectual Property Rights, including adaptations, translations and derivative works in the Licensed Software or other material provided under this Customer Contract are the exclusive property of the Contractor (or the Contractor's licensor, if applicable), and must vest in or must be transferred to the Contractor immediately upon creation, as the case may be.
- 2.11** At the request of the Contractor, the Customer must assign or transfer the Intellectual Property Rights (and must procure the granting of consent for the unfettered use of Moral Rights) to any adaptations, translations or derivative works of the Licensed Software or other materials provided under this Customer Contract to the Contractor or its designee and must sign (or procure any person to sign) any document reasonably required to assign or transfer any such Intellectual Property Rights to the Contractor or its designee, and/or consent to the unfettered use of any Moral Rights, (at the Contractor's cost).
- 2.12** The Customer must not remove, alter, obscure or deface any:
- (a) trade mark, service mark, get up, logo or branding, proprietary or restricted use legend; or
  - (b) any disclaimer, warning, instruction or advisory notice,
- on the Licensed Software, User Documentation, on any other materials provided under the Customer Contract or on any packaging.

## PERMITTED USERS

- 2.13** The Customer is liable for the acts and omissions of all Permitted Users to the same extent as if they were the acts or omissions of the Customer.

## MACHINERY OF GOVERNMENT CHANGES

- 2.14** The License granted to the Customer under this Module is non-transferable, subject only to the Customer having a right to transfer the License to another Eligible Customer as part of a machinery of government change implemented by law and in accordance with clause 2.17.
- 2.15** If a License is transferred in accordance with clause 2.14, the Contractor:
- (a) must immediately notify the Customer of any proposed reductions in costs which may occur; and
  - (b) may notify the Customer of any proposed additional fees for any additional:
    - (i) overall usage arising from the Machinery of Government Change, to the extent that such usage is greater than any limits on usage specified in the Customer Contract; and
    - (ii) costs directly incurred as a result of the provision of additional overall Services.
- 2.16** The Contractor agrees to negotiate with the Customer in good faith to vary or consolidate the Customer Contract to:
- (a) adjust the Price as a result of the notification of the matters raised in clause 2.15; and/or
  - (b) comply with any specific requirements of the Departments, Agencies and Eligible non-Government Bodies to which the Customer Contract is transferred following the Machinery of Government Change.

Any agreement that arises from this clause must be documented via a Change Request.

## TRANSFER TO OUTSOURCER

- 2.17** The Customer may sublicense any of the rights granted under the License without additional charge, (on one or more occasions) on a limited time basis to a contractor that is providing outsource services to the Customer that includes the operation of the Licensed Software, provided that:
- (a) the Licensed Software is used solely for use of the Customer as is permitted under this Customer Contract, is limited to the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement;
  - (b) the contractor's use of the Licensed Software is included within the Class of License (e.g. if the Class of License is based on the number of users, then the number of the contractor's users is included within the number of users acquired by the Customer); and
  - (c) 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 Licensed Software in the same manner as stated in the Customer Contract.

## TERMINATION

**2.18** The Customer may terminate the License for convenience at any time during the License Period by providing the Contractor with 30 days Notice in Writing. If the License is terminated under this clause the Customer must immediately pay any installments of the Price that have not been paid, and the Customer is not entitled to a refund of any Price that has been paid.

**2.19** Where the Customer wishes to terminate the License and:

- (a) convert to a different Class of License that is offered by the Contractor in respect of the Licensed Software on the Designated Equipment; and
- (b) the Price agreed for the new License is equal to or greater than the Price that applies to the terminated License,

the Parties must follow the procedure set out in clause 26 of Part 2 of the Customer Contract to vary the Customer Contract and the Contractor must allow the Customer to set-off against the Price of the new License the Price that has been received by the Contractor for the current License.

## OBLIGATIONS UPON TERMINATION OR EXPIRY

**2.20** The Customer, after termination or expiry of the License:

- (a) subject to sub-clause (b), must destroy (and provide such evidence of such destruction as the Contractor may reasonably require) or return to the Contractor all copies of the Licensed Software that are in its possession or control;
- (b) may retain a copy of the Licensed Software and its related User Documentation where it is reasonably required by the Customer to comply with any Statutory Requirement relating to record keeping and retention. Such copies may only be used by the Customer to comply with those Statutory Requirements and the Customer must not use, and must not permit to be used, such Licensed Software and related User Documentation for any other purpose. Such copy may not be used to process any data that is not in the Licensed Software on the last day of the License Period.

## EXPORT

**2.21** Export laws and regulations of Australia and the United States may apply to the Licensed Software and User Documentation under this Module. The Customer agrees:

- (a) that such export laws govern the use of the Licensed Software and User Documentation (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, Licensed Software and User Documentation, 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. Supply of Licensed Software

### INSTALLATION

- 3.1** Where the Module Order Form specifies that the Contractor is to install (or grant access to) the Licensed Software, the Contractor must install (or grant access to) the Licensed Software by the date stated in the Module Order Form.
- 3.2** Unless the Module Order Form specifies that the Contractor is responsible for installing the Licensed Software, the Customer is responsible for downloading (if applicable) and/or installing the Licensed Software on the Designated Equipment. The Customer must perform the installation in accordance with any instructions in the User Documentation or other instructions provided by the Contractor, and provided it does so the act of installing the Licensed Software will not invalidate any warranty provided by the Contractor under the Customer Contract or any applicable statutory guarantee.
- 3.3** Where the Contractor makes the Licensed Software and User Documentation available for download from a website, the Contractor must provide the Customer with the relevant access codes promptly following the date the Parties enter into the Customer Contract, or such other time stated in the Module Order Form.
- 3.4** If the Customer requests installation to be postponed or to be made in advance of the date nominated in the Module Order Form, the Contractor must use its reasonable efforts to re-schedule installation accordingly. The Customer is responsible for any costs incurred by Contractor in re-scheduling the installation, such costs to be calculated using the rates set out in the Customer Contract, or if none, are stated at the Contractor's then current commercial rates.
- 3.5** If the Contractor provides (or provides access to) any:
- (a) software or documentation for which the Contractor is acting as a Reseller as Facilitator under clause 7.1(a); or
  - (b) software that is subject to an open source license,
- the Contractor provides this software as a convenience only and without liability.

### USER DOCUMENTATION

- 3.6** At the time of delivery of (or the grant of access to) the Licensed Software, the Contractor must provide the Customer with the User Documentation in the quantities that are stated in the General Order Form.
- 3.7** The Contractor must from time to time and in any event as soon as practicable give the Customer access to copies of any amended, revised or supplementary User Documentation during the License Period. This information must be provided:
- (a) without additional charge, if the Contractor provides such information to its other customers generally without charge; or
  - (b) in all other cases, at the Contractor's then current fees.

### BACK UP

- 3.8** Unless the Contractor has an obligation under another Module to take back ups of data that is loaded into in 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.

## FIRST RELEASE

- 3.9** If the Licensed Software is a First Release:
- (a) this must be stated and agreed on the Module Order Form; and
  - (b) the Parties may agree additional terms and conditions or services that are required for that First Release, such agreement to be documented in the Order Documents.

## 4. Updates and New Releases

- 4.1** To the extent that it is stated on the Module Order Form that the Contractor provides the Customer the right to receive Updates and/or New Releases for Licensed Software as part of the License, and not as part of a separate agreement for Software Support Services or other arrangement, then the provisions of clauses 4.2 to 4.4 apply to the Customer Contract.
- 4.2** The Contractor must, at no additional charge to the Customer, make available to the Customer any Updates and New Releases for the Licensed Software if and when the Contractor makes these generally available to its other customers during the License Period at no additional charge.
- 4.3** The Customer must notify the Contractor within 90 days from the date that the Update or New release is made available to Customer if the Customer decides not to use the Update or New Release. The Customer must accept and use any Update that the Contractor advises addresses a security issue.
- 4.4** If the Customer accepts the Update or New Release:
- (a) if requested by the Customer, the Contractor must install the Update or New Release, coordinating and scheduling such installation with the Customer. The Customer must pay the Contractor the costs for such installation at the Contractor's then current time and materials rates, unless agreed otherwise. This arrangement may be documented by way of a Change Request;
  - (b) if the Customer installs the Update or New Release, the Customer must do so in accordance with any instructions provided by the Contractor, and the Customer is responsible for all testing, including testing for interoperability with other software programs;
  - (c) the License Price must not be increased, unless agreed otherwise on a Module Order Form;
  - (d) the Contract Specifications of the Licensed Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Contract Specifications; and
  - (e) following installation of the Update or New Release, the Customer must destroy or return to the Contractor all copies of the original Licensed Software or otherwise deal with all such copies in accordance with the Contractor's directions, provided that the Customer may retain a copy of the superseded Licensed Software and its related User Documentation where:
    - (i) it is necessary to create an effective back up of the Licensed Software; or
    - (ii) it is reasonably required by the Customer to comply with any Statutory Requirement relating to record keeping and retention. Such copies may only be used by the Customer to comply with those Statutory Requirements.



The Customer must not use, and must not permit to be used, such superseded Licensed Software and related User Documentation to be used for any other purpose. Such copy may not be used to process any data.

**4.5** Subject to clause 4.3, if the Customer decides not to use the Update or New Release then the Customer acknowledges and agrees that:

- (a) subsequent Updates or New Releases may not operate with the Licensed Software; and
- (b) the Licensed Software may have its usefulness reduced over time;
- (c) the Contractor may not be able to remedy any Defects in the Licensed Software; and
- (d) the Contractor is not responsible for any Defect in the Licensed Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the latest version of the Licensed Software been used.

For clarity, nothing in this clause reduces the Contractor's obligations under clauses 8 and 9.

**4.6** The Contractor must not provide a New Release that is a First Release without notifying the Customer that a New Release is a First Release. If a New Release is a First Release, the Parties may agree additional terms and conditions or services that are required for that First Release, such agreement to be documented on a Change Request.

## 5. Open Source Software

**5.1** Nothing in this Customer Contract overrides the terms of any Open Source License. Any open source code is available only under the terms of the relevant Open Source License.

**5.2** To the extent that open source code is associated with any Licensed Software:

- (a) the open source code is supplied and licensed under the Open Source License and not under Module 3;
- (b) if stated on the Module Order Form and subject to clause 5.2(c), any open source code that is incorporated into the Licensed Software is deemed to be part of the Licensed Software solely for the purpose of the warranty under clauses 8 and 9 under this Module, and/or any statutory guarantee under the CCA;
- (c) it is agreed by the Parties that the Contractor excludes any warranty or indemnity whatsoever in respect of the Intellectual Property Rights in any open source code to the maximum extent permitted by law;
- (d) the Customer must remove any of the Contractor's trademarks, service marks, logos, get up or other branding from any open source code if:
  - (i) the Customer creates any new software that is a work based on the open source code; or
  - (ii) the Customer seeks to distribute any open source code that has been provided to it with Contractor's trademarks, service marks, logos, get up or other branding; and
- (e) the Customer warrants to the Contractor that it will comply with the terms of the Open Source License.



## 6. Ancillary Services

### TRAINING

- 6.1 Where stated on the Module Order Form, the Contractor must provide the training for the Prices stated in the Module Order Form.

### OTHER SERVICES

- 6.2 Where stated on the Module Order Form, the Contractor must:
- (a) provide the necessary services to install the Licensed Software;
  - (b) provide any ad hoc issue resolution or support service for the Licensed Software as part of the License and not as part as Software Support Services,
- at the times and for the Prices set out in the Module Order Form.
- 6.3 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 Order Documents or if the Services are requested after the Commencement Date, on a Change Request and the Variation Procedures in Schedule 4 – Variations Procedures will apply.

## 7. Reseller Provision of Licensed Software

- 7.1 Where it is specified on the Order Documents that the Licensed Software is to be supplied via a Contractor that is a Reseller, the provisions of this clause 9 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 Licensed Software:
- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Licensed Software by the original IP owner or its authorised distributor to the Customer, in which case:
    - (i) the Contractor will procure that the original IP owner or its authorised distributor enters into a contract directly with the Customer for the supply of the Licensed Software (and/or any Updates and New Releases), and the provisions of the Customer Contract that relate to the supply of the Licensed Software, including provisions in this Customer Contract relating to intellectual property rights and the features, capabilities, performance or other characteristics of the Licensed Software and the other provisions of this Module (other than clause 6) do not apply. The terms of the contract between the original IP owner or its authorised distributor and the Customer for the supply of the Licensed Software will be:
      - (A) attached to the Customer Contract;
      - (B) available for the Customer to accept online from a website nominated by the Contractor (including the website of the original IP owner or authorised distributor); or
      - (C) in the form of a shrinkwrap license or license document that is provided with the Licensed Software (a copy of which is available in advance of delivery, upon request from the Customer)

and such contract will be deemed to have been reviewed by the Customer and entered into by the Customer and the original IP owner or authorised distributor (as stated in the contract) on the date when the Customer enters into the Customer Contract;

- (ii) the Contractor will co-ordinate and manage the provision of the original IP owner's or distributor's (as applicable) warranty service, if any, that is to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Contractor;
- (iii) the Customer must pay the Contract Price for the Licensed Software to the Contractor, and the Contractor must pay the amount agreed between the Contractor and the original IP owner or its authorised distributor for the Licensed Software; or

(b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Licensed Software to the Customer on the terms and conditions of the Customer Contract, except that:

- (i) clause 19.1(c) of Part 2 does not apply;
- (ii) clauses 5, 8 and 9 of this Module do 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 are provided by the original IP owner 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 Licensed Software are utilised to the benefit of the Customer; and
  - (B) all benefits of any original IP owner or its authorised distributor warranty services for that Licensed Software are utilised to the benefit of the Customer.

**7.2** The Customer warrants to the Contractor that the Customer and all of the Customer's Permitted Users will comply with the terms of any contract between the Customer and the original IP owner or its authorised distributor (as applicable).

**7.3** The Contractor must provide any value added services that are set out in the Order Documents.

## 8. Specific Warranties

### SCOPE

**8.1** The Contractor warrants that the Licensed Software will meet the requirements of the Contract Specifications in all material respects when operating on the Designated Equipment during the Warranty Period, subject to the Exceptions.

**8.2** Owing to the nature of the subject matter, the Contractor expressly excludes any warranty that:

- (a) the Licensed Software will be error free;
- (b) the Licensed Software will operate without interruption;

- (c) it will correct all program errors;
- (d) the Licensed Software will be compatible with any hardware, software or data not supplied by the Contractor (except for the Designated System);
- (e) any Licensed Software or User Documentation will meet the Customer's requirements.

**8.3** If an unmodified version of the Licensed Software fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor must, at its option, promptly remedy those Defects, implement a Workaround or replace the Licensed Software, at its own expense, or provide a refund of the Price paid for the License. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.

**8.4** The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect, including installing patches and Workarounds.

## 9. Exceptions

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

- (a) modifications to the Licensed Software that were effected or attempted by a person other than the Contractor or its authorised representative;
- (b) any act, error, fault, neglect, misuse or omission of the Customer;
- (c) damage caused by the operation of the Licensed Software other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the original IP owner, authorised distributor or the Contractor;
- (d) any Virus, denial of service attack or other malicious act that adversely affects the Licensed Software, 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 Specification;
- (e) improper use or mismanagement by the Customer; or
- (f) an Event.

**9.2** Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect 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.

## 10. Audit

### RECORDS

**10.1** The Customer must:

- (a) if and to the extent stated on the Module Order Form maintain records of:
  - (i) the location of all copies of the Licensed Software;
  - (ii) the usage of the Licensed Software as measured against the Class of License;
- (b) provide copies of the records kept under this clause to the Contractor every six months, or such other frequency stated on the Module Order Form; and
- (c) ensure that, prior to the disposal of any media or other storage device, any Licensed Software contained on it has been erased or destroyed.

### AUDIT AND VERIFICATION

**10.2** The Customer must, upon reasonable written notice from the Contractor, allow the Contractor to make investigations in any reasonable manner to verify the Customer's compliance with the License.

**10.3** The costs of the review in clause 10.2 must be borne by the Contractor unless the review shows that the Customer has not used the Licensed Software in accordance with the Customer Contract and as a result has underpaid the Contractor. If this occurs then the costs of the review must be paid in accordance with the sliding scale below:

<b>Proportion of reviewer's fees to be borne</b>	<b>Difference between License Fee paid and payable</b>
\$0	95% of payable License Fee was paid
50% of audit and other costs	75-95% of payable License Fee paid
75% of audit and other costs	50-75% of payable License Fee paid
100% of audit and other costs	less than 50% of payable License Fee paid

**10.4** If the review shows that the Customer has not used the Licensed Software in accordance with the Customer Contract and as a result has underpaid the Contractor then, in addition to any costs that payable under clause 10.3, the Customer must pay to the Contractor the unpaid license fees and fees for in respect of Software Support Services that would have been payable had the correct license been acquired at the time that it was acquired.

# MODULE ORDER FORM

## MODULE 7 – PROFESSIONAL SERVICES

### Box 1 Details of Professional Services

Details to be included from Module 7	Order Details agreed by the Contractor and the Customer
<b>Scope (clause 3.1)</b>	
<p>Specify the Professional Services (other than Training Services) which are to be provided, including:</p> <ul style="list-style-type: none"> <li>(a) the Contract Period;</li> <li>(b) the details of the Professional Services that the Contractor is to provide;</li> <li>(c) the details of any Specified Personnel;</li> <li>(d) the details of any Deliverables and their Contract Specifications;</li> <li>(e) the location of where the Professional Services are to be provided;</li> <li>(f) whether any Deliverable must undergo an Acceptance Test;</li> <li>(g) the Price, expenses and any other charges that apply in respect of the Professional Services; and</li> <li>(h) how the Prices, expenses and charges will be paid, including any Payment Milestones and whether the Professional Services are provided on a time and materials basis or some other basis.</li> </ul> <p>[Note: These details can be put on a PIPP instead of being including on this Module Order Form. If the details are put on a PIPP, insert “Details of the Professional Services (other than Training Services) are set out in the PIPP”.]</p>	<p>Details of the Professional Services (other than Training Services) are set out in the PIPP.</p>

**Box 2 Requirement for a PIPP**

<b>Details to be included from Module 3</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Project Implementation and payment Plan (PIPP) (clause 3.3)</b>	
Specify if the Contractor is required to provide a PIPP, if no PIPP is attached to this Customer Contract at the Commencement Date.  [If this Box is not completed, the Contractor is not required to provide a PIPP.]	The PIPP attached to this Customer Contract at the Commencement Date applies.

## Module 7 – Professional Services

Version 3.1

### TABLE OF CONTENTS

1. AGREED TERMS AND INTERPRETATION .....	2
2. PROFESSIONAL SERVICES PERIOD .....	2
3. SCOPE OF PROFESSIONAL SERVICES .....	3
4. ACCEPTANCE TESTS AND USE.....	4
5. RESTRAINT .....	5
6. SPECIFIC WARRANTIES .....	6
7. EXCEPTIONS .....	6

#### Use Guidelines

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

See the Procure IT User Guide for more details.

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

# 1. Agreed Terms and Interpretation

## AGREED TERMS

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

In this Module, unless the contrary intention appears:

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

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

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

## INTERPRETATION

- 1.3 Other capitalised words and expressions used in this Module are defined in Part 3 of the Agreement.

# 2. Professional Services Period

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



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

### 3. Scope of Professional Services

#### SCOPE

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

#### PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

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

#### REPORTING

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

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

#### CUSTOMER DIRECTIONS

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

#### EMPLOYEE RELATIONSHIP

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

## 4. Acceptance Tests and Use

- 4.1 Where the Professional Services are for the creation of a specific Deliverable for which the Parties have agreed that the Deliverable is to undergo Acceptance Tests then:
- (a) the Customer must not use any part of the Deliverable for its business purposes and/or in a production environment without first undertaking Acceptance Tests in accordance with clause 10 of Part 2; and
  - (b) it is acknowledged and agreed by the Customer that if the Customer uses the Deliverable for its business purposes and/or in a production environment before the Deliverable has passed its Acceptance Tests in accordance with clause 10.9 of Part 2

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

## 5. Restraint

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

## 6. Specific Warranties

### SCOPE

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

## 7. Exceptions

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

- (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
    - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
    - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specification;
  - (f) improper use or mismanagement by the Customer; or
  - (g) an Event.
- 7.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

# MODULE ORDER FORM

## MODULE 8 – TRAINING SERVICES

### Box 1 Details of Training Services

Details to be included from Module 8	Order Details agreed by the Contractor and the Customer
<b>Scope (clause 3.1)</b>	
<p>Specify the Training Services which are to be provided, including:</p> <ul style="list-style-type: none"> <li>(a) the Contract Period;</li> <li>(b) whether the training is: <ul style="list-style-type: none"> <li>(i) User Training - training to be provided to users of Deliverables to enable them to develop the requisite skills to use Deliverables;</li> <li>(ii) Train-the-Trainer Training – training to be provided to the Customer’s nominated trainers who will provide user training in the future; and</li> <li>(iii) Awareness Training – training to be provided to the Customer’s Personnel who are affected by the Deliverables and therefore need to be aware of: <ul style="list-style-type: none"> <li>(A) how the Deliverables work;</li> <li>(B) their roles, if any; and</li> <li>(C) how they benefit from the changes;</li> </ul> </li> </ul> </li> <li>(c) a description of the Training Service, including the: <ul style="list-style-type: none"> <li>(i) name of the course;</li> <li>(ii) course content overview;</li> <li>(iii) any pre-requisites for course attendees;</li> <li>(iv) number of attendees per course;</li> <li>(v) the cancellation arrangements for non-attendance at any training course, including notice</li> </ul> </li> </ul>	<p>The Contractor must provide the training services and training materials for system administrators, system users and maintainers.</p> <p>The training services will include, at a minimum, the following:</p> <ul style="list-style-type: none"> <li>• System administrators training;</li> <li>• System user training;</li> <li>• Maintainer training; and</li> <li>• Train-the-Trainer training.</li> </ul> <p>For the avoidance of doubt, “Train-the-Trainer” training in relation to the NanoLumens component cannot be provided.</p> <p>The Contractor acknowledges that a total of 6 Business Days of Training Services will be provided across the Customer’s user groups, listed above. The Contractor must provide an additional module for Train-the-Trainer training as required, at no cost to the Customer. For the avoidance of doubt, the training sessions may not be run in consecutive sessions.</p> <p>The prices, expenses and charges of the Training Services and the training materials are provided at no additional cost to the Customer.</p> <p>The Contractor must develop,</p>

<p>arrangements, arrangements for substitutions and cancellation fees;</p> <p>(vi) how the Training Services will be delivered;</p> <p>(d) whether the Training Services will be provided at the Customer's premises;</p> <p>(e) the items that the Party that is providing the premises for the Training Services is responsible for providing and ensuring that they are set up and/or otherwise made available for the training, including:</p> <p>(i) the venue, furniture, projectors, flip carts, pens, pencils and other presentation equipment for the trainer and the attendees;</p> <p>(ii) refreshments and catering for the trainer and the attendees;</p> <p>(iii) any hardware, software and technical infrastructure needed for the trainer and each attendee;</p> <p>(iv) who is to pay the costs associated with any of these items;</p> <p>(f) the details of any the presentation materials and any handouts for the attendees, and who is to provide them;</p> <p>(g) where "Train the Trainer" services are to be provided, the qualifications and competencies that each of the Customer's trainers must have in order to deliver a training course using the training materials;</p> <p>(h) where the Contractor is providing training materials, the license that the Contractor provides to the Customer relating to the use of the training materials and the Price and payment arrangements for that license.</p> <p>[Note: If this item within the Box is not completed then:</p> <p>(i) the Contractor grants the Customer and its Personnel a non-exclusive, licence to permit each attendee of the training course to use the training materials for the benefit of the Customer;</p>	<p>with the Customer and the Customer's training representatives, bespoke training materials configured to meet the Customer's specific use of the OVDS solution.</p> <p>The Contractor must write the training and reference materials and these must be aligned to clearly defined, measureable and tangible objectives agreed with the Customer. The training and reference materials must be in electronic and editable format (Microsoft Word, Powerpoint or other easily editable format) and accessible by the Customer at all times. The Contractor must customise the training and reference materials and configure them to reflect the exact requirements of the hardware and software systems. The Customer and the Contractor agree that the Sydney Trains branding is to be utilised throughout the training materials.</p> <p>The Contractor acknowledges that all training materials and reference material will be subject to review and endorsement by the Customer (or an authorised representative of the Customer). The Contractor must continue to, if reasonably required by the Customer, configure and customise the material until the Customer is satisfied that the training materials are fit for purposes.</p> <p>The ownership of training and reference materials developed for the Project will be passed to the Customer on acceptance of the training material and will be branded by the Customer.</p>
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<p>(ii) where “Train the Trainer” services are to be provided, the Contractor also grants the Customer a non-exclusive licence to:</p> <p>(A) allow the Customer’s Personnel who have the agreed qualifications and competencies to train other Customer Personnel, to copy and use the “trainer version” of the training materials to train other Customer Personnel during the Contract Period;</p> <p>(B) allow the Customer to copy the “student version” of the training materials and provide a copy of the student version of the training materials to each Customer Personnel who attend such training courses during the Contract Period]</p> <p>(i) the Price, expenses and any other charges that apply in respect of the Training Services; and</p> <p>(j) how the Prices, expenses and charges will be paid.</p> <p>[Note: These details can be put on a PIPP instead of being including on this Module Order Form. If the details are put on a PIPP, insert “Details of the Training Services are set out in the PIPP”.]</p>	<p>Additional details of the Training Services are set out in the PIPP and will otherwise be developed as part of the Deliverables (a training matrix to be further developed is included in Appendix A).</p>
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### Box 2 Requirement for a PIPP

Details to be included from Module 8	Order Details agreed by the Contractor and the Customer
<p><b>Project Implementation and Payment Plan (PIPP) (clause 3.2)</b></p>	
<p>Specify if the Contractor is required to provide a PIPP, if no PIPP is attached to this Customer Contract at the Commencement Date.</p> <p>[If this Box is not completed, the Contractor is not required to provide a PIPP.]</p>	<p>The PIPP attached to this Customer Contract at the Commencement Date applies.</p>



**Appendix A - an example training matrix to be further developed during Phase 2:**

<b>Module Name</b>	<b>System administrators</b>	<b>System users</b>	<b>Maintainers</b>	<b>Number of sessions</b>	<b>Materials or any pre-requisites required</b>	<b>Specific requirements</b>	<b>Maximum number of participants</b>	<b>Method of delivery</b>	<b>Cost for additional training sessions</b>
Introduction to audio visual terminology	X	X	X	TBA	N/A	N/A	0	Classroom	TBA
OVDS display - technology overview	X	-	X	TBA	N/A	N/A	0	Classroom /site	TBA
OVDS management system - technology overview	X	-	X	TBA	N/A	N/A	0	Classroom /site	TBA
OVDS control system - technology overview	X	X	X	TBA	N/A	N/A	0	Classroom /site	TBA
OVDS control system - use	X	X	X	TBA	N/A	N/A	0	Classroom /site	TBA
Troubleshooting	-	-	X	TBA	N/A	N/A	0	Classroom /site	TBA
Safety	-	-	X	TBA	N/A	Access to server room	0	Classroom /site	TBA
Integration with Sydney Trains systems	X	-	X	TBA	ST system understanding	Access to server room	0	Classroom /site	TBA

## Module 8 – Training Services

Version 3.1

### TABLE OF CONTENTS

1. AGREED TERMS AND INTERPRETATION .....	2
2. TRAINING SERVICES PERIOD .....	2
3. SCOPE OF TRAINING SERVICES .....	2
4. ACCEPTANCE TESTS AND USE.....	5
5. RESTRAINT .....	5
6. SPECIFIC WARRANTIES .....	6
7. EXCEPTIONS .....	7

#### [Use Guidelines

This Module should be used when the Customer is buying the training services, including user training, train the trainer training and awareness training. This type of training is often associated with IT projects.

See the Procure IT User Guide for more details.

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

# 1. Agreed Terms and Interpretation

## AGREED TERMS

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

In this Module, unless the contrary intention appears:

- 1.1 Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 7.
- 1.2 Training Services** means the services described in clause 3.1.

## INTERPRETATION

- 1.3** Other capitalised words and expressions used in this Module are defined in Part 3 of the Agreement.

# 2. Training Services Period

- 2.1** Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Training Services must be provided for the Contract Period unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2** If no Contract Period is specified in the Order Documents and the Training Services are provided on a time and materials basis, then the Training Services will be provided from the Commencement Date until either Party cancels the Training Services by providing 30 days prior Notice in Writing to the other.

# 3. Scope of Training Services

## SCOPE

- 3.1** The Parties will set out in the Module Order Form or a PIPP the details of the Training Services, which may include:
- (a) the Contract Period;
  - (b) whether the training is:
    - (i) User Training - training to be provided to users of Deliverables to enable them to develop the requisite skills to use Deliverables;
    - (ii) Train-the-Trainer Training – training to be provided to the Customer’s nominated trainers who will provide user training in the future; and
    - (iii) Awareness Training – training to be provided to the Customer’s Personnel who are affected by the Deliverables and therefore need to be aware of:
      - (A) how the Deliverables work;
      - (B) their roles, if any; and

- (C) how they benefit from the changes;
- (c) a description of the Training Service, including the
  - (i) name of the course;
  - (ii) course content overview;
  - (iii) any pre-requisites for course attendees;
  - (iv) number of attendees per course;
  - (v) the cancellation arrangements for non-attendance at any training course, including notice arrangements, arrangements for substitutions and cancellation fees;
  - (vi) how the Training Services will be delivered;
- (d) whether the Training Services will be provided at the Customer's premises;
- (e) the items that the Party that is providing the premises for the Training Services is responsible for providing and ensuring that they are set up and/or otherwise made available for the training, including:
  - (i) the venue, furniture, projectors, flip carts, pens, pencils and other presentation equipment for the trainer and the attendees;
  - (ii) refreshments and catering for the trainer and the attendees;
  - (iii) any hardware, software and technical infrastructure needed for the trainer and each attendee;
  - (iv) who is to pay the costs associated with any of these items;
- (f) the details of any the presentation materials and any handouts for the attendees, and who is to provide them;
- (g) where "Train the Trainer" services are to be provided, the qualifications and competencies that each of the Customer's trainers must have in order to deliver a training course using the training materials;
- (h) where the Contractor is providing training materials, the license that the Contractor provides to the Customer relating to the use of the training materials and the Price and payment arrangements for that license. If the Parties do not include a license to use the training materials in the Order Documents:
  - (i) the Contractor grants the Customer and its Personnel a non-exclusive, licence to permit each attendee of the training course to use the training materials for the benefit of the Customer;
  - (ii) where "Train the Trainer" services are to be provided, the Contractor also grants the Customer a non-exclusive licence to:
    - (A) allow the Customer's Personnel who have the agreed qualifications and competencies to train other Customer Personnel, to copy and use the "trainer version" of the training materials to train other Customer Personnel during the Contract Period;
    - (B) allow the Customer to copy the "student version" of the training materials and provide a copy of the student version of the training

materials to each Customer Personnel who attend such training courses during the Contract Period;

- (iii) the Customer is not granted any other right to use or exploit the training materials, including any right to reproduce or adapt any training materials.

**3.2** For the purposes of this Module 7, it is agreed by the Parties that clause 13.6(d) of Part 2 is subject to this clause 3.3(h).

- (a) the Price, expenses and any other charges that apply in respect of the Training Services; and
- (b) how the Prices, expenses and charges will be paid.

#### PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

**3.3** If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, and it is stated on the Module Order Form that a PIPP is required, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the Training Services. Within 5 Business Days of receipt of the draft PIPP the Customer must:

- (a) approve the PIPP;
- (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.

**3.4** Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

#### REPORTING

**3.5** The Contractor must monitor the progress of the Training Service and provide the Customer with status reports at monthly intervals, or such other intervals as is agreed by the Parties which, at a minimum, include the following issues:

- (a) the issues and risks that the Contractor recommends be pro-actively addressed to avoid delays;
- (b) any actions that the Parties need to take, or decisions that need to be made, to ensure the provision of the Training Services in accordance with the requirements of the Customer Contract, including any PIPP;
- (c) the progress of the work against any project plan;
- (d) the amounts charged, and amount of work in progress against the budget;
- (e) whether it is anticipated that the budget is likely to be exceeded, and if so the reasons;
- (f) any other issues that the Parties agree should be included in the reports.

#### CUSTOMER DIRECTIONS

**3.6** The Contractor must comply with all reasonable directions of the Customer as may be given to the Contractor from time to time in respect of the delivery of the Training Services, provided that such directions are consistent with the requirements of the Customer Contract. Where such direction:

- (a) causes the Contractor's costs to increase, the Customer must pay for any increase in the Contractor's costs at the Contractor's time and materials rates (calculated using

the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) plus any expenses; and

- (b) causes the Contractor not to be able to meet any timetable for delivery, then the timetable must be extended to the extent that it is reasonable given the nature of the direction and the impact on the Training Services.

**3.7** Nothing in clause 3.5 affects the Contractor's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the Customer's reasonable directions or otherwise to comply with the Contractor's obligations under the Customer Contract.

**3.8** Subject to otherwise complying with its obligations under the Customer Contract, the Contractor must exercise its independent discretion as to the most appropriate and efficient manner of providing the Training Services and satisfying the Contractor's obligations under this Customer Contract.

#### EMPLOYEE RELATIONSHIP

**3.9** The Contractor undertakes to comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement.

**3.10** The Contractor acknowledges and agrees that:

- (a) it is solely responsible for the obligations in clause 3.8; and
- (b) neither it, nor its personnel have, pursuant to this Customer Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

## 4. Acceptance Tests and Use

**4.1** Where the Training Services are for the creation of a specific Deliverable for which the Parties have agreed that the Deliverable is to undergo Acceptance Tests then:

- (a) the Customer must not use any part of the Deliverable for its business purposes and/or in a production environment without first undertaking Acceptance Tests in accordance with clause 10 of Part 2; and
- (b) it is acknowledged and agreed by the Customer that if the Customer uses the Deliverable for its business purposes and/or in a production environment before the Deliverable has passed its Acceptance Tests in accordance with clause 10.9 of Part 2 (as opposed to where the Deliverable is merely deemed to have passed its Acceptance Tests under clause 10.13) the Customer is taking a significant risk in using untested Deliverables, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Deliverable.

## 5. Restraint

**5.1** The Customer must not, without the prior written consent of the Contractor, whether on its own behalf or on behalf of any other person and in any capacity:

- (a) encourage any of individual who has performed any Training Services, to:
  - (i) stop working for or providing services to the Contractor; or

- (ii) work for or provide services to the Customer, any Agency or Department or any other person;
- (b) employ, contract, or enter into any arrangement, to receive the benefit of the services of the individual who has performed any Training Services,

for the following restraint periods:

- (c) during the period that the individual performed the Training Services and a period of 12 months thereafter;
- (d) during the period that the individual performed the Training Services and a period of 9 months thereafter;
- (e) during the period that the individual performed the Training Services and a period of 6 months thereafter;
- (f) during the period that the individual performed the Training Services and a period of 3 months thereafter;
- (g) during the period that the individual performed the Training Services.

**5.2** Clause 5.1 is to be construed and have effect as the number of separate restraints that arise by separately combining each of the subclauses in 5.1(a) and (b)(i) and (ii) above with the restraint periods listed in each of the subclauses in (c) to (g) above. Each of the covenants that result from a combination of the restraints in subclauses 5.1(a), (b)(i) and (ii) with the restraint periods in subclauses (c) to (g), constitute and are to be construed as having effect as separate, distinct, severable and independent provisions from the other covenants, but cumulative in overall effect. If any of the covenants or parts of the covenants resulting from the operation of this clause, are unenforceable they will be severed from the remaining enforceable covenant or part thereof.

**5.3** The Customer agrees that the remedy of damages may be inadequate to protect the interests of the Contractor from a breach of the Customer's obligations under this clause 5 and the Contractor is entitled to seek and obtain injunctive relief, or any other remedy, in any court.

**5.4** A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 5.1.

**5.5** The Parties agree that the restrictions in clauses 5.1 to 5.4 are necessary to protect the legitimate interests of the Contractor.

## 6. Specific Warranties

### SCOPE

**6.1** Where the Training Services are provided on a fixed price basis:

- (a) the Contractor warrants that any Deliverable (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects during the Warranty Period, subject to the Exceptions; and
- (b) if an unmodified version of the Deliverable (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor may, at its option, promptly remedy those Defects, implement a Workaround, or replace the relevant part of the Deliverable, at its own expense, or refund the Price payable for the deficient Deliverable. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.

- 6.2** Owing to the nature of the subject matter, but subject to clauses 6.1, 6.3, 6.4 and 7, the Contractor expressly excludes any warranty that:
- (a) any Deliverable will be error free;
  - (b) any person will learn or understand any information or training materials provided by the Contractor;
  - (c) any Deliverable will meet the Customer's requirements.
- 6.3** The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect.
- 6.4** The Contractor warrants that, subject to the Exceptions, from the Commencement Date until the end of the Warranty Period in relation to the Training Services that the Contractor will provide the Training Services in accordance with the requirements of the Contract Specifications in all material respects and with due care and skill.

## 7. Exceptions

- 7.1** The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
  - (b) modifications to any Deliverable that were effected or attempted by a person other than the Contractor or its authorised representative, other than where such modifications were recommended by the Contractor;
  - (c) any act, error, fault, neglect, misuse or omission of the Customer;
  - (d) damage caused by the operation of the Deliverable other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the original IP owner, authorised distributor or the Contractor;
  - (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
    - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
    - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specification;
  - (f) improper use or mismanagement by the Customer; or
  - (g) an Event.
- 7.2** Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.