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1. Recitals

PROCURE IT FRAMEWORK

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

PANEL ARRANGEMENT

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

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

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

NON-PANEL ARRANGEMENT

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

CUSTOMER CONTRACT

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

DICTIONARY

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

2. Scope of Contract

PRODUCTS AND SERVICES

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

PRICING

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

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

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

CONTRACT PERIOD

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

NOMINEE PURCHASER

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

3. Formation of Customer Contract

FORMATION

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

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

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

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

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

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

3.10 For clarity:

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

COMPLIANCE WITH CONSUMER LAWS

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

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

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

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

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

4. Relationship

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

5. Deliverable Specific Issues

DELIVERY

5.1 The Contractor must deliver any Deliverables to the Site between the hours stated in Item 12 of the General Order Form or as otherwise agreed in writing.

5.2 The Contract Price is inclusive of any additional or separate delivery costs, unless otherwise stated in the Order Documents including Item 11 of the General Order Form.

5.3 The Parties must perform their obligations in accordance with any Service Level Agreement. Either Party may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to a Service Level Agreement must be implemented as a Change Request in accordance with the procedures stated in Schedule 4 – Variation Procedures.

DOCUMENTATION

5.4 The Contractor must provide the User Documentation and any Bespoke User Documentation to the Customer in either hard copy or electronic format. If the User Documentation is provided in hard copy format:

- (a) the Contractor must make available, at no additional cost to the Customer, at least one copy of the User Documentation and such related material as the Contractor usually makes available free to its other customers, upon supply of the Product or Service to the Customer, or at the time(s) stated in the PIPP; and
- (b) additional copies of the User Documentation must, if requested by the Customer, be provided by the Contractor at the Price stated in Item 15 of the General Order Form, or if the Price is not stated in the Order Documents, at the Contractor's then current commercial price.

5.5 The Contractor must ensure that any User Documentation and Bespoke User Documentation:

- (a) is of a reasonable standard in terms of its presentation, accuracy and scope;
- (b) provides an explanation of functions, capacity and operations of the relevant Product, Service or Deliverable;
- (c) in the case of User Documentation only, is the most current and up-to-date version available; and

(d) is in the English language.

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

NORMAL USE

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

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

PRODUCT SAFETY

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

SYSTEM

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

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

6. Delivery Management

PROJECT MANAGEMENT

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

MANAGEMENT COMMITTEE

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

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

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

PERFORMANCE REVIEWS

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

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

SITE SPECIFICATIONS

6.12 Where it is stated in Item 18 of the General Order Form that a Site Specification is required, the Contractor must inspect the Site and provide the Customer with a Site Specification for the Customer's approval.

6.13 The Contractor must make any amendment to the Site Specification that is reasonably required by the Customer, providing such amendments are requested prior to the delivery of the Deliverables. Where the Contractor reasonably believes that the required amendment will materially affect the Contractor's ability to perform its obligations under the Customer Contract, it will notify the Customer and the Parties will discuss in good faith whether any Change Request is required to deal with such required amendment.

IMPLEMENTATION PLANNING STUDY

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

PROJECT SCHEDULE

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

CHANGE CONTROL

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

STAGED IMPLEMENTATION

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

EXTENSION OF TIME

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

LIQUIDATED DAMAGES

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

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

CUSTOMER SUPPLIED ITEMS (CSI)

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

6.38 The Contractor must:

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

6.39 If the CSI is no longer required for the purposes of the Customer Contract, it must be returned to the Customer or destroyed at the Customer's request as soon as practicable, unless other arrangements are agreed.

6.40 Provided the Contractor complies with its obligations under clauses 6.38(c) to 6.38(f), the Customer must repair or replace CSI within a reasonable time of becoming aware that the CSI does not comply with the requirements stated in the Order Documents.

CUSTOMER ASSISTANCE

6.41 During the Contract Period, the Customer must:

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

ESCROW

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

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

6.43 Any escrow arrangements to which the Customer becomes a Party under clause 6.42 must endure for at least the period stated in Item 23 of the General Order Form unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in the Escrow Agreement.

6.44 The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under clauses 6.42.

BUSINESS CONTINGENCY

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

7. Access

ACCESS TO CUSTOMER'S SITE

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

CUSTOMER DATA

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

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

SECURITY

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

8. Personnel

PERSONNEL - GENERAL

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

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

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

SPECIFIED PERSONNEL

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

APPROVED AGENTS AND SUBCONTRACTORS

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

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

8.16 The Contractor:

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

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

9. General Warranties

CONTRACTOR WARRANTIES

9.1 The Contractor warrants to the Customer that:

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

- (f) that to the best of its knowledge and belief, the Contractor has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Customer the rights to use and/or own (if applicable) the Deliverables in accordance with the Customer Contract;
- (g) it will perform its obligations in accordance with:
 - (i) the Statutory Requirements,
 - (ii) any other laws that are stated in Item 30 of the General Order Form;
 - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iv) the codes, policies, guidelines and standards listed in Item 8 of the Head Agreement Details and Item 30 of the General Order Form;
- (h) it will maintain the quality standard accreditation stated in Item 29 of the General Order Form during the Contract Period; and
- (i) it is responsible for the acts and omissions of its Personnel as if they were its own acts and omissions.

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

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

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

CUSTOMER WARRANTIES

9.4 The Customer warrants to the Contractor that:

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

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

MUTUAL WARRANTIES

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

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

10. Acceptance

ACCEPTANCE

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

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

ACCEPTANCE TESTING

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

CONDUCTING ACCEPTANCE TESTS

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

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

10.4 To the extent that:

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

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

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

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

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

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

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

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

ACCEPTANCE TEST OUTCOMES

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

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

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

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

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

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

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

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

10.13 The Deliverables are deemed accepted if:

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

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

11. Payment and Invoicing

PAYMENT

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

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

INVOICING

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

12. Taxes

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

13. Intellectual Property Rights

OWNERSHIP

- 13.1** All Intellectual Property Rights in:

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

CONTRACTOR OWNED NEW MATERIAL

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

EXISTING MATERIAL

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

CUSTOMER OWNED NEW MATERIAL

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

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

CUSTOMER MATERIAL

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

KNOW HOW ETC

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

OPEN SOURCE LICENCE

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

14. Confidentiality

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

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

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

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

15. Privacy

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

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

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

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

16. Insurance

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

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

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

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

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

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

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

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

17. Guarantees

PERFORMANCE GUARANTEES

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

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

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

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

FINANCIAL SECURITY

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

- (b) one year from the date that the last Deliverable under the Customer Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Customer Contract;
- (c) the date the Customer and Contractor agree in writing to release the Issuer; or
- (d) the date the Customer notifies the Issuer that the Financial Security is no longer required.

17.11 The Customer must reimburse the Contractor for any reasonable costs it incurs, including the fees payable to the Issuer, in connection with providing the Financial Security. These costs and fees must be reimbursed to the Contractor within 30 days of the Contractor providing a Correctly Rendered Invoice for the costs and fees.

18. Liability

18.1 To the extent permitted by law, and subject to clauses 3.12, 3.13, and 18.2 to 18.7, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out of, or in connection with, the Customer Contract shall not exceed in aggregate for all claims that arise out of, or in connection with, the Customer Contract, the greater of:

- (a) \$100,000; or
- (b) in respect of claims that arise from:
 - (i) a Non-Recurring Service or Product; two times the Contract Value for the Non-Recurring Service or Product;
 - (ii) a Short Term Recurring Service; the Contract Value for the Short Term Recurring Service;
 - (iii) a Recurring Service other than a Short Term Recurring Service;
 - (A) if the claim arose after the Recurring Service had been provided for 12 months; the amount paid or unpaid but due and outstanding, for the Recurring Service for the 12 months prior to the date that the claim first arose; or
 - (B) if the claim arose prior to the Contractor providing 12 months of Recurring Services; the amount that is 12 times the average monthly amount that was paid or unpaid but due and outstanding for the Recurring Service prior to the date on which the claim first arose; or
 - (iv) a System, two times the Contract Value for the Non-Recurring Service or Product comprising the System.

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

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

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

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

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

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

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

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

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

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

19. Indemnities

CONTRACTOR INDEMNITY

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

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

- (c) is the result of a claim against the Customer, its officers or employees made by a third party that the use of the Deliverable in accordance with the Customer Contract infringes any Intellectual Property Rights, including the Moral Rights, of the third party claimant, that are enforceable in Australia (**IP Claim**).

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

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

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

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

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

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

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

20. Conflict of Interest

20.1 The Contractor must:

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

21. Performance Management

REPORTING

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

22. Government Policy

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

23. Contract Administration

REPRESENTATIVES

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

NOTICE OF CHANGE IN CONTROL

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

RECORD KEEPING AND AUDIT

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

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

(b) to the Contractor's Personnel,

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

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

NOTICES

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

24. Dispute Resolution

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

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

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

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

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

25. Termination

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

TERMINATION FOR CAUSE BY THE CUSTOMER

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

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

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

TERMINATION FOR CONVENIENCE BY THE CUSTOMER

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

TERMINATION FOR CAUSE BY THE CONTRACTOR

- 25.6** The Contractor may terminate the Customer Contract immediately by providing the Customer Notice in Writing if the Contractor 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 Contractor 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 Contractor has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;
 - (ii) obligations of confidentiality under the Customer Contract:

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

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

- (d) suffered an Insolvency Event.

CONSEQUENCES OF TERMINATION

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

25.8 If the Customer Contract:

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

25.9 On termination of this Customer Contract for any reason:

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

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

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

26. General

VARIATION

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

ASSIGNMENT AND NOVATION

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

WAIVER

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

MATERIAL ADVERSE EVENTS

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

FORCE MAJEURE EVENTS

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

GOVERNMENT INFORMATION

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

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

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

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

SEVERABILITY

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

ENTIRE AGREEMENT

26.18 To the extent permitted by law:

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

RIGHTS ARE CUMULATIVE

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

SURVIVAL

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

COUNTERPARTS

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

APPLICABLE LAW

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

SIGNED AS AN AGREEMENT

Signed for and on behalf of

The State of New South Wales by its Department of Education

By [REDACTED] but not so as to incur personal liability

Signature of Customer representative

[REDACTED]

14 January 2022

Date

Executed by [REDACTED] as attorney for **Telstra Corporation Ltd ABN 33 051 775 556** under power of attorney dated 29 April 2019

[REDACTED]

Print name

14th Jan 2022

Date

By executing this Customer Contract the attorney states that the attorney has received no notice of revocation of the power of attorney

General Order Form

Schedule 1 to the Customer Contract (which is Part 2 of the *Procure IT V3.2 Framework*)

Incorporating Module 10 – As a Service and Module 11 – Telecommunications as a Service

CUSTOMER

Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's full legal name:	The State of New South Wales by its Department of Education (incorporates DoE Corporate & DoE Schools) ABN 40 300 173 822

Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's service/delivery address:	8 Central Avenue, Eveleigh NSW 2015

Item 3 Customer's Representative

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

CONTRACTOR

Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's full legal name:	Telstra Corporation Limited ABN 33 051 775 556

Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's service/delivery address:	Level 6, 400 George Street Sydney NSW 2000

Item 6 Contractor's Representative

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

Item 7 Head Agreement

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.1)	
Specify the Head Agreement number:	2210
Specify the Head Agreement title:	Contract 2210: Telecommunications Purchasing Arrangements for the nominated service tower
Specify the Term of the Head Agreement: <ul style="list-style-type: none"> ▪ Start Date: ▪ End Date: <p>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.</p>	Start Date: 1 July 2018 End Date: 30 June 2023
Insurance (clause 16.2)	
Specify the insurances required under the Head Agreement:	As per clause 10 of the Head Agreement
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	No higher limit applies
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:	No higher limit applies
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement. If so, the default insurance requirement is for a limit of cover of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head	No higher limit applies

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Agreement:	
Workers' compensation insurance in accordance with applicable legislation:	No higher limit applies
Specify any other type of insurance required under the Head Agreement and the specified amount:	Nil
Performance Guarantee (clause 17.1)	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	Not applicable

Item 8 Modules that form part of the Customer Contract

Formation (clause 3.8(a))

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

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

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

Formation (clause 3.8(b))

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

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

Schedules 4 and 11 as available on <https://www.procurepoint.nsw.gov.au/before-you-buy/standard-procurement-contract-templates/procure-it-framework-version-32> are incorporated by reference.

Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contract Period (Clause 2.4)	
Specify the Commencement Date if it is not the date when the Customer and the Contractor sign the Customer Contract:	13 January 2022
Specify the end of the Contract Period:	The Contract Period ends on the date that the last Transition Out Period ends, unless terminated earlier in accordance with the Customer Contract. Service Periods and any Transition Out Period are as set out in Module 11 and the Additional Terms and Conditions.
Specify any period of extension of the Contract Period in days/weeks/years:	The Contract Period will automatically be extended by any extension of the Service Periods by Customer in accordance with clause 3 of Module 11.

Item 11 Common Details

Formation (clause 3.4)			
Product and/or Service	Price per Unit	Quantity	Extended Price
Fixed Voice Services - Annexure 4 (Fixed Voice Services Terms) of the Additional Terms and Conditions			
Mobile Services - Annexure 5 (Mobile Services Terms) of the Additional Terms and Conditions			
Pricing for Fixed Voice Services and Mobile Services is set out in the [REDACTED]			
			Sub-Total: -
			Delivery Charges: -
			Any Other Charges: -
			GST: -
This is the Contract Price (plus GST)			Total Amount: -

Item 12 Delivery Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Delivery (clause 5.1)	
Specify the address of the Site where delivery is to be made:	See Box 1 of the Module 11 Order Form.
Specify any delivery instructions:	As set out in the Contract Specifications.
Specify the hours during which delivery may be made to the Site:	As set out in the Contract Specifications.

Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
If the Contract Specifications are the User Documentation leave this Item blank.	The Contract Specifications comprise the technical or descriptive specifications within the following documents

Item 16 Management Committee

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

Item 17 Performance Review Procedures

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

Item 18 Site Preparation and Maintenance

Not applicable.

Item 19 Implementation Planning Study

Not applicable

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

Not applicable. There is no PIPP. There will not be a Staged Implementation.

Item 21 Liquidated Damages

Not applicable.

Item 22 Customer Supplied Items (CSI) and Customer Assistance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Supplied Items (CSI) (clause 6.36)	
Specify each CSI to be provided by the Customer: CSI may be: <ul style="list-style-type: none"> ▪ office access, desks etc (specify location, standards, times of access); ▪ Hardware or software (specify equipment, capacity, versions of software and dates of availability); ▪ VPN access or other remote access (specify capacity and hours available). [Note: details of any Customer Personnel should be specified in Item 26].	As agreed in writing by the Parties.

Item 23 Escrow

Not applicable.

Item 24 Business Contingency Plan

Not applicable.

Item 25A Transfer of Records outside NSW - Customer Data

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Data (clause 7.5)	
Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract. If yes, Customer to state whether consent is provided to transfer State Records outside the jurisdiction of New South Wales. If consent is granted, Customer to specify: <ol style="list-style-type: none"> 1. the jurisdiction(s) for which consent is granted 2. the conditions on which such consent is granted. [Note: Clause 7.5 of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]	Customer Data (including State Records) may be transferred to the Contractor's possession under the Customer Contract. Consent is granted for the transfer of Customer Data (including State Records) outside of NSW to any other Australian State or Territory for the sole purpose of the Contractor providing the Deliverables and performing its obligations for the Customer under this Customer Contract. For the purposes of this Item 25A, Customer Data will not be "transferred, taken or sent" (which would include being "hosted") outside of Australia merely because the Customer Data can be accessed by a person located outside of Australia by means of a secure network connection that does not enable them to store, download or otherwise make any permanent copy of the data or information on equipment located outside of Australia.

Item 25B Transfer of Records outside NSW – Personal Information

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Privacy (clause 15)	
Customer to specify whether consent is provided to transfer Personal Information	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ol style="list-style-type: none"> the jurisdiction(s) for which consent is granted the conditions on which such consent is granted. <p>[Note: Clause 15.1(h) of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	<p>Consent is granted by the Customer for the transfer of Personal Information outside of NSW to any other Australian State or Territory for the sole purpose of the Contractor providing the Deliverables and performing its obligations for the Customer under this Customer Contract.</p> <p>The Customer hereby consents to the Business Contact Information being accessed by the Contractor's Personnel outside of New South Wales, strictly in order to perform the services in this Customer Contract, in the following locations:</p> <p>(a) All States and Territories of Australia where the Contractor's operations are undertaken; and</p> <p>██</p> <p>The Contractor must seek consent from the Customer in the event the location in paragraphs (a) or (b) changes or for any additional location not listed in paragraphs (a) or (b).</p> <p>The Contractor must ensure that:</p> <p>(c) the Business Contact Information is only accessed by the Contractor's Personnel outside of New South Wales via a secure network connection in relation to performing the services; and</p> <p>(d) the Contractor's Personnel accessing the Business Contact Information from outside of New South Wales take all reasonable safeguards to guard against the unauthorised use or disclosure of the Business Contact Information and do not make any copy of the Business Contact Information unless and solely to the extent as is strictly necessary to perform the services.</p> <p>In this Item 25B, "Business Contact Information" means business contact information of the Customer, including its Personnel, for example, name, business telephone, address, email, and user ID for business dealings with them, to the extent such information constitutes Personal Information.</p>

Item 25 Secrecy and Security

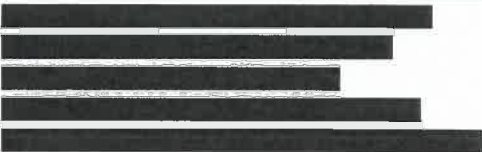
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Access to Customer's Site (clause 7.11)</p> <p>Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.</p>	<p>1. Compliance with Customer policies</p> <p>██ ██ ██</p> <p>2. Data Security</p> <p>██ ██ ██</p>
<p>Timeframes for response to a Security Issue</p>	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Specify whether Customer agrees to any alternate timeframe for:</p> <ol style="list-style-type: none"> Notification of actual, alleged or suspected security breach (clause 7.12(a)) <p>[Note: default is immediate notification]</p> <ol style="list-style-type: none"> Investigation of Security Issue (clause 7.12(b)) <p>[Note: default is within 48 hours from notification]</p> <ol style="list-style-type: none"> Remedy the Security Breach (clause 7.12(c)) <p>[Note: the default is within 24 hours from conclusion of investigation].</p> <p>Any alternate timeframes agreed to in this General Order Form must:</p> <ol style="list-style-type: none"> be approved by the Customer's Chief Information Officer; and comply with the NSW Government Digital Information Security Policy, NSW Government Information Security Event Reporting Protocol, NSW Government Cloud Policy and all other applicable NSW Government policies; comply with applicable security standards; and comply with the Customer's Information Security Management System and other Customer security and policy requirements. 	<p>No alternative timeframes.</p>

Item 26 Customer's Personnel

Not applicable.

Item 27 Specified Personnel

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

Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Agents and Subcontractors (clause 8.17)</p> <p>Specify which subcontractors are required to provide a Statutory</p>	<p>None</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Declaration - Subcontractor, substantially in the form of Schedule 7:	

Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(h))	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	Not applicable

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(g))	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	Not Applicable
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	

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

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

Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Part 3 Dictionary (clauses 1.2 to 1.5)	As at the Commencement Date, the Customer does not require any of the Services to be subject to Acceptance Tests. If, during the Contract Period, the Customer requires Acceptance Tests to be performed for newly commissioned Services, then: (a) the Acceptance Criteria; (b) the Acceptance Test Notification Period; (c) the Acceptance Test Data; and (d) the Acceptance Test Period, for such testing will be reasonably agreed between the parties.
Acceptance Test Notification Period is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period: If no period is specified, the period is 2 Business Days:	See above.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Acceptance Test Data is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:</p>	See above.
<p>Acceptance Test Period is the period for the performance of any Acceptance Tests for any Deliverable. Specify this period: If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.</p>	See above.
<p>Acceptance (clause 10.1)</p>	
<p>For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing: If not, the Deliverable will be Accepted under clause 10.1(a)</p>	See above.
<p>If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date for a Deliverable occurs: If no period is specified, then the period is 2 Business Days.</p>	See above.
<p>Conducting Acceptance Tests (clause 10.3)</p>	
<p>For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:</p>	See above.
<p>Specify the identification of the Deliverables or part of the Deliverables to be tested:</p>	See above.
<p>Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:</p>	See above.
<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>	See above.
<p>Specify the methodology and process for conducting Acceptance Tests:</p>	See above.
<p>Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:</p>	See above.
<p>Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:</p>	See above.
<p>Specify the Acceptance Test Data required:</p>	See above.
<p>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:</p>	Not Applicable.

Item 33 Credit/Debit Card

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

Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Existing Material (clauses 13.7, 13.9 and 13.10)	
Specify any terms and condition applicable for granting a licence for Existing Material owned by a third party:	Not applicable. Note: Under clause 20.1 of Module 11, clause 13 of Part 2 (Customer Contract) is replaced with clause 20 of Module 11.
If a perpetual and irrevocable licence to use certain Existing Material cannot be provided (for example because it is licensed under subscription for a defined period), specify: <ul style="list-style-type: none"> the duration of the licence to use that Existing Material and/or the terms on which the licence may be revoked. 	Not Applicable
Specify any fees to be charged for any licence to use any of Contractor's Existing Materials:	Not Applicable
Customer Owned New Material (clause 13.11)	
Specify whether clause 13.11 applies ie. whether the Customer owns any New Material. If so, specify: <ul style="list-style-type: none"> which items of New Material are Customer Owned New Material; and whether the Contractor is granted any licence by the Customer to use the Customer Owned New Material, and if so, what licence terms apply to the Contractor's use of the Customer Owned New Material. If clause 13.11 does not apply, state "Not applicable".	Not applicable Note: Under clause 20.1 of Module 11, clause 13 of Part 2 (Customer Contract) is replaced with clause 20 of Module 11.

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.4)	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8 - Deed of Confidentiality	Yes for the entity providing BillView for billing, Fastlane Software Pty Ltd.

Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Insurance (clause 16.7)</p> <p>Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]</p>	
<p>Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if any higher limit of cover that is required by the Customer Contract:]</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 [Only specify is a higher limit that is required by the Customer Contract:]</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>	None

Item 37 Performance Guarantee

Not applicable.

Item 38 Financial Security

Not applicable.

Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Limitation of Liability (clause 18)</p> <p>If the Parties cannot agree the amount that is legally payable under the Customer Contract for the:</p> <ol style="list-style-type: none"> 1. Non-Recurring Service or Product; and/or 2. Short Term Recurring Service <p>(as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price). Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service. (See the definition of Contract Value in Part 3)</p>	As set out in clause 18 of this Customer Contract
<p>If Services are being provided under any of the following Modules:</p> <ol style="list-style-type: none"> 3. Module 6 – Contractor Services; 4. Module 7 – Professional Services; or 5. Module 8 – Training Services, 	Not applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
specify whether the Parties regard the relevant Services as being: 6. 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 7. provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability. (See definition of Non-Recurring Services and Recurring Services in Part 3)	
Specify the alternative cap of liability (clause 18.3):	No alternative cap

Item 40 Performance Management Reports

Monthly service activation and assurance reports will be available for the Customer's managed data services where applicable (e.g. MDN or Connect IP) as further detailed in Our Customer Terms.

Item 40A Audit

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

Item 41 Dispute Resolution

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

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Termination for Convenience by the Customer (clause 25.4)	

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

Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Specify any Additional Conditions:</p> <p>Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the consent of the Contract Authority and the Secretary of the New South Wales Department of Finance, Services and Innovation where an Additional Condition varies any term or condition of the Procure IT Framework including a Protected Clause.</p>	<p>AC.1 Amendments</p> <p>(a) Clause 14.3 of the Customer Contract is amended as follows: <i>Each Party must ensure that any Confidential Information of the other Party is used solely for the purposes permitted under clause 14.2. For clarity, the persons listed in clause 14.2(a) and (b) may use any Confidential Information disclosed to them for any legitimate purpose, consistent with the role and function of those persons.</i></p> <p>(b) Clause 1.10 of Part 3 (Dictionary) is deleted in its entirety and replaced as follows: Annexure means: (i) when used in reference to the Head Agreement: a document that is incorporated into, and forms part of, the Head Agreement; and (ii) when used in reference to this Customer Contract: a document that is entitled as an 'Annexure' and is incorporated into, and forms part of, the Customer Contract.</p> <p>(c) Clause 1.36 of Part 3 (Dictionary) is deleted in its entirety and replaced as follows: Customer Data means data and information relating to the Customer and the operations, facilities, customers, clients, personnel, assets, students, families and caregivers and programs of the Customer and any other Government Agency, including Personal Information, in whatever form that information may exist and which is received by the Contractor or entered into, stored in, generated by, retrieved, printed, processed or produced as part of any Services.</p> <p>(d) Clause 1.79 of Part 3 (Dictionary) is amended as follows: Notice in Writing means a notice signed by a Party's authorised representative or his/her delegate or agent which must not <u>may</u> be an email or a document scanned and sent by email.</p> <p>(e) Clause 1.110 of Part 3 (Dictionary) is deleted in its entirety and replaced with the definition set out Module 11.</p> <p>(f) Clause 1.127 of Part 3 (Dictionary) is deleted in its entirety and replaced as follows: Workaround means a fix or alternative reasonable and operable procedure to temporarily address a defect.</p> <p>AC.2 Compliance with Laws</p> <p>The Contractor must perform its obligations under this Customer Contract in accordance with applicable law. If it is not possible for the Contractor to comply with both an obligation under this Customer Contract and its obligations under applicable law, then the Contractor:</p> <p>(a) must notify the Customer of such; and (b) will not be considered to be in breach of that obligation if it complies with its obligations at law.</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>AC.3 Clauses 3.8 of Part 2 (Customer Contract) Clause 3.8(c) and (k) is deleted and replaced with the following: (c) any Additional Conditions in Schedule 1 (if applicable) excluding Schedules to Annexures in the Additional Terms and Conditions. (k) the Agreement Documents and Schedules to Annexures in the Additional Terms and Conditions.</p> <p>AC.4. Project management</p> <p>4.1 The Contractor will ensure, through its project manager, that the Deliverables are provided to the requirements, specifications, quality, and within time and cost, set out in the Customer Contract. The Contractor's project manager will:</p> <ul style="list-style-type: none"> (a) track the Customer's responsibilities that has direct impact or dependencies in relation to the Deliverables; (b) notify the Customer's project manager of the need to perform any activities or manage its dependencies as agreed in the Customer Contract, including by informing the Customer's project manager with reasonably sufficient advance notice when an activity is due for performance or when a dependency is to occur (as the case may be); (c) proactively follow up with the Customer's project manager on a regular basis where activities are required to be performed by the Customer, or dependencies managed by the Customer as agreed in the Customer Contract are to occur, so that the Customer performs those activities within the agreed timeframes; and (d) make all reasonable effort to avoid any material impact to the delivery of the Deliverables, if events occur that delay a party performing an obligation under this Customer Contract, irrespective of which party is at fault. <p>4.2. To be clear, the Contractor is responsible for providing all services and items required to provide the Deliverables unless it is expressly set out in the Customer Contract that it is a Customer responsibility.</p> <p>4.3. The Contractor and its Personnel must be reasonably willing and able to work with any third party providers who may also provide services to the Customer in relation to the project, provided that the Contractor will not be required to disclose any of its Confidential Information or provide any of its intellectual property to any third party providers.</p> <p>AC5. Publicity The Contractor must not disclose, distribute or otherwise communicate any media release, promotional material or publicity about or in relation to this Customer Contract, their relationship or otherwise refer to the Customer (including use its logo) without its approval.</p> <p>AC6. Working with Children Checks The Contractor must ensure that:</p> <ul style="list-style-type: none"> (a) all its Personnel employed or engaged in child-related work at a Site undergo a Working with Children Check (unless the Contractor is exempt from a Working with Children Check under the Child Protection Legislation); and (b) none of those Personnel are a prohibited person under the Child Protection Legislation. <p>In the Customer Contract:</p> <ul style="list-style-type: none"> (a) Additional Terms and Conditions means the Additional Terms and Conditions forming part of this Customer Contract. (b) Child Protection Legislation means the <i>Child Protection (Working with Children) Act 2012 No 51</i> (NSW). (c) Contract Management Plan means the Contract Management Plan agreed according to this Customer Contract. A contract

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>management plan template is attached under Schedule 2 (Agreement Documents).</p> <p>(d) Module 11 means Module 11 (as amended by the Parties and attached to this Customer Contract).</p> <p>Capitalised terms not defined in the Dictionary or this Additional Condition have the meaning given in Module 11.</p> <p>AC9. Additional Terms and Conditions</p> <p>See 'Additional Terms and Conditions' at the end of this General Order Form.</p>

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

SIGNED AS AN AGREEMENT

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

The State of New South Wales by its Department of Education


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

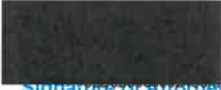

Signature of Customer


Print name

14 January 2022

Date

Executed by  as attorney for **Telstra Corporation Ltd ABN 33 051 775 556** under power of attorney dated 29 April 2019


Signature of Attorney


Print name

14th Jan 2022

Date

By executing this Customer Contract the attorney states that the attorney has received no notice of revocation of the power of attorney

Schedule 2: Agreement Documents

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

Document	Date of Document
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
OCTs - [REDACTED]	
[REDACTED]	

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Schedule 3: Service Level Agreement

1. General

This Service Level Agreement contains Service Levels in relation to the Services.

Part I – Fixed Voice Services
Part II – Mobile Services

2. All Services

2.1 These clauses apply despite any other provision of this Schedule for all Services.

3. Response Times and Status Updates

Response Times

3.1 **Response Times** for any Service is as follows:

PRIORITY	RESPONSE TIME	CONTACT
P1 or P2	██████	████████████████
P3	██████	████████████████
P4	██████	████████████████
P3	██████	████████████████
P4	██████	████████████████

Contact to the ISD by DoE can be made by:

- (a) the DoE IT Customer Experience and Service Delivery team (or a nominated person or other team);
or
- (b) a School.

In this clause 3, School means any school or educational institution operated by DoE.

3.2 **Response Time** means the period:

- (a) starting from when a ticket is raised in Telstra's systems, which occurs when:
 - (i) an Incident is reported by DoE either by a phone call or via T-Connect or identified by Telstra, whichever is earlier, or
 - (ii) an Incident is reported by DoE via an email in which case a Telstra staff will raise a ticket once the email is read and actioned. Telstra will endeavour to action the email within 15 minutes of receipt, and
- (b) ending when Telstra notifies DoE by contacting:
 - (i) the person who contacted the ISD; and
 - (ii) the DoE IT Customer Experience and Service Delivery team if the person who contacted the ISD was a School for a P1 or P2 priority,

about the Incident and that work has commenced to identify the cause of the Incident. The coverage period for the Response Time Service Level is 24 hours a day, 7 days a week (including public holidays).

- 3.3 An Incident reported by DoE must include the following details:
- (a) the name of the Site, the location of the Site and the name and contact number of DoE representative with whom Telstra will liaise in respect of the Incident report;
 - (b) the nature of the Incident; and
 - (c) any required Priority Level.

As long as DoE has submitted the details specified above in this clause 3.3 to Telstra, then calculation of Response Time will commence regardless of whether DoE has submitted any other relevant supporting documentation for the Incident (e.g. photos of the relevant Incident logged) to Telstra.

Status Reports

[REDACTED]

Status Report means report that communicates that:

- (a) the relevant Incident has been identified as Telstra's responsibility by remote diagnostics and action has commenced to resolve it;
- (b) a Site visit or a visit to one of Telstra's sites is required; or
- (c) provides progress on correcting the relevant Incident and the likely time at which the Incident will be resolved.

4. Service Improvement Plans

[REDACTED]

4.2 A Service Improvement Plan must specify:

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

4.3 Telstra must make any changes to the draft Service Improvement Plan required by DoE (acting reasonably).

[REDACTED]

4.5 Telstra will not be in material breach of this Customer Contract only because it has not achieved any items set out in the Service Improvement Plan.

5. Post Incident Report and Initial Problem Report

[Redacted]

5.3 An Initial Problem Report must specify:

- (a) the Telstra's Service designation reference number (FNC) for the Service;
- (b) the name of the Site, the location of the Site and the name and contact number of DoE representative with whom Telstra liaised with in respect of the Incident report;
- (c) the nature of the Incident;
- (d) the response times and resolutions times of the Incident;
- (e) the cause/s of the Incident;
- (f) the actions taken to resolve the Incident;
- (g) the actions that Telstra will take to prevent the same or a substantially similar Incident from occurring in the future; and
- (h) any other content reasonably required by DoE.

[Redacted]

6. Account management and priority handling

Account Personnel

[Redacted]

Priority levels

[Redacted]

6.3 The priority level for Incidents affecting the Services is set out in the table below:

Priority Level	Description
P1	[Redacted]
P2	[Redacted]

P3	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
P4	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

Assigning and reassigning priority level

[Redacted]

[Redacted]

Service level escalation

6.5 DoE and Telstra agree to the escalation process set out in the following table for the purposes of escalation:

Escalation Level	Point of Action	Position of Action
Level 1	[Redacted]	[Redacted]
Level 2	[Redacted]	[Redacted]
Level 2 Out of Hours	[Redacted]	[Redacted]
Level 3	[Redacted]	[Redacted]
Level 4	[Redacted]	[Redacted]
Level 5	[Redacted]	[Redacted]

Transparency on Incident resolution process

6.6 Telstra will provide transparency on the progress to Incident resolution for DoE to ensure that appropriate service level escalation in accordance with this clause is complied with by Telstra.

Monthly governance meeting

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Integrated Service Desk

[Redacted content]

Schedule 3: Service Level Agreement Part I - Fixed Voice Services

1. Part

- 1.1 A reference in this Part to Service is a reference to a Service that is for Fixed Voice Services.
- 1.2 A reference in this Part to a Site is a reference to the Site where a Service (referred to in the clause above) is connected.

[REDACTED]

2. Network and Service Availability Service Levels

[REDACTED]

[REDACTED]

Network Availability Service Levels

- 2.1 The Network Availability performance service levels are:

NETWORK	NETWORK AVAILABILITY
IP Solutions Core Network	[REDACTED]
IP Solutions Edge network	[REDACTED]

- 2.2 Network Availability for the IP Solutions Core Network and IP Solutions Edge Network is calculated, subject to clause 2.6, using the following formula:

Network Availability =

$$[((HPM - POM) - OT) / (HPM - POM)] \times 100$$

where:

HPM = the number of hours in the relevant month.

OT = the number of outage hours for the applicable network in the relevant month.

POM = the number of hours in the Planned Outage period in the relevant month.

Planned Outage means the unavailability of the Services to allow Telstra to perform scheduled maintenance, upgrades and repairs or to implement new or additional services.

For unavailability to be a Planned Outage, Telstra must:

- (a) have advised DoE's IT Customer Experience and Service Delivery team about the unavailability of the Services beforehand. Telstra will aim, but does not guarantee, to provide DoE with at least 14 Business Days' notice to DoE's IT Customer Experience and Service Delivery team;
- (b) ensure that the scheduled unavailability does not exceed 2 hours a month, except where required for an Emergency; and
- (c) ensure that 2 Services that are part of a fully redundant connection Service are both not unavailable or impacted.

- 2.3 Telstra must use best endeavours to conduct Planned Outages at a time that does not impact DoE's operational requirements. To achieve this, Telstra must consult with DoE's IT Customer Experience and Service Delivery team about the proposed times. This applies to all Planned Outages relating to Fixed Voice (including TIPT) but excluding nbn voice services.

Service Availability Service Levels

CONNECTING SERVICE	SERVICE AVAILABILITY
Basic Telephone Service (PSTN)	██████████
ISDN	██████████

- 2.4 Service Availability is calculated, subject to clause 2.6, using the following formula:

$$\text{Service Availability} = [((HPY - POY) - OT) / (HPY - POY)] \times 100$$

where:

HPY = the number of hours in the relevant year.

OT = the number of outage hours for the relevant Service at the Site in the relevant year.

POY = the number of hours in the Planned Outage period in the relevant year.

Planned Outage has the same meaning as defined in clause 2.2.

Availability measurement period

- 2.5 The Network Availability and Service Availability measurement period for the Services is 24 hours per day, 7 days a week (including public holidays).

Availability calculation exclusions

- 2.6 The calculations of Network Availability and Service Availability will not include times when the Service (as applicable) is unavailable due to:

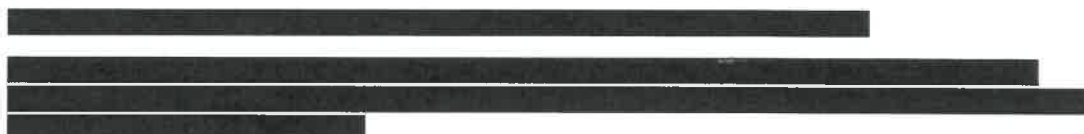
- (a) a Force Majeure Event;
- (b) a fault or delay caused or contributed to by DoE;

- (c) a Planned Outage where Telstra has complied with this Customer Contract for those Planned Outages.

3. Service Levels and Service Credits for Services

The table below sets out for each Service:

- **Current OCTs** – a reference to the current OCTs;
- **Summary** - a summary of the service levels and credits for the Service Types ; and



Service Type	Current OCT	Summary
Basic Telephone Service	OCT_fixed-general OCT_bg-serviceassurance	<p>Service Availability: ■■■ - calculated the same as 'Service Availability' in Clause 2 above ■■■</p> <p>Response Time: See Priority Terms ■■■</p> <p>Restoration and any Service Credit: (Mon-Fri 8am to 5pm, excluding Public Holidays) 1 working day for Urban. This time will be extended by one additional working day in Major and Minor Rural Areas, and by two additional working days in Remote Areas.</p> <p><i>See Current OCT for full details and exclusions</i></p>
T-Biz Voice	OCT_t-biz-voice OCT_nbnservices OCT_fixed-general	<p>Service Availability: N/A</p> <p>Response Time: See Priority Terms ■■■</p> <p>Restoration and any Service Credit:</p> <p>Where a fault is reported to Telstra before 3pm on a Business Day:</p> <ul style="list-style-type: none"> • <u>Urban Area</u>: by the end of the next business day after the day on which the fault is reported; • <u>Rural Area</u>: by the end of the second business day after the day on which the fault is reported; and • <u>Remote Area</u>: by the end of the third business day after the day on which the fault is reported <p>Where the fault is reported to Telstra between 3pm and midnight on a Business day, 1 Business Day is added to the above targets.</p> <p>Faults will be repaired during 9am to 5pm on Monday to Friday, excluding public holidays.</p> <p>(If the fault is not within NBN, Telstra can repair outside of these hours at an additional charge.)</p> <p><i>See Current OCT for full details and exclusions.</i></p>
ISDN	OCT_Part A - isdn-general	The final exit date for ISDN for all areas nationwide is 21 May 2022.

OCT_Part B -
BusinessLine
Complete - bg-isdn-
businesscustomers
OCT_Part C - isdn-
othercalltypes
OCT_bg-
serviceassurance

Service Availability: [REDACTED] calculated the same as in the
Priority Terms [REDACTED]

Response Time: See Priority Terms [REDACTED]

The fault reporting service is 24 hours.

Restoration and any Service Credits:

ISDN 2, ISDN 2 Enhanced, ISDN 10/20/30

Urban Area	12 hours
Rural Area	36 hours ---
Remote Area	60 hours

Restoration service are available between 7am and 9pm,
Monday to Saturday (including public holidays) for **ISDN 2** and
ISDN 2 Enhanced

Restoration service are available 24/7 for **ISDN 10/20/30**.

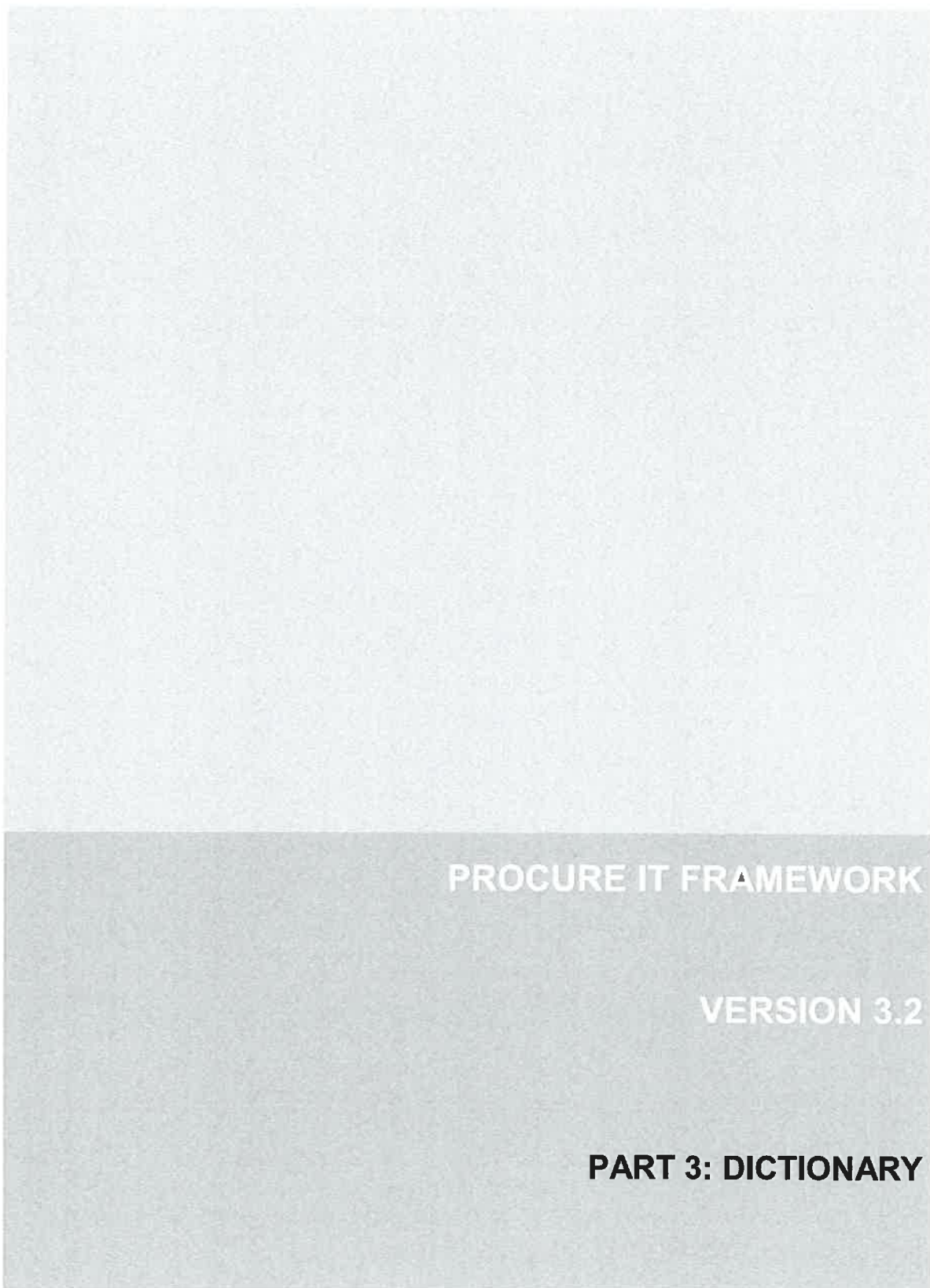
Service Credits calculated at:

ISDN 2 Enhanced	a rebate of one month's Service charges for each affected Service
ISDN Enhanced and ISDN 10/20/30 :	A rebate to the value of one month access rental fee, paid at 20% per complete hour beyond the target restoration time and capped at 100% per month per Service.

See Current OCT for full details and exclusions.

Schedule 3: Service Level Agreement Part II – Mobile Services

See Contract Specifications including [REDACTED]



PROCURE IT FRAMEWORK

VERSION 3.2

PART 3: DICTIONARY

DICTIONARY

1. AGREED TERMS & INTERPRETATION

AGREED TERMS

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

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

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

but excludes any information which the confidant can establish was:

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

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

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

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

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

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

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

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

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

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

1.29 Contract Value means:

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

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

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

1.32 Contractor Information means information relating to:

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

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

- 1.33 Correctly Rendered Invoice** means an invoice that is rendered in the form of a Tax Invoice where:
- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
 - (b) the invoice is set out as an itemised account which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
 - (c) the invoice is accompanied by documentary evidence that signifies that acceptance (where appropriate) has occurred in accordance with the Customer Contract; and
 - (d) the invoice is addressed to the officer stated in Item 6 of the General Order Form to receive invoices.
- 1.34 Customer** means the person or body corporate named in Item 1 of the General Order Form that enters into a Customer Contract with the Contractor. Customer does not include any of the Customer's Personnel.
- 1.35 Customer Contract** means those Parts, terms and conditions and other documents listed in clause 3.8 of Part 2.
- 1.36 Customer Data** means all data and information relating to the Customer or any other Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any other Government Agency, including Personal Information, in whatever form that information may exist and whether entered into, stored in, generated by, retrieved, printed, processed or produced as part of any Services.
- 1.37 Customer Supplied Item** or **CSI** means the items set out in Item 22 of the General Order Form to be supplied by the Customer under a Customer Contract.
- 1.38 Cyberterrorism** means an assault on any electronic communications network.
- 1.39 Defect** means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet the Contract Specifications and other requirements under the Customer Contract.
- 1.40 Defects List** means a written notice stating details of the actual results of any Acceptance Test, and for any alleged Defect(s) a statement as to whether the alleged Defect is Minor. The Defects List is not required to include the cause of the Defect.
- 1.41 Deliverable** means any Product, Service or output from any Service that is required to be provided to the Customer under the Customer Contract, and if applicable, includes the System.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.94 Privacy Laws means:

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

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

1.96 Product means Hardware and Licensed Software only.

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

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

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

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

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

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

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

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

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

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

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

- 1.102 Reseller** means any entity which provides Products or Services but is not:
- (a) the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service; or
 - (b) a Related Company of the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service.
- 1.103 Schedule** means a schedule to the Customer Contract.
- 1.104 Service** means any item or thing to be provided under a Customer Contract that is not a Product.
- 1.105 Service Address** means:
- (a) in the case of the Contract Authority, the address set out in the Head Agreement;
 - (b) in the case of the Contractor:
 - (i) the address set out in the Head Agreement or such other address of which the Contactor gives Notice in Writing to the Contract Authority; or
 - (ii) in relation to a Customer Contract at its address set out in Item 5 of the General Order Form or such other address of which the Contactor gives Notice in Writing to the Customer; or
 - (c) in the case of the Customer: the address set out in Item 2 of the General Order Form or the address of which the Customer gives Notice in Writing to the Contractor.
- 1.106 Service Credit** means the service credits awarded against the Contractor for a failure to meet the Service Levels, as specified in a Service Level Agreement.
- 1.107 Service Level Agreement** or **SLA** means the document or clauses that set out the performance expectations of the Parties and defines the benchmarks for measuring the performance of the Services. An example template of an SLA is set out in Schedule 3 to the Customer Contract.
- 1.108 Service Levels** means the minimum performance levels to be achieved by the Deliverable, as specified in a Service Level Agreement.
- 1.109 Short Term Recurring Services** means Recurring Services that are stated to be provided for a period of 12 months or less in the Order Documents.
- 1.110 Site** means the Customer's offices or other Customer-controlled locations stated in Item 18 of the General Order Form to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.
- 1.111 Site Specification** means the document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverable(s).

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

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

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

INTERPRETATION

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

- a reference to the Part in which the reference to that Part appears e.g. if the phrase "clause 3 in this Part" appears in a clause in the Customer Contract , then this is a reference to clause 3 in the Customer Contract only;
- (v) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (b) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
 - (c) If an agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.
 - (d) A singular word includes the plural, and vice versa.
 - (e) The words "include(s)" and "including" are not words of limitation.
 - (f) When a Party exercises its "discretion", the party may exercise its discretion in any way it chooses, provided only that it acts in good faith. There is no obligation to act reasonably where the word "discretion" is used.
 - (g) Where there is an obligation that requires the completion of a particular Order Document, including a PIPP or Service Level Agreement, but the particular Order Document is not incorporated into the Customer Contract because it is not stated in the General Order Form that the particular Order Document is included in the Customer Contract, then that obligation does not form part of the relevant Customer Contract.
 - (h) The Parties may undertake business by the electronic exchange of information and the provisions of each Part will be interpreted to give effect to undertaking business in this manner. To the extent permitted by law, any Part or any Order Document, including the General Order Form may be in electronic format.
 - (i) Where there is a shortened version of the General Order Form, Module Order Form or other Order Document, and the Order Details (details placed under an Item number) have been numbered differently in the shortened version of the Order Document to the Item numbering in the pro forma template of the relevant Order Document, then the references to the Item number in the relevant Part of the Procure IT Framework shall be interpreted as a reference to the relevant Item in the shortened version of the relevant Order Document notwithstanding the actual Item number used in the shortened version of relevant Order Document, e.g. if in a shortened General Order Form the Order Details relating to Credit/Debit Cards are included under Item number 16 in the shortened General Order Form, then the reference to "Item 33" in clause 11.3 of the Customer Contract shall be interpreted as a reference to Item number 16 in the shortened General Order Form.
- 1.129** Headings are for the purpose of convenient reference only, and do not affect interpretation of the document in which they appear.

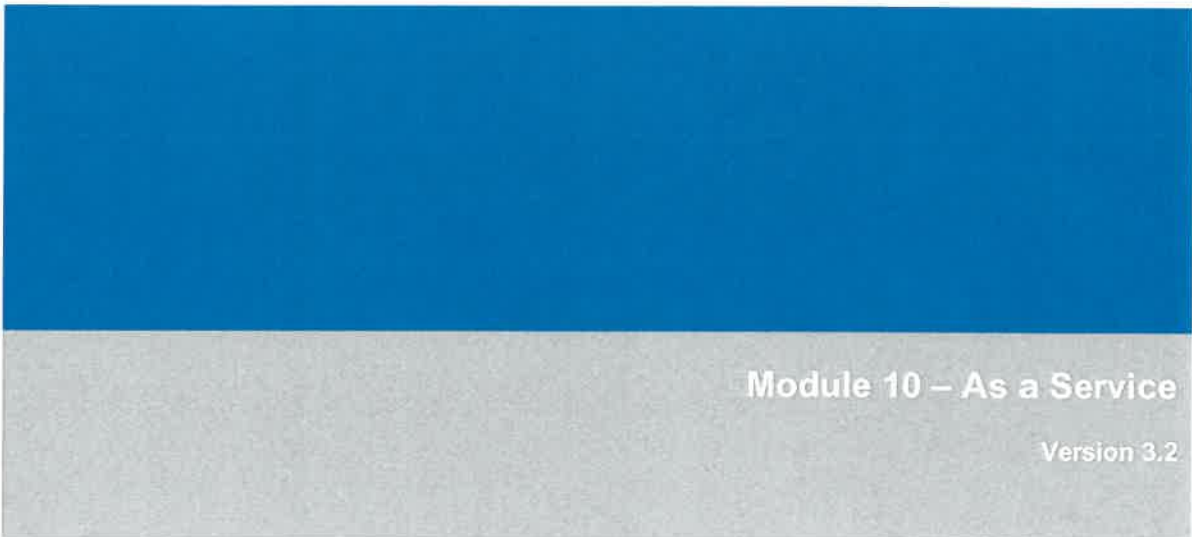


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1. AGREED TERMS AND INTERPRETATION

The terms and conditions included in this Module 10 form part of the Customer Contract and apply when the Parties state that the As a Service Module forms part of the Customer Contract.

In this Module, unless the contrary intention appears:

- 1.1 **Application** means any application software which may or may not be delivered as an Online Service, for use by Permitted Users.
- 1.2 **Approved Purpose** means the purpose agreed in the Order Documents for which the Customer and Permitted Users shall use the Service.
- 1.3 **As a Service** means Infrastructure as a Service, Platform as a Service and/or Software as a Service that is being supplied in accordance with the Order Documents, and each such As a Service is a Service for the purposes of the Customer Contract.
- 1.4 **Consolidation Period** means the first month of the provision of the As a Service (commencing on the Service Commencement Date of the relevant As a Service), or such other period, or no such period, stated in the Order Documents.
- 1.5 **Customer Access Facilities** means telecommunications, networks, systems and other facilities used, or required by, or on behalf of the Customer for accessing and making use of the Service.
- 1.6 **Customer Data** means data or information, including Personal Information, that is submitted by the Customer or Permitted Users into the As a Service to be stored or processed and made accessible from the As a Service in any form, regardless of the format, location or medium.
- 1.7 **Cutover Date** means the date when the Contractor advises the Customer that the Customer can commence loading Customer Data into the As a Service following the completion of the Transition In Services.
- 1.8 **Data Access** means the ability to retrieve, view, edit, transmit or otherwise make use of, Customer Data.
- 1.9 **Data Centre Region** means the physical location, by country or region, of the Contractor's computing Hardware and software, including any back-ups used to store, host and process Customer Data.
- 1.10 **Environment** means the entire set of technology components required for the provision of the As a Service.
- 1.11 **Infrastructure as a Service** means a computing data centre with the equipment used to support operations, including storage, hardware, servers and networking components, delivered as an Online Service.
- 1.12 **Online Service** means computing services and capabilities such as application software, software platforms, hardware platforms, infrastructure and similar capabilities, which are delivered by the Contractor to the Customer over an IP network (including the Internet), rather than provided locally or on-site. Typically, the software and hardware assets are owned by the Contractor and the Customer is billed for usage.
- 1.13 **Permitted User** means such persons that the Customer has permitted to use the As a Service for an Approved Purpose, in accordance with the Customer Contract, including individual end users.

- 1.14 **Platform as a Service** means a hosted Environment for configuring and running Applications that is delivered as an Online Service.
- 1.15 **Service Commencement Date** means the date that the Contractor states it is ready to commence the Services or such date that the Parties agree that the Contractor must commence the Services.
- 1.16 **Service Definition** means the Contractor's description of the As a Service as specified in the Order Documents and may include details of specific inclusions, exclusions, limitations and costs.
- 1.17 **Services** means the As a Service, any Support Services, Transition In Services, Transition Out Services, Training Services provided under clause 10.3 in this Module and any other Deliverables specified in the Order Documents.
- 1.18 **Software as a Service** means software or an Application that is delivered as an Online Service.
- 1.19 **Support Services** means any services specified in the Service Definition or Order Documents that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup and recovery services.
- 1.20 **Technical Specifications** means any defined characteristics of the Environment or Services in terms of functionality, performance, availability or dependencies.
- 1.21 **Third Party Application** means an Application supplied, licensed from or owned by a third party which is used by the Customer.
- 1.22 **Transition In Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor prior to the Cutover Date that may include, data migration, business continuity plans, testing of the As a Service, handover arrangements and planning to enable the Customer's operations and Customer Data to be moved to the Services and may also include development of a Transition Out Services plan.
- 1.23 **Transition Out Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor after the cessation of the As a Service to enable the Customer's operations and Customer Data to be removed from the As a Service and may include treatment of Customer's documents or materials, transitioning the As a Service to a new service provider or to the Customer, resolving issues relating to technological parity and current industry standards with other service providers and provision of technical documentation for the transfer of Customer Data, and procedures for the return/transfer or deletion of Customer Data.
- 1.24 **User Documentation** means the user manuals, installation instructions, reference material and other relevant publication and aids and any updates, replacements, revisions and additions (if any) provided or made available by the Contractor from time to time in a hard copy, electronic or online format. User Documentation excludes any document that is training material.

INTERPRETATION

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

2. TERM OF SERVICES

2.1 The Contract Period:

- (a) commences from the Services Commencement Date of the first of the Services to be provided under the Customer Contract; and
- (b) continues for the period of time stated in the Order Documents, including any period or periods of extension of the Customer Contract,

unless the Customer Contract is terminated sooner in accordance with the Customer Contract and this Module.

2.2 The Contract Period may be extended by agreement between the Parties using the procedure in Schedule 4 – Variation Procedures.

2.3 During the Contract Period, the Customer engages the Contractor to be the provider of the Services.

3. SCOPE

3.1 The Contractor shall provide all Services to the Customer for the Contract Period.

3.2 Should the Contractor employ an agent, subcontractor or third party to perform or carry out any part of the Services, the Contractor is not relieved of its liabilities and obligations arising out of, or in connection with, the Customer Contract by such employment.

4. CUSTOMER USE AND ACCESS TO THE AS A SERVICE

4.1 The Customer agrees that the access rights of any Permitted User (for example on a named or password enabled basis) cannot be shared or used by more than one individual, unless the right is reassigned in its entirety to another individual authorised user in which case the first user shall no longer have any right to access the As a Service.

4.2 The Customer acknowledges and agrees that it is the Customer's and/or Permitted Users' responsibility (unless otherwise stated in the Order documents) to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification or the Service Definition change during the Contract Period.

4.3 The Customer acknowledges and agrees that the As a Service may be provided on a shared service basis to the Customer and other clients of the Contractor from a common code base and/or common Environment and the Contractor may from time to time:

- (a) change add or delete the functions, features, performance, or other characteristics of the As a Service, and if such change, addition or deletion is made, the specifications of the As a Service shall be amended accordingly; and
- (b) correct errors or upgrade the As a Service,

provided that the functionality or availability of the As a Service used by the Customer shall not materially decrease during the Contract Period.

4.4 The Contractor will provide prior written notice via its website or email of major changes or new versions of the Service (if relevant). The Contractor does not guarantee any change, addition, deletion, error correction, patch or new version will be compatible with any application, other software or interface that connects to or interfaces with the As a Service that has been made by or on behalf of the Customer.

- 4.5 The Contractor will identify any additional guidelines and usage restrictions (if any) that may apply to the As a Service in each Customer Contract. The Customer must use the As a Service in accordance with any such guidelines and restrictions (as updated from time to time) provided that such guidelines and restrictions do not result in a material reduction in the level of performance or availability of the As a Service during the Contract Period.
- 4.6 If the Contractor's changes under clauses 4.3, 4.4, or 4.5 result in a material reduction in the level of performance or availability of the As a Service during the Contract Period the Customer may exercise its rights to terminate the Customer Contract.
- 4.7 The Customer is solely responsible for all Customer Data and it, and its Permitted Users, are solely responsible for entering Customer Data into the As a Service, maintaining Customer Data (including backing up and restoring Customer Data) and ensuring that it is accurate and not false, misleading or deceptive nor likely to mislead or deceive.
- 4.8 The Customer will comply with all applicable laws in connection with access to or use of the As a Service or the Customer Contract.

5 DATA CONTROL AND AUDIT

- 5.1 This clause 5 operates during the Contract Period and (where relevant) such period thereafter as the Contractor (including any person on the Contractor's behalf) has access to anything which embodies the Customer Data.
- 5.2 The Contractor agrees:
- (a) it shall ensure that the As a Service materially complies with the Service Definition;
 - (b) it will not vary the Data Centre Region(s) specified in the Order Documents without the prior written consent of the Customer, such consent not to be unreasonably withheld;
 - (c) to apply to the Customer Data the level of security and encryption that is specified in the Order Documents;
 - (d) it shall implement and comply with any business continuity plan that may be specified in the Order Documents;
 - (e) it shall implement and comply with the retention and disposal requirements specified in the Order Documents; and
 - (f) it shall ensure the accessibility, usability and preservation of Customer Data does not change detrimentally in any material respect as a result of any changes made by the Contractor to the As a Service and subject to any agreed downtime of the As a Service.
- 5.3 The Customer agrees that:
- (a) it shall use only the Customer Access Facilities to access the As a Service;
 - (b) it shall ensure that the Customer Access Facilities meet the security standards specified in the Order Documents; and
 - (c) it shall use its best endeavours to prevent viruses or other harmful or malicious code in the Customer Data and that the Customer Data does not infringe any third party's rights.
- 5.4 The parties agree that the Customer and/or its representative who may not be a competitor of the Contractor (including a supervisory authority of the Customer) may conduct an audit, at the Customer's cost and up to one time per year. This number of audits may be exceeded

where additional audits are required by any lawful authority. The audit shall solely involve access to Customer Data, access to all relevant documentation and access to evidence to verify the Contractor's processes and controls. Such documentation and evidence may include but is not limited to the Contractor's data and logs directly related to the Customer's use of the As a Service, the Contractor's architecture, systems and procedures, independent certifications or interviews.

- 5.5 If expressly agreed in the Order Documents, the Contractor shall facilitate an on-site visit to the facilities from where the Service is provided at the Customer's cost up to one time per year. The Customer shall give the Contractor reasonable advance written notice of not less than 14 days of any request for an on-site visit. During any on-site visit the Customer and its representatives shall observe the security procedures which the Contractor reasonably requires and ordinarily obtains from third parties. If the Customer conducts an on-site visit through a third party independently appointed representative, such representative shall be required to enter into a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in the Customer Contract to protect the Contractor's proprietary information. Any on-site visits described in this clause shall be conducted during reasonable times and shall be of reasonable duration and shall not unreasonably interfere with the Contractor's day-to-day operations.
- 5.6 The Contractor will provide production, test, and backup environments in the Data Centre Regions specified in the Order Documents. All activities or services which involve Data Access, storage, hosting or processing of Customer Data will be carried out in the Data Centre Region(s) specified in the Order Documents. The Contractor and its Related Companies may perform certain aspects of the Services from locations and/or through use of subcontractors worldwide, and those services may require access to the Customer's account details or the Contractor's logs and data relating to the Customer's use of the As a Service, but will exclude any use or retrieval of Customer Data.

6. SERVICE LEVELS

- 6.1 From the day after the Consolidation Period the Contractor must comply with the terms of the Service Level Agreement, subject to any:
- (a) Force Majeure Event;
 - (b) act or omission of the Customer or its Personnel; and
 - (c) act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer.

7. RESTRICTIONS

- 7.1 The Customer shall not:
- (a) remove, alter or obscure any disclaimer or notice, or any restricted right legend, trademark, copyright or other ownership right legend appearing in the As a Service on a screen or any print out from the As a Service;
 - (b) allow access to or use of the As a Service for any purpose other than the Approved Purpose;
 - (c) copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation, or derivative of the As a Service or the User Documentation, unless expressly permitted by the Customer Contract or the law;
 - (d) reverse engineer, reverse compile, decompile or disassemble the object code of any part of the As a Service or otherwise attempt to derive the source code of the As a Service, except to the extent permitted by law; or

- (e) use or permit the use of the As a Service for any purpose that may cause damage or injury to any person or property or breach any law.

8. LIABILITY

- 8.1 The Contractor and the Customer agree that, for the purposes of the Services provided under this Module, clause 18.5 of the Customer Contract is replaced with the following:

The Contractor has:

- (a) subject to paragraph (b) below, no financial cap on its legal liability where that liability arises from:
 - (i) bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b); or
 - (ii) loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
 - (iii) breach of the Contractor's obligation of confidence under or pursuant to clause 14; or
 - (iv) the Contractor's indemnity in respect of breach of privacy obligations as stated in clause 19.1(a); and
- (b) a financial cap on its legal liability for all claims in the aggregate arising from:
 - (i) the Contractor's indemnity for IP Claims under clause 19.1(c); or
 - (ii) liability arising from or in relation to Customer Data,

the greater of \$100,000 or three times the annual Contract Value of the affected Service provided under this Module unless a greater amount is specified in the Order Documents.

9. INFORMATION OWNERSHIP, INTEGRITY AND PRIVACY

- 9.1 The Contractor does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in this Module or the Customer Contract.
- 9.2 The Customer grants to the Contractor or to any third party associated with the Contractor, a non-exclusive, non-transferable licence over the Customer Data for the sole purpose of the Contractor performing its obligations under the Customer Contract and enabling the Customer's use of the As a Service including handling Customer Data in accordance with the Customer's instructions.
- 9.3 The Contractor will ensure continuity of accessibility and usability (in each case, in material compliance with the Service Definition) of all Customer Data regardless of any migration of data to other formats during the Contract Period. The Contractor will notify the Customer of any proposed migration and will allow the Customer to verify data integrity.
- 9.4 The Contractor may delete, purge and/or disclose Customer Data where it is required to do so under any applicable law. Where the Contractor receives a request to delete, purge and/or disclose any part of the Customer Data, if legally permitted to do so, it shall promptly notify the Customer of the request to enable the Customer to respond.
- 9.5 Subject to clause 9.4, the Contractor and any third party associated with the Contractor will not access, disclose, delete, process or otherwise use Customer Data for any purpose other than in accordance with the Customer Contract or as expressly authorised by the Customer.
- 9.6 Without limiting this clause, the Contractor agrees that, in respect of Personal Information it shall comply with Privacy Laws applicable to its provision of the As a Service.

10. ADDITIONAL SERVICES

Transition in services

- 10.1 Any Transition In Services shall be provided by the Contractor in accordance with the Order Documents.

Transition out services

- 10.2 Any Transition Out Services shall be provided by the Contractor in accordance with the Order Documents.

Training services

- 10.3 The Contractor will provide the Customer with requested training services at the time, and for the Price, set out in the Order Documents. The details of the courses, number of attendees, location for training, and which party is responsible for providing the equipment and the Price must be set out in the Order Documents.

Documentation

- 10.4 The Contractor will provide or make available to the Customer, upon request and at no cost to the Customer:
- (a) all necessary User Documentation; and
 - (b) any other Contractor documents listed in the Order Documents to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.

11. WARRANTIES

- 11.1 The Contractor warrants to the Customer that the Services will perform in accordance with the Service Definition and Technical Specifications in all material respects during the Contract Period. The Contractor does not guarantee that access to and use of the Service will be uninterrupted or error free.

12. PAYMENT AND INVOICING

- 12.1 The Customer must pay the Contractor for the Services in accordance with the Order Documents.
- 12.2 If any charge owing by the Customer is 30 days or more overdue, and is not in dispute the Contractor will issue a notice to the Customer's Authorised Representative named in Item 3 of the General Order Form requiring payment within a further 14 days of the date the notice before taking any further action including suspension of the As a Service.

13. TERMINATION

- 13.1 In addition to the Customer's right to terminate the Customer Contract in accordance with clause 25 of the Customer Contract and clause 4.6 of this Module, the Customer may immediately terminate the Customer Contract in respect of this Module for cause by providing the Contractor Notice in Writing, if the Contractor persistently breaches the warranties contained in this Module (irrespective of whether such breaches collectively constitute a Substantial Breach) in which event the Contractor will be liable for the Customer's reasonable direct costs and expenses associated with the breach including all reasonable direct costs associated with changing Contractors, subject to the applicable exclusions and limitations of liability set out in this Module and the Customer Contract.
- 13.2 On termination of this Customer Contract for any reason:

- (a) all licences granted in this Module shall immediately terminate;
- (b) other than in respect of Confidential Information which is Customer Data, each Party shall destroy or return and make no further use of any Confidential Information (and all copies of them) of the other Party;
- (c) the Contractor must delete Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification that it has been deleted; and
- (d) at the Customer's request made within 60 days of termination, the Contractor must provide the Customer with access to a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by the Contractor.

14. NO ASSIGNMENT OR NOVATION

- 14.1 The Contractor must not assign in whole or in part or novate the Customer Contract without obtaining the prior written consent of the Customer, and such consent may be withheld in the Customer's sole discretion except where the novation involves a Contractor Related Company.

15. INFRASTRUCTURE AS A SERVICE

- 15.1 Additional terms and conditions may be set out in the Order Documents in relation to Infrastructure as a Service.
- 15.2 Unless otherwise specified in the Order Documents, the Customer is solely responsible for:
- (a) configuring, installing, maintaining and obtaining licences to any software, applications or other materials that may be installed, located, hosted or otherwise stored on the Infrastructure as a Service;
 - (b) ensuring that all content and data stored on or otherwise retained on the Infrastructure as a Service are backed-up and that copies of back-up media are stored securely;
 - (c) restoring data or content from back-up media;
 - (d) implementing and maintaining security measures to protect the data, software, applications or other materials that are installed, located, hosted or otherwise stored on the Infrastructure as Service;
 - (e) obtaining all third party consents that are necessary to enable the Customer to store the relevant data and content on the Infrastructure as a Service; and
 - (f) all use of the Infrastructure as a Service by any person.
- 15.3 The Customer must:
- (a) ensure that all licences obtained by it in relation to software, applications or other materials that are hosted on the Infrastructure as a Service extend to permit the Contractor (and its sub-contractors) to run, execute or otherwise use each such item for the purposes of providing the Infrastructure as a Service; and
 - (b) comply with the terms of all licences referred to in paragraph (a) above and clause 15.2(a).

- 15.4 The Contractor may change the underlying infrastructure used by it to provide the Infrastructure as a Service, provided that any such change does not materially and adversely impact the Customer.

16. PLATFORM AS A SERVICE

- 16.1 Additional terms and conditions may be set out in the Order Documents in relation to Platform as a Service.

17. SOFTWARE AS A SERVICE

- 17.1 Additional terms and conditions may be set out in the Order Documents in relation to Software as a Service.
- 17.2 The Contractor or third parties may from time to time make available to the Customer (e.g., through an online exchange) third-party products or services, including but not limited to Third Party Applications. Any acquisition by the Customer of such Third Party Applications, products or services, and any exchange of data between Customer and any Third Party Application provider, is solely between the Customer and the applicable Third Party Application provider. The Contractor is not liable for, and does not warrant or support, third party products or services, whether or not they are designated by Contractor as "certified" or otherwise, except as specified in an Order Documents.
- 17.3 Any Third Party Applications supplied under Order Documents between Customer and Contractor shall be supplied by the Contractor in accordance with such Order Documents.
- 17.4 **Third Party Applications and Customer Data.** If the Customer installs or enables Third Party Applications for use with Services, the Customer acknowledges that the Contractor may allow providers of those Third Party Applications to access Customer Data as required for the interoperation and support of such Third Party Applications with the As a Service. The Contractor shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Application providers. The As a Service shall allow the Customer to restrict such access by restricting Permitted Users from installing or enabling such Third Party Applications for use with the As a Service.
- 17.5 **Reservation of Rights in Service.** Subject to the limited rights expressly granted hereunder, the Contractor reserves all rights, title and interest in and to the As a Service, including all related Intellectual Property Rights. No rights are granted to the Customer hereunder other than as expressly set out in this Module.
- 17.6 **Customer Applications and Code.** If a Customer, or a third party acting on Customer's behalf, or a Permitted User creates applications or program code using the As a Service, the Customer authorizes the Contractor to host, copy, transmit, display and adapt such applications and program code, solely to enable the Contractor to provide the Service in accordance with the Order Documents. The Contractor acquires no right, title or interest from the Customer or its licensors in or to such applications or program code, including any Intellectual Property Rights therein.

PROCURE IT VERSION 3.2

MODULE ORDER FORM

MODULE 10 – AS A SERVICE

Box 1 Services

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>Contract Period (clause 2.1)</p> <p>Specify the Services Commencement Date, and, if applicable, the period of time for which the Services will be provided</p>	<p>Services Commencement Date is the Commencement Date</p> <p>The Services in this Module will be provided as follows: BillView: Contract Period. EMMS: Service Period for EMMS as defined in Box 1 of the Module Order Form for Module 11 – Telecommunications as a Service to this Customer Contract.</p>
<p>Service definition (clause 2.3)</p> <p>Describe the Service to be provided, ie:</p> <ul style="list-style-type: none"> a. Infrastructure as a Service; b. Platform as a Service; c. Software as a Service; and d. any Management Services (unless subject to a separate module), eg <ul style="list-style-type: none"> a) implementation b) user training c) support services d) ongoing system administration e) monitoring and performance management f) backup and recovery services. <p>The Service Definition should include the strategy for the delivery of the Services that is appropriate for the Customer’s needs and its user population, such as:</p> <ul style="list-style-type: none"> a. identification of the Services to be performed; b. identification of Client Contracts and Third Party Contracts and how they are to be managed; c. a mechanism to determine when Transition In Services are complete and the Services can commence; and d. implementation of the Services, and <p>Note: Module 10 expects that the Parties will enter into a Service Level Agreement.</p> <p>Specify any Support Services that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup and recovery services.</p>	<p>See Contract Specifications for BillView and EMMS.</p>

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Training Services (clause 10.3)	
Specify whether the Contractor will provide any training services associated with the Service. If yes, specify the time when training services will be provided.	See Contract Specifications for BillView and EMMS.
Documentation (clause 10.4)	
Specify any Contractor documents, in addition to User Documentation, to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.	See Contract Specifications for BillView and EMMS.
Pricing	
Specify whether the Service is for a fixed Price or on a subscription basis. If for a fixed Price, set out the pricing for the Service. If on a subscription basis, specify how payment is made (eg monthly, yearly, etc). Specify the Price of any training services. (clause 10.3)	For BillView, [REDACTED] For EMMS, as set out in the [REDACTED]
Approved Purpose (clauses 1.2 and 7.1(b))	
Specify the purpose for which the Customer and Permitted Users shall use the Service.	See Contract Specifications for BillView and EMMS.

Box 2 Transition In

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Specification of Transition In Services (clause 10.1)	
Specify any Transition In Services to be provided, such as: a. due diligence; b. data migration; c. Business Contingency Plans; d. testing of Services; and e. handover arrangements	See Contract Specifications for BillView and EMMS.
Due diligence may include assessment and definition of the: a. Customer's goals, requirements and expectations in respect of the Services b. Contractor's understanding of the Customer's and/or user's experience and requirements in relation to the Services c. objectives to be met by the Contractor d. nature and scope of the Service, including the Environment, the Assets, Client Contracts and Third Party Contracts (and any requirement to novate or assign any of them) e. end users who will be supported by the Service f. necessary Assets and Additional Items and how they may need to be procured g. migration of Customer Data h. data retention and disposal requirements i. required Deliverables j. resources required (including any Customer Supplied Items or Customer assistance)	

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>k. complexity of the project, and l. any Transition-Out Services plan.</p> <p>Data migration services should include the drafting of a Procedures Manual (if one does not exist as part of the Service Definition) for approval by the Customer (eg within 14 days). The Procedures Manual should describe the key attributes of the Services, including:</p> <ul style="list-style-type: none"> a. the governance arrangements between the Customer and the Contractor; b. the governance arrangements dealing with the Contractor and any third parties; c. the protocols for managing security issues between the Parties; d. the protocols for identifying and managing risks; e. how the key aspects of the Services will be provided to the Customer; f. the procedures for varying Services and providing Additional Services; g. how user complaints and disputes will be managed; h. updating the Procedures Manual; and i. data backups, if required outside of disaster recovery processes. <p>Note: Once the Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it.</p> <p>Business Contingency Plan The Parties may agree to include a Business Contingency Plan in accordance with clauses 6.45 to 6.48 of the Customer Contract.</p>	

Box 4 Customer Use and Access to the As a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>Terms under which the Service is available (clause 4.1)</p> <p>Consider issues including:</p> <ul style="list-style-type: none"> a. authorisation to access the Service, eg individual and multi-user passwords; b. maximum Contractor Systems capacity; c. is the Customer responsible to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification of the Service Definition changes during the Contract Period; d. is the Service provided on a shared service basis to the Customer and other clients from a common code base and/or common environment; e. conditions under which the Contractor may change any characteristics of the Service, and if the specifications of the Service must be amended accordingly; and f. conditions under which the Contractor may correct errors patch or install new versions of the Service. 	<p>See Contract Specifications for BillView and EMMS.</p>

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>Data Centre Region (clause 5.2(b) and clause 5.6)</p> <p>Specify the physical location(s) by country or region of the Contractor's computing hardware and software used to store, host and process Customer Data, including production, test and backup environments.</p> <p>Note: the location(s) must not be changed without the prior written consent of the Customer (cl. 5.2(b)).</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Box 4 Data Control and Access

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>Security and Encryption (clause 5.2(c))</p> <p>Specify the level of security and encryption required for the Customer Data as defined by the Customer's Information Security Management System (ISMS).</p> <p>Note: All NSW Government Departments, Statutory Bodies and Shared Service Providers are required to have an ISMS.</p>	<p>See Contract Specifications.</p>
<p>Business Continuity Plan (clause 5.2(d))</p> <p>Detail any Business Continuity Plan, including backup and disaster recovery procedure, in place for implementation by the Contractor, if required.</p>	<p>Not required.</p>
<p>Data Retention and Disposal (clause 5.2(e))</p> <p>Specify the retention period for the Customer Data and retention and disposal requirements the Contractor will implement and comply with in relation to Customer Data.</p>	<p>BillView: A copy of all Customer Data must be sent to the Customer in an industry acceptable form at the end of the Service Period or Transition-Out Period as required by the Customer.</p> <p>EMMS: A copy of all user hardware profiles must be sent to the Customer at the end of the Service Period as required by the Customer.</p>
<p>Security Standards for Customer Access Facilities (clause 5.3(b))</p>	
<p>Specify the security standards that the Customer Access Facilities will meet.</p>	<p>See Contract Specifications.</p>
<p>On-site visit (clause 5.5)</p>	
<p>Specify any requirements by the Contractor for on-site visits to the facilities where the Service is provided.</p>	<p>As advised by the Customer reasonably in advance.</p>

Box 5 Service Levels

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Consolidation Period (clause 6.1)	
The Consolidation Period is defined as the first month of the provision of the As a Service (cl. 1.4). Specify if another period is required. If yes, what is the period?	See Contract Specifications for BillView and EMMS.

Box 6 Payment and Invoicing

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Payment for Services (clause 12.1)	
Terms of payment should include details of the Services provided. Note that no payment is due where termination of the contract is occasioned by the Contractor's breach of the contract. The Contractor must send the Customer a Correctly Rendered Invoice for each payment before the relevant amount is due. Payment terms must be consistent with NSW Government policy.	For EMMS, included as part of EMMS Contract Monthly Charge. For BillView, [REDACTED]

Box 7 Transition-Out

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Transition-Out Services (clause 10.2)	
If required, Transition-Out Services may include: <ul style="list-style-type: none"> a. returning or destroying documents or materials, together with any reproduction of those documents or materials; b. transitioning the Service to a new service provider or to the Customer; c. granting or assisting the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is the same as that being used in the System, and any software owned by the Contractor which is integral to the ongoing provision of the Service, subject to payment of licence fees by the Customer (or new service provider); d. ensuring technological parity with other service providers, and the provision of sufficient technical documentation, to enable successful and cost-effective transfer of the Customer Data; and e. procedures for the return/transfer or deletion of Customer Data upon termination of the Customer Contract; or in the event that the Contractor becomes subject to corporate takeover or insolvency. Consider issues relating to: <ul style="list-style-type: none"> a. regular (eg annual) review of the Transition-Out Services plan; and b. how and when the Transition-Out Services are brought into effect. Specific matters that may be covered in the Transition-Out Services plan include that the Contractor, in consultation with the Customer and as stated in the Transition-Out Services plan:	BillView: As detailed in clause 6 of the Additional Terms and Conditions. EMMS: None

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<ul style="list-style-type: none"> a. return any Customer Supplied Item(s); b. freeze non-critical software changes in any of the Customer's software that is being supported as part of the Service; c. provide all reasonable transition assistance for the delivery of Customer Data to the new service provider or to the Customer and the reloading of the production databases; d. provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties in the Transition-Out Plan); e. provide a list of the outstanding issues detailed on any issues register; f. answer questions and provide such other information as may be reasonably sought by the new service provider and/or by the Customer to assist it in the transition process; g. surrender any remaining Customer owned reports and documents still in the Contractor's possession; h. the Contractor ceases to become liable to perform any part of the Service after it is transitioned to a new service provider or to the Customer; i. the Contractor's obligations to meet the Service Levels are not reduced and the Contractor remains liable for failing to meet any Service Levels; j. the Customer must continue to pay the full Services Price until the last day of the Contract Period, notwithstanding that some or all of the Service may have been transitioned to a new service provider or to the Customer (unless otherwise agreed in the Order Documents); k. the Contractor must, subject to clause 13.2 of the Module, return to the Customer all Customer Data within 14 days of termination of the Customer Contract and back up and secure Customer data for a further 60 days after termination of the Customer Contract; l. grant or assist the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is integral to the ongoing provision of the Services, subject to payment of licence fees by the Customer (or new service provider); and m. not delete any Customer Data at the end of the Customer Contract without the express prior approval of the Customer. 	

Box 8 Return of Customer Data on termination

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>Customer Data deletion and certification (clause 13.2(c))</p>	
<p>Specify the period within which the Contractor must delete the Customer Data and whether certification it has been deleted is required.</p>	<p>Within 30 days or such other agreed time after return of the Customer Data to the Customer. Certification will be provided if requested.</p>

Customer Data format (clause 13.2(d))	
Specify the format that the Customer Data must be provided to the Customer.	Industry acceptable form to be agreed by the parties at termination.

Box 9 Additional terms – Infrastructure as a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Additional terms and conditions (cl. 15.1)	
Specify any additional terms and conditions in relation to Infrastructure as a Service.	Not applicable.

Box 10 Additional terms – Platform as a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Additional terms and conditions (cl. 16.1)	
Specify any additional terms and conditions in relation to Platform as a Service.	Not applicable

Box 11 Additional terms – Software as a Service

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
Additional terms and conditions (cl. 17.1)	
Specify any additional terms and conditions in relation to Software as a Service. Specify whether the Contractor warrants or supports third party products or services. (cl. 17.2). Specify any Third Party Applications supplied by the Contractor (cl. 17.3).	See Contract Specifications for BillView and EMMS.

Module 11 – Telecommunications as a Service
Based on Procure IT Framework version 3.2 (with changes)

1. AGREED TERMS AND INTERPRETATION

The terms and conditions included in this Module 11 form part of the Customer Contract when the Parties state that the Telecommunications as a Service Module forms part of the Customer Contract in Item 8 of the General Order Form.

DEFINITIONS

In this Module, unless the contrary intention appears:

- 1.1 **ACMA** means the Australian Communication and Media Authority.
- 1.2 **ACMA Standard** means a telecommunications, technical or radiocommunications standard published by the ACMA from time to time.
- 1.3 **Back Billing Period** means a period of three (3) months from the date that charges are incurred by the Customer.
- 1.4 **Benchmark** means a benchmarking exercise of Telecommunications Services conducted pursuant to, and for the purposes specified in, clause 14 of this Module 11.
- 1.5 **Benchmarker** means an independent consultant agreed by the Parties to undertake the benchmarking.
- 1.6 **Benchmarking Report** means a report prepared by a Benchmarker setting out the result of a Benchmark.
- 1.7 **Billing Period** means Telstra's billing period for the relevant Service(s).
- 1.8 **BillView** means the Service described in Annexure 2, Part 2 (BillView Service Details).
- 1.9 **Contract Monthly Charge** means, in respect of a Service(s), the monthly charge for the Service set out in the [REDACTED]
- 1.10 **Contractor Software** means all software:
 - (a) in which the Intellectual Property Rights are owned by the Contractor;
 - (b) which are developed by or for the Contractor independently of the Customer Contract;
 - (c) which the Contractor can reasonably demonstrate was developed at its sole cost; or
 - (d) in which the Intellectual Property Rights are owned by a third party and used by the Contractor and/or any of its subcontractors under licence.
- 1.11 **Contractor Tools and Methodologies** means all methodologies, tools, ideas, processes, reports, concepts, techniques and other material used by or for the Contractor in performing the Telecommunications Services:
 - (a) in which the Intellectual Property Rights are owned by the Contractor, its subcontractors or any other third party prior to their use in performing the Telecommunications Services; or
 - (b) which are developed by or for the Contractor, its Subcontractors or any other third party independently of the Customer Contract.
- 1.12 **Corporate** has the meaning set out in section 2 of the Additional Terms and Conditions.
- 1.13 **Customer Content** means data or information which is transmitted and/or received using Telecommunications Services provided to the Customer.
- 1.14 **Customer Works** means:
 - (a) all information provided to the Contractor by the Customer under this Module;

- 1.33 **Service Description** means the detailed description of the Telecommunications Service to be provided by the Contractor which will form part of the relevant Module Order Form.
- 1.34 **Service Period** has the meaning set out in clause 3 of this Module.
- 1.35 **Service Specifications** means the agreed specifications relevant to the delivery of the Telecommunications Service.
- 1.36 **SIM card** means a Subscriber Identity Module card.
- 1.37 **Site** refers to the Customer's offices, stations or other Customer-controlled locations to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.
- 1.38 **Standard Form of Agreement** means the Contractor's standard form of agreement formulated for the purposes of Part 23 of the Telecommunications Act 1997 (Cth).
- 1.39 **Standard Telephone Service** means local, national and international calls, twenty-four (24) hour access to the emergency service number operator assisted services, freecall, information services, service maintenance services and directory assistance
- 1.40 **Telecommunications Equipment** means the equipment that will be sold, licensed, leased or otherwise provided by the Contractor to the Customer as part of the Telecommunications Service.
- 1.41 **Telecommunications Service** means a telecommunications service identified in the relevant Module Order Form.
- 1.42 **Transition Out Period** has the meaning set out in clause 6 of the Additional Terms and Conditions.
- 1.43 **Transition-Out Services** means Telecommunications Services disengaged in accordance with clause 6 of the Additional Terms and Conditions (whether encompassing all or part of the Telecommunications Services), and any additional services which the Contractor is required to provide under that clause 6.
- 1.44 **Urban Area** means Australian areas of population with more than 10,000 people.
- 1.45 **User** means any person who has been given the authority by the Customer to use a Telecommunications Service or some or all of the functionality provided by a Telecommunications Service or by the Customer's system.

INTERPRETATION

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

Unless otherwise specified, a reference to a clause or sub-clause only is a reference to a clause or sub-clause in this Module.

2. SUPPLY OF TELECOMMUNICATIONS SERVICES

- 2.1 Clauses 1 to 31 (inclusive) in this Module 11 will apply to all Telecommunications Services supplied by the Contractor to the Customer. The provisions in Parts A – C of this Module will only apply to the Telecommunications Services covered by each of those Parts.
- 2.2 The Contractor will supply the Telecommunications Services in accordance with the relevant Module Order Form and the Customer Contract, including the Service Description and Service Specifications (if relevant).
- 2.3 If the relevant Module Order Form specifies that Acceptance Tests must be undertaken in respect of a Telecommunications Service, it will be carried out in accordance with the processes and timeframes specified in clauses 10.3 to 10.16 of Part 2 (Customer Contract) and any requirements included in the relevant Module Order Form including Additional Terms and Conditions.
- 2.4 Not used.
- 2.5 The Contractor will provide the Telecommunications Services with sufficient capacity, availability and quality during the Service Period as necessary to comply with the requirements of the

Service Levels (if any) and the Service Specifications.

- 2.6 The Contractor acknowledges that it has:
- (a) examined all information relevant to the risks, contingencies and other circumstances which could affect the supply of the Telecommunications Services, obtainable by making reasonable enquiries; and
 - (b) satisfied itself as to the availability of labour, resources and services required to supply the Telecommunications Services.
- 2.7 The Contractor shall provide the Customer with training, as specified in the relevant Module Order Form, in respect of the use of the Telecommunications Services ordered.

3. PERIOD OF TELECOMMUNICATIONS SERVICE

- 3.1 The Contractor will supply the Telecommunications Services for the Service Period unless terminated earlier in accordance with the Customer Contract.
- 3.2 The Service Period for the Fixed Voice Services and Mobile Services will continue for the length of time set out in Box 1 (Service Period) of the Module 11 Order Form.
- 3.3 The Customer may extend the Service Period of any of the Telecommunications Services on the same terms and conditions for the periods stated in Box 1 (Service Period) of the Module 11 Order Form, by giving Telstra written notice at least 90 days prior to the end of the relevant Service Period.

4. CUSTOMER'S USE OF TELECOMMUNICATIONS SERVICES

- 4.1 The Customer is responsible for all use of a Telecommunications Service and will not, and will use reasonable endeavours to ensure that its Users do not, use or attempt to use the Telecommunications Services:
- (c) for any illegal, fraudulent or defamatory purposes;
 - (d) to engage in the bulk transmission of unsolicited electronic mail, except to the extent allowed by the Customer under Statutory Requirements;
 - (e) to send or cause to be sent any computer worms, Viruses, or other similar programs;
 - (f) to send or transmit any defamatory, harassing, abusive, knowingly indecent or obscene, offensive, menacing or threatening material;
 - (g) to reproduce, distribute, transmit, publish, copy or exploit any material that constitutes an infringement of any Intellectual Property Rights of a third party in Australia;
 - (h) to make any hoax calls;
 - (i) in a manner which constitutes a violation or an infringement or any duty or obligation in contract, tort or otherwise to any third party; or
 - (j) in conjunction with the commission of an offence against the laws of the Commonwealth, State or Territories.

5. STANDARDS

- 5.1 The Contractor must ensure that the Telecommunications Services conform to any applicable technology and industry standards including, but not limited to:
- (k) all applicable ACMA Standards; and
 - (l) any standards specified in the relevant Module Order Form, as updated by agreement from time to time.

6. WARRANTIES

- 6.1 The Contractor warrants that:
- (a) it has sufficient capacity to deliver the Telecommunications Services in accordance with the Service Levels;

- (b) the Telecommunications Services will be provided in accordance with this Customer Contract;
- (c) it will provide the Telecommunications Services and perform all other obligations under this Module with due care and skill and in accordance with industry best practice;
- (d) all Documents and other materials provided by the Contractor are true, correct, complete and accurate and are not misleading or deceptive (including by omission);
- (e) if a Business Contingency Plan is required under this Module, the Business Contingency Plan will comply with the requirements of the Customer Contract and it will maintain and regularly test such plan to ensure continued compliance (and in any event no less often than every six (6) months or other such period as otherwise agreed);
- (f) it has disclosed in writing to the Customer any matters relating to the commercial, technical or financial capacity of the Contractor that might materially affect the Contractor's ability to perform any of its obligations under the Customer Contract or the relevant Module Order Form (as applicable); and
- (g) it will not represent that it is, or hold itself out as, authorised to act on behalf of the Customer, except to the extent that it is authorised to do so in writing by the Customer.

7. CONTRACT PRICE

- 7.1 The Contractor warrants that the Contract Price for the Telecommunications Services identifies all charges for all elements of the Telecommunications Service (including any charges for training, provision, licence fees, set up and ongoing access and usage costs) identified in the [REDACTED]

8. BILLING

- 8.1 A Correctly Rendered Invoice for a Telecommunications Service must:
- (a) identify and itemise the Telecommunications Services to which the invoice relates;
 - (b) include the respective charges for the Telecommunications Services; and
 - (c) where relevant, include the date and time at which the charges were incurred, in a manner that is able to be readily understood by the Customer (acting reasonably).
- 8.2 Subject to clause 8.3, charges not invoiced in accordance with clause 8.1 may be included in a subsequent Correctly Rendered Invoice if:
- (a) the charges are listed separately from the current charges; and
 - (b) the date and time that the charges were incurred is clearly identified; and
 - (c) the invoice is issued within the Back Billing Period.

This does not affect the Contractor's obligation to provide a Correctly Rendered Invoice for a Telecommunications Service at the frequency and for the relevant Billing Period according to the Customer Contract.

- 8.3 If the charges are not invoiced within the Back Billing Period, the Customer does not have to pay those charges unless:
- (a) the charges have been withheld for subsequent invoicing with the Customer's agreement;
 - (b) the charges are disputed and, with the Customer's knowledge, the Contractor has refrained from invoicing them because of the dispute;
 - (c) the delay is attributable to a Force Majeure Event; or
 - (d) the Customer caused or contributed to the delay.
- 8.4 The Contractor shall comply with any requirements and obligations for billing and invoicing specified in the relevant Module Order Form.

9. ISSUE RESOLUTION

- 9.1 For the purposes of clause 24 in Part 2 (Customer Contract), an Issue Notice in relation to a Telecommunications Service shall include the following information (if it is reasonably available):

- (a) the relevant account number, invoice reference number and invoice date;
- (b) the invoice amount or the amount relating to the relevant account (whichever is applicable);
- (c) the Telecommunications Services and amount in dispute; and
- (d) the reasons for the dispute.

10. AUDIT

- 10.1 For this clause 10, "Auditor" means an independent auditor, inspector, regulator or other representative nominated by the Contract Authority or Customer.
- 10.2 The Contractor must maintain records and supporting Documents sufficient to permit a complete audit of the provision of the Telecommunications Services by the Contractor in accordance with this clause 10.
- 10.3 The Parties agree that:
- (a) the Contract Authority or the Customer will be permitted to arrange an audit of any invoices at the Contract Authority's election (limited to those invoices rendered to the Customer within the twelve month period prior to the relevant audit);
 - (b) if an audit under clause 10.3(a) indicates a discrepancy, the Contract Authority or the Customer may request a further audit of any invoices rendered during the entire current Customer Contract;
 - (c) the Contractor is to do all things reasonably necessary to facilitate a prompt and efficient audit. Reasonable notice is to be provided of an intended Contract Authority or Customer audit; and
 - (d) the audit is to be carried out by an Auditor (with suitable qualifications and experience and who has entered into a confidentiality agreement reasonably acceptable to the Contractor) during normal business hours (unless the Contractor agrees otherwise), and the Contract Authority or Customer (and its Auditors) shall be required to comply with the Contractor's standard security procedures whilst on the Contractor's premises.
- 10.4 The Parties agree that the Contract Authority or Customer may at its own cost (except where the Contractor is required to bear certain costs under clause 10.4(d)) engage an Auditor (with suitable qualifications and experience, who must not be a competitor of the Contractor) to undertake the billing services audit in accordance with the following terms:
- (a) the Contract Authority or Customer must ensure that the Auditor provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.
 - (b) the Contractor must, at no additional cost to the Customer or the Contract Authority:
 - (i) provide all co-operation reasonably required by the Auditor; and
 - (ii) provide the Auditor with access (at reasonable times and on reasonable notice) to all Documents, materials and other information (including information in electronic form) relating to the provision of billing services to the Customer or relating to the Customer Contract for the purposes and to the extent reasonably necessary to enable the conduct of audit of the Contractor's provision of the billing services.
 - (c) the Auditor is not entitled to have access to:
 - (i) the Contractor's network;
 - (ii) any information that would enable the Auditor to determine the costs of the Contractor; or
 - (iii) the Contractor's core billing systems.
 - (d) the Customer and/or the Contract Authority shall pay for the audit unless the audit discloses:
 - (i) a discrepancy between the charges invoiced during the period audited and the Auditor's assessment of the applicable charges for that period; and
 - (ii) that any amount invoiced during the period audited is found by the Auditor to be overcharged in error by more than 5 per cent, in which case the Customer may

recover:

- (A) the overcharged amount; and
- (B) the costs of the audit conducted subject to the following limitations:
 - (I) limited to a maximum of 50% of the costs of the audit in those circumstances where the discrepancy is 5% or more, but less than 10%;
 - (II) limited to a maximum of 75% of the costs of the audit in those circumstances where the discrepancy is 10% or more, but less than 20%; and
 - (III) 100% of the costs of the audit in those circumstances where the discrepancy is 20% or greater,

in accordance with clause 10.4 of Part 2 (Customer Contract).

- 10.5 The Parties agree that the Contract Authority or Customer may request an audit of the Contractor's performance of the Telecommunications Services (other than billing services), including the Contractor's compliance with the Service Levels, no more than once annually unless a second or subsequent audit during that period is required to be conducted:
- (a) at the request of the internal audit department of the Contract Authority or the Customer in the course of conducting an agency-wide audit;
 - (b) for the purpose of verifying the accuracy of any incident report provided by the Contractor in relation to a significant failure, or recurring failures, in relation to the Telecommunications Services;
 - (c) for the purpose of verifying that the Contractor has undertaken any actions required as a result of a previous audit, provided that the Contract Authority cannot reasonably achieve that purpose without conducting an audit; or
 - (d) at the request or direction of a regulator.
- 10.6 The Contractor is to do all things reasonably necessary to facilitate a prompt and efficient audit of the Telecommunications Services. Reasonable notice is to be provided of an intended Contract Authority audit. The audit is to be carried out during normal business hours (unless the Contractor agrees otherwise) at a time and date mutually agreed between the Contract Authority and the Contractor and in a manner that does not unduly interfere with the Contractor's normal business activities. The Contract Authority or Customer (and its Auditors) are to comply with the Contractor's standard security procedures whilst on the Contractor's premises. Any audit will be conducted subject to the confidentiality provisions set out in the Customer Contract.
- 10.7 The Parties agree that the Contract Authority or Customer may at its own cost engage an Auditor (with suitable qualifications, experience, and not a competitor of the Contractor) to undertake the audit of the Telecommunications Services in accordance with the following terms:
- (a) The Contract Authority or Customer must ensure that the Auditor provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.
 - (b) The Contractor must, at no additional cost to the Customer or the Contract Authority:
 - (i) provide all co-operation reasonably required by the Auditor; and
 - (ii) provide the Auditor with access (at reasonable times and on reasonable notice) to Sites only to the extent reasonably necessary to enable the Auditor to audit the provision of the Telecommunications Services (other than billing services) at those Sites under the Customer Contract, provided that such access shall be limited as follows:
 - (A) in relation to disaster recovery, to be limited to access to a copy of the Contractor's disaster recovery plan to the extent relevant to the Telecommunications Services at those Sites; and
 - (B) in relation to the network, to be limited to access to the monitoring tools applicable to the Telecommunications Services provided at those Sites (any such access to be in the presence of, and under the supervision of, the Contractor's nominated personnel).

The audit rights under this clause 10.7 extend to audits or practices, procedures, systems and general controls relating to the Telecommunications Services (including security), but do not

include audits of all or part of the Contractor's network or the Contractor's billing systems.

11. SERVICE LEVELS

- 11.1 The Contractor warrants that the Customer will have access to the Telecommunications Services in accordance with the Service Levels throughout the Service Period.
- 11.2 The Contractor shall promptly notify the Customer of the occurrence of, or the pending or threatened occurrence of, any event that may materially adversely affect the Contractor's ability to provide the Telecommunications Services in accordance with the Service Levels or the Service Specifications.
- 11.3 If the Contractor fails to supply a Telecommunications Service in accordance with the Service Levels on a minimum of three or more consecutive occasions, or other period as specified in the relevant Module Order Form, during a three month rolling period, the Contractor will identify and implement steps to address the cause of the repeated failures. Such steps must be notified to and agreed with the Customer within five (5) days of the third Service Level failure.

12. PERFORMANCE MEASURES

- 12.1 The Contractor must, at its own cost, implement and maintain processes and/or tools to measure, and where possible identify and eliminate potential incidents before they occur, and report on the performance of the Telecommunications Services against the Service Levels (Monitoring Tools) at all times during the Service Period.

13. APPLICATION OF SERVICE CREDITS

- 13.1 If in any calendar month or such other agreed period referred to in the relevant Module Order Form:
 - (a) the Contractor fails to meet any Service Level for a Telecommunications Service; and
 - (b) the relevant Module Order Form provides for Service Credits to accrue in respect of such failure,the Customer will be entitled to a Service Credit, to be calculated in accordance with the relevant Module Order Form or the Service Level Agreement (as the case may be).
- 13.2 Service Credits available to the Customer will be totalled for the relevant period in respect of which they are incurred. The Contractor must deduct the aggregate Service Credits from the Contract Price payable by the Customer for Telecommunications Services within the following three calendar months.
- 13.3 The Contractor must provide reports to the Customer in reasonable level of detail to allow the Customer to understand how the Service Credits were calculated and then deducted. This will be provided on a monthly basis where there is an entitlement to Service Credits.
- 13.4 Unless Service Credits are specified to be the Customer's sole remedy in the Module Order Form and/or the Service Level Agreement, the Customer's entitlement to a Service Credit:
 - (a) is in addition to, and does not limit or affect, any other right or remedy the Customer may have in connection with the Contractor's failure to meet a Service Level; and
 - (b) does not relieve the Contractor from its obligation to provide the Telecommunications Service in any calendar month or period during the Service Period and the Contractor must ensure ongoing compliance with the Service Levels throughout any such period.
- 13.5 The Contractor agrees that, upon termination or expiration of the Service Period, any remaining accumulated Service Credits will be applied to adjust the final invoice using the same method described above in clause 13.2 or, if no final invoice is prepared, the amount of the resultant accumulated Service Credit will be paid by the Contractor within 30 days of termination or expiration.
- 13.6 Not used.

14. BENCHMARKING OF TELECOMMUNICATIONS SERVICE

- 14.1 The Customer or the Contract Authority, where applicable, may, at the written request of either the Customer or Contract Authority, require a Benchmark to be undertaken after the expiry of the

initial Service Periods of the Customer Contract, provided that a Benchmark may only be conducted once each year thereafter and if the Contract Authority has not required a Customer of the Contractor to conduct a Benchmark pursuant to a different Customer Contract for Telecommunications Services entered into pursuant to the Head Agreement in the 12 months immediately preceding the proposed Benchmark. In this case the Customer must appoint the Contract Authority to perform the Benchmark on behalf of the Customer.

- 14.2 Subject to clause 14.1, the Customer or the Contract Authority may undertake a Benchmark no more than annually for the purposes and scope specified below:
- (a) to compare:
 - (i) the Contract Prices the Customer is paying to the Contractor for the Telecommunications Services; and
 - (ii) the quality and standard of performance of the Telecommunications Services (as reflected in, among other things, the Service Levels), against prices being paid by, and the quality and standard of performance of services being provided to, the Customer's peer organisations for the same or similar services at similar volumes, functionality and in similar geographic regions; and
 - (b) to implement the results of the Benchmarking Report in accordance with clause 14.9.
- 14.3 The Customer or Contract Authority may at its own cost engage a Benchmarker, provided that it is not a competitor of the Contractor. The Parties agree that the Customer may disclose to the Benchmarker any provisions of this Module 11, the Head Agreement and the Customer Contract that are relevant to the Telecommunications Services, and that the Benchmarker will be required to comply with the Customer's and the Contractor's reasonable confidentiality and security requirements.
- 14.4 For clarity, the restrictions listed in clause 10.4 apply to the Benchmarker. The Parties must give the Benchmarker:
- (a) access to any premises, equipment, personnel, records or documents; and
 - (b) any reasonable assistance,
- but only so far as is reasonably required by the Benchmarker to conduct the Benchmark. Without limiting the foregoing, the Contractor must provide the Benchmarker with reasonable access to its prices (excluding the Contractor's costs and profit margins), staffing and configuration information on request, but may require this to be in confidence. The Contractor is under no obligation to disclose information dealing with customer-specific internal costs, profit margins or confidential customer information if that information identifies an individual customer of the Contractor.
- 14.5 Each Party will bear its own internal costs of complying with its obligations under this clause 14.
- 14.6 Any Benchmark will be based on average data for the same type of services in Australia for the immediately preceding 12 month period. The Customer or the Contract Authority must instruct the Benchmarker to Benchmark the Telecommunications Services on the basis of the following measures:
- (a) the Contract Prices paid by the Customer for the Telecommunications Services; and
 - (b) the quality of performance of the Telecommunications Services, including Service Levels,
- taking into account the specifications, volume, geographic service coverage, service levels and quality of the same type of services.
- 14.7 The Benchmarker will prepare a Benchmark Report which sets out the results of the Benchmark. The Benchmarker will prepare the Benchmark Report in draft form and provide this to the Parties for review prior to finalising the Benchmark Report.
- 14.8 The Customer or the Contract Authority will ensure that the Contractor has an opportunity to provide input into the Benchmark and that any comments provided by the Contractor within a reasonable timeframe on a draft Benchmarking Report provided by the Benchmarker under clause 14.7 will be considered in good faith before it is issued in final form.
- 14.9 Where the Benchmarker finds that the Contract Prices charged by the Contractor for any

Telecommunications Services are higher than the comparable prices identified in the Benchmarking Report the Contractor must adjust the Contract Prices to match price or such alternative prices that may be agreed by the Customer and Contractor with effect from two months following the date of the issue of the final Benchmarking Report, provided that the final Benchmarking Report is not materially different from the draft report reviewed in clause 14.8.

- 14.10 If the Contractor fails to implement the results of a Benchmark as required and identified in clause 14.9, the Contractor will be in material breach of the Customer Contract and the Customer may by giving at least 30 days' Notice in Writing:
- (a) terminate the Customer Contract, in whole or in part, without having to pay any compensation to the Contractor (subject to the obligations of the Customer in relation to Contract Prices due and payable under the Customer Contract in respect of Telecommunications Services provided up until the date of termination, and subject to the Parties' obligations in relation to the Transition-Out Services under clause 18); and
 - (b) cease to acquire the whole or any specified part of the Telecommunications Services affected by the Benchmark, and in such case the Customer will have no obligation to pay any Contract Prices in respect of those Telecommunications Services, following the date of termination.
- 14.11 The Customer or the Contract Authority will include in its agreement with the Benchmark obligations on the Benchmark to destroy or return to the Customer or Contractor, as appropriate, any copies of the information provided by the Contractor to the Benchmark and any Contract Prices used or accessed by the Benchmark, in each case, and to provide written confirmation that it has complied with this obligation after the completion of the Benchmark that was conducted under this clause 14. The Benchmark is not able to make use of the information provided for any other purpose than the Benchmark of the Customer Contract for Telecommunications Services.

15. REPORTS AND RECORDS

- 15.1 The Contractor must provide to the Customer the Customer Works and reports:
- (a) as reasonably required by the Customer; or
 - (b) as stated in the relevant Module Order Form.
- 15.2 The Contractor must maintain records as required to enable it to comply with its obligations under this Customer Contract, including Module 11.

16. CHANGES TO TELECOMMUNICATIONS SERVICES

- 16.1 The Contractor may exit a Telecommunications Service or make changes to a Telecommunications Service but only where it intends to withdraw or retire the underlying technology supporting the Telecommunications Service and provided that:
- (a) the Contractor provides a Notice in Writing to the Customer at least 9 months prior to the exit or change;
 - (b) the Contractor provides a written report to the Customer setting out details of any modified or alternative service that it proposes to make available to the Customer and the proposed migration to that service; and
 - (c) the Contractor consults with the Customer prior to the implementation of the proposed changes and co-operates with the Customer in good faith to achieve a smooth and uninterrupted transition (at no cost to the Customer) in relation to the exit of a Telecommunications Service or transformation to a modified or alternative service.
- 16.2 If, in the Customer's reasonable opinion, the features and functionality of any proposed modified or alternative Telecommunications Service are not substantially the same or better than the existing Telecommunications Service that is being provided by the Contractor, or proposed changes are otherwise materially detrimental to the Customer, the Customer may cancel the relevant Telecommunications Service without the payment of any early termination fee for that cancellation
- 16.3 During the Service Period, the Contractor shall offer the Customer new telecommunications services, which may include new technologies, when the Contractor makes such new

telecommunications services generally commercially available in Australia.

- 16.4 The Parties agree to co-operate in good faith to identify opportunities for the Contractor to propose new Telecommunications Services for the purpose of creating technology enabled business value for the benefit of the Customer.

17. CANCELLATION, TRANSFER AND SUSPENSION OF TELECOMMUNICATIONS SERVICES

- 17.1 For this clause 17, "State Owned Corporation" means a state owned corporation as defined in the State Owned Corporations Act 1989.
- 17.2 The Customer may cancel a Telecommunications Service by giving at least 30 days' Notice in Writing to the Contractor.
- 17.3 The Customer may, by giving at least 60 days' Notice in Writing (or otherwise agreed time period in the relevant Module Order Form) to the Contractor:
- (a) transfer or redeploy any Telecommunications Services so that the Telecommunications Service is provided to:
 - (i) a different User of the Customer under this Customer Contract; or
 - (ii) another Department, Agency, State Owned Corporation, or other government organisation under a different Customer Contract nominated by the Contracting Authority, but only where the Parties, using reasonable endeavours, have agreed a plan to facilitate an orderly, prompt and efficient transition of that Telecommunications Service from the Customer to that other party.
- 17.4 If Telecommunications Services are transferred or redeployed in accordance with clause 17.3(a), the Contractor must promptly notify the affected Customers of any proposed changes in service costs which may occur as a result of the transfer or redeployment.
- 17.5 For the avoidance of doubt, no early termination fee is payable by the Customer for the transfer of a Telecommunications Service in accordance with clause 17.3(a), provided the term is at least equal to the remainder of the term under the original Customer Contract and all other conditions (including volume) continue to apply after the relevant transfer. The Contractor may charge a reasonable service relocation charge for a transferred service.
- 17.6 The Contractor is entitled to suspend the Telecommunications Service in the event of an Emergency or to comply with the binding order or direction of a regulator, emergency services organisation or other competent authority, but only to the extent and only for so long as is necessary to enable the Contractor to address the Emergency or to comply with such order or direction. The Contractor must resume provision of the affected Telecommunications Service as soon as practicable after the reason for the suspension has been removed or addressed.
- 17.7 In addition to the Customer's right to terminate the Customer Contract in accordance with clause 25 of Part 2 (Customer Contract) and clause 16 of this Module, the Customer may immediately terminate the Customer Contract in respect of this Module for cause by providing the Contractor Notice in Writing, if the Contractor persistently breaches the warranties contained in this Module (but only where such breaches collectively constitute a Substantial Breach) in which event the Contractor will be liable for the Customer's reasonable direct costs and expenses associated with the breach including all reasonable direct costs associated with changing Contractors, subject to the applicable exclusions and limitations of liability set out in this Module and the Customer Contract.

18. TRANSITION OUT ARRANGEMENTS

- 18.1 On termination or expiry of a Services Period, the Contractor will provide the Telecommunications Services on the same terms as the Customer Contract in accordance with clause 6 of the Additional Terms and Conditions to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer (except in those circumstances where termination arises as a result of the Customer's failure to pay moneys owing in accordance with clause 25.6 of Part 2 (Customer Contract)).
- 18.2 The Contractor must, in relation to the Telecommunications Services disengaged under this clause 18:

- (a) continue to provide such Telecommunications Services (including any associated monitoring, reporting and other related services required under the Customer Contract) during a Transition-Out Period in accordance with clause 6 of the Additional Terms and Conditions and the other applicable terms of the Customer Contract;
 - (b) do everything within its control to ensure that there is no disruption to such Telecommunications Services during a Transition-Out Period; and
 - (c) provide for the orderly hand over of such Telecommunications Services to a third party supplier nominated by the Customer.
- 18.3 The Customer may terminate the Transition-Out Services, in whole or in part, at any time by giving the Contractor 30 days Notice in Writing of such termination.
- 18.4 On request by a Customer, the Contractor must prepare a plan for the disengagement of Telecommunications Services in accordance with the specific requirements set out in clause 6 of the Additional Terms and Conditions within 30 days of the Customer's request.
- 18.5 The Customer must pay the Contractor:
- (a) for any Telecommunications Services provided during a Transition-Out Period in accordance with clause 6 of the Additional Terms and Conditions for any Telecommunications Services provided during a Transition-Out Period in accordance with the Prices specified in the Customer Contract in effect immediately prior to the commencement of a Transition-Out Period; and
 - (b) if the Customer is transitioning to an alternative service provider, a reasonable amount for any additional services, costs and expenses incurred in the provision of the Transition-Out Services calculated to the extent practicable in a manner consistent with the Prices, such amount to be agreed and specified in the Transition-Out Plan.

19. ACCESS TO CUSTOMER'S SITE

- 19.1 Where, for the purposes of providing a Telecommunications Service to the Customer, the Contractor requires access to the Customer's Site, such access will be provided in accordance with and subject to the requirements in clause 7 of Part 2 (Customer Contract) and any other requirements specified in the relevant Module Order Form.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 For the purposes of this Module 11, clause 13 of Part 2 (Customer Contract) is replaced with this clause 20.
- 20.2 For the purposes of this clause 20:
- (a) **"Contractor Network Data"** means any network data and network information (including statistical data and configuration information, and any other such data necessary for administrative, corporate governance, network operations, facilities management and related purposes) relating directly to the Contractor's provision of the Telecommunications Services in accordance with this Customer Contract which is generated by the Contractor, by the Contractor's network, or by the Contractor's software, systems or equipment which monitor the operation or performance of its network, and includes:
 - (i) any Documents or records related to such data or information;
 - (ii) any products resulting from the use or manipulation of such data or information; and
 - (iii) any and all copies of any of the above.
 - (b) **"Contractor Works"** means all Works other than Customer Works, including Contractor Software and Contractor Tools and Methodologies and Contractor Network Data and any other Works which relate to the Contractor's Network or any development, improvement, modification to or extension of the Contractor's Network; and
 - (c) **"Generic Third Party Documentation"** means Documents provided to the Contractor's customers generally, to the extent that such generic Documents incorporates Contractor Works in which Intellectual Property Rights are owned by a third party.
- 20.3 The Customer will own all Intellectual Property Rights in the Customer Works immediately from creation (including part creation), regardless of whether the Intellectual Property Rights arise

during or after termination of the Customer Contract.

- 20.4 The Contractor assigns to the Customer all Intellectual Property Rights in all Customer Works created or developed by the Contractor. This assignment will be effected on the creation of such Intellectual Property Rights (including as a present assignment of future copyright) without the need for further consideration.
- 20.5 The Customer grants to the Contractor, for the effective period of the Customer Contract, to the extent necessary and for the sole purpose of providing the Telecommunications Services, a royalty-free, non-exclusive, non-transferable licence to use the Customer Works in Australia.
- 20.6 The Contractor retains all Intellectual Property Rights in the Contractor Works immediately from creation (including part creation) regardless of whether the Intellectual Property Rights arise during or after termination of the Customer Contract.
- 20.7 The Contractor grants to the Customer a royalty-free, irrevocable, non-transferable and non-exclusive right and licence to use:
- (a) during the Contract Period: the Contractor Works (including Contractor Works in which the Intellectual Property Rights are owned by a third party, or which relate to the Contractor's network) and all Generic Third Party Documentation, but excluding the Contractor Network Data which is governed by clause 20.7(b); and
 - (b) in perpetuity: the Documents (other than Generic Third Party Documentation) and the Contractor Network Data, such use to be limited to the Customer's internal operational purposes.

21. THIRD PARTY SERVICE PROVIDERS

- 21.1 The Contractor agrees to comply with the Customer's reasonable requests for co-operation and assistance for the Customer and its third party suppliers (if any) in connection with the Telecommunications Services. Such co-operation and assistance must, at a minimum, include providing all reasonable co-operation and assistance in relation to the following matters:
- (a) delivering the Telecommunications Services in conjunction with other relevant projects and services in a coordinated, effective and timely manner;
 - (b) providing connection to any infrastructure, facilities or equipment, or access to the relevant Documents or materials necessary for providing the Telecommunications Services; or
 - (c) agreeing on procedures with the Customer and any third party suppliers for the division of responsibilities in relation to services and functions that may overlap between the Contractor and third party suppliers.
- 21.2 If the Contractor is required to provide a connection to any infrastructure, facilities, equipment or access to any Documents under this clause 21, this connectivity or access is subject to the Contractor's reasonable security requirements and procedures. If the Contractor provides information to a third party supplier under this clause 21, that third party supplier must, if required by the Contractor, sign a non-disclosure undertaking in a form reasonably requested by the Contractor and affording no less protection than those standards applied by the Contractor to the protection and disclosure of its own confidential information.

22. CO-OPERATIVE PROBLEM SOLVING PROCEDURES

- 22.1 Where the Contractor in good faith believes, and has taken reasonable steps to confirm, that a problem relating to the Telecommunications Services is not the responsibility of the Contractor under the Customer Contract but is the responsibility of a third party provider, the Contractor must promptly notify the Customer, and the Customer is responsible for ensuring that such third party provider rectifies the problem.
- 22.2 The Contractor may only hand over responsibility for the resolution of a problem referred to in this clause 22 to a third party provider where the Contractor:
- (a) has investigated the problem in accordance with this clause 22;
 - (b) has reasonable grounds to believe that the cause of the problem is one or more factors for which the third party provider is responsible; and
 - (c) has given the Customer and the third party provider:

- (i) notice that it has investigated the problem;
- (ii) a description of the factor or factors which the Contractor considers to have caused the problem; and
- (iii) a copy of any network or service reports and such other data as reasonably necessary to establish that the cause of the problem is a factor or factors for which the third party provider is responsible.

22.3 If, after handing over responsibility for the resolution of a problem to the third party provider in accordance with this clause 22, the third party provider subsequently notifies the Contractor that it believes that the Contractor is responsible for the resolution of the problem, the matter will be resolved in accordance with the resolution procedures in clause 24 of Part 2 (Customer Contact).

23. SECURITY

23.1 The Customer will implement and maintain appropriate security measures to protect its operational environment and data in accordance with the requirements specified in the relevant Module Order Form.

23.2 The Contractor must use all reasonable endeavours to:

- (a) implement and maintain appropriate security measures relating to the Telecommunications Services with the purpose of the prevention of unauthorised access:
 - (i) by any third party to a Network; and
 - (ii) by any Customer to the data or Confidential Information of another Customer;
- (b) ensure that all its software deployed in the delivery of the Telecommunications Services incorporates industry best practice in relation to the implementation of (if applicable to the Telecommunications Service) encryption systems and anti-virus protection, patches, updates and upgrades for security purposes;
- (c) implement and maintain appropriate measures to maintain the confidentiality and integrity of data in a Network;
- (d) provide an applicable Information Security Management System in accordance with AS/NZS ISO/IEC 17799:2001 Information Technology – Code of Practice for Information Security Management (as updated from time to time) and, as relevant, AS 13335 Parts 1 to 5 Information Technology – Guidelines for the Management of IT Security (as updated from time to time) or equivalent;
- (e) meet the standards set out in the relevant Module Order Form, as amended from time to time; and
- (f) address any specific security needs of the Customer in relation to the Telecommunications Services, as notified to the Contractor in writing from time to time, provided that to the extent such request is in addition to the requirements for compliance with this clause 23, the Customer must bear the cost of such additional requirements.

23.3 The Contractor must provide to the Customer:

- (a) as soon as reasonably practicable following a request by the Customer:
 - (i) a statement of the types and severity of any security risks to confidentiality and integrity against which the Contractor's network is safeguarded from time to time;
 - (ii) a copy of the Contractor's then current security policy; and
 - (iii) the details of any changes made to the security policy since the last time a copy was provided to that Customer; and
- (b) following any security incident affecting the Contractor in respect of the Telecommunications Services:
 - (i) notification of the security incident within one (1) Business Day; and
 - (ii) a detailed security incident report within three (3) Business Days.

24. MANAGEMENT OF NETWORKS

24.1 The Contractor must:

- (a) use all reasonable endeavours to undertake all maintenance of a Network during the times specified in the relevant Module Order Form or other times as are agreed with the Customer;
 - (b) use all reasonable endeavours to undertake all maintenance of a Network in such manner as to avoid any impact on the provision of Telecommunications Services to the Customer in accordance with the Customer Contract; and
 - (c) use all reasonable endeavours to continue to meet or exceed the Service Levels and comply with the Service Specifications while undertaking any maintenance of a Network. The Contractor must ensure that a Network is designed, constructed and maintained in such a manner as to enable the Contractor to comply with its obligations in relation to the Service Levels and Service Specifications.
- 24.2 Without limiting its obligation under clause 24.1, where the Contractor reasonably anticipates that:
- (a) any maintenance (including modifications and upgrades, but excluding Emergency maintenance) of a Network will or might have an impact on the provision of Telecommunications Services to the Customer; and
 - (b) the Contractor may not be able to meet or exceed the Service Levels or comply with the Service Specifications while undertaking such maintenance (Scheduled Maintenance),
the Contractor must provide notice of such Scheduled Maintenance to the Customer as soon as reasonably practicable, but not less than five (5) Business Days in advance of such Scheduled Maintenance, including details of:
 - (c) the reasons for the proposed Scheduled Maintenance;
 - (d) a date, start time and end time for the proposed Scheduled Maintenance;
 - (e) a list of all Telecommunications Services likely to be affected by the proposed Scheduled Maintenance;
 - (f) mobile phone contact details for the Contractor Representative in charge of the management of the Scheduled Maintenance for any queries in relation to the Scheduled Maintenance; and
 - (g) any other information reasonably requested by the Customer from time to time.
- 24.3 The Contractor must notify the Customer of the occurrence of, or the pending or threatened occurrence of, any event that may adversely affect the Contractor's ability to provide the Telecommunications Services in accordance with the Customer Contract, including the Service Levels, as soon as practicable upon becoming aware of this event.

25. INCIDENT AND PROBLEM MANAGEMENT

- 25.1 Without limiting any other provision of the Customer Contract, the Contractor must report immediately to the Customer Representative any actual or anticipated Incident as soon as it becomes aware of any actual or anticipated Incident.
- 25.2 The Contractor must keep a log of each Incident reported to it in a system maintained by the Contractor for this purpose, and allocate a severity code to each Incident. Unless otherwise specified in the relevant Module Order Form, the severity codes have the corresponding level of impact as follows:
- (a) Severity Code 1: Incidents which affect business critical systems that impact on any User and no reasonable or viable alternatives are available.
 - (b) Severity Code 2: Incidents which degrade performance of critical systems and which are critical to any User and no reasonable or viable alternatives are available.
 - (c) Severity Code 3: Incidents which degrade performance of non-critical systems which may result in such systems being difficult to use or having restricted functionality. There is some operational impact.
 - (d) Severity Code 4: Incidents which have little operational impact. The relevant system is useable, the Incident can be circumvented and deferred maintenance is acceptable.

- 25.3 If the Customer does not agree with the allocation of a severity code with respect to an Incident, the Customer may designate the severity code applicable to that Incident.
- 25.4 The Contractor must use all reasonable endeavours to resolve each Incident in accordance with the timeframes for each severity code level of Incident specified in the relevant Module Order Form.
- 25.5 For the avoidance of doubt, the Parties acknowledge that the obligations of the Contractor under this clause 25.5 are in addition and without prejudice to the Contractor's other obligations under the Customer Contract or any entitlement of the Customer to a Service Credit or other rights or remedies.

26. DISASTER RECOVERY AND BUSINESS CONTINUITY

- 26.1 Where the relevant Module Order Form states that the Contractor must prepare a Disaster Recovery Plan or Business Continuity Plan in respect of Telecommunications Services, that plan must be prepared by the Contractor, and the Contractor must comply with the plan in accordance with clauses 6.47 to 6.48 of Part 2 (Customer Contract).
- 26.2 A Disaster Recovery Plan or Business Continuity Plan prepared by the Contractor under clause 26.1 must deal with any matters specified in the relevant Module Order Form.

27. CONTRACTOR'S STANDARD FORM OF AGREEMENT

- 27.1 The Parties agree that those mandatory terms that relate to services on the National Broadband Network, if any and if applicable, as set out in the Contractor's Standard Form of Agreement will apply to the supply of Telecommunications Services by the Contractor to the Customer for services on the National Broadband Network, but, unless as otherwise specified in this Customer Contract all other provisions of that Standard Form of Agreement will not apply to such supply.

28. ORDERING TELECOMMUNICATIONS SERVICES

- 28.1 The initial establishment of the Telecommunications Services under this Module 11 will be implemented in accordance with the agreed implementation process as set out in Annexure 5 (Implementation).
- 28.2 The Customer may make requests for Telecommunications Services:
- (a) in accordance with this Customer Contract; and
 - (b) by issuing a Module Order Form which specifies all details of the request including:
 - (i) the Telecommunications Services which are the subject of the request; and
 - (ii) the date from which the Customer requires the instructions under the relevant Module Order Form to be implemented.
- 28.3 The Contractor must, within one Business Day of receipt of the relevant Module Order Form, provide written acknowledgement of receipt to the Customer.
- 28.4 Within ten (10) Business Days of receipt of the relevant Module Order Form, the Contractor must:
- (a) confirm that it accepts all of the terms of the relevant Module Order Form; or
 - (b) if it reasonably considers that the relevant Module Order Form does not contain sufficient information, notify the Customer in writing and request the further information required, in which case the Customer will submit an amended Module Order Form; or
 - (c) if it reasonably considers that it is not technically or commercially feasible to implement the relevant Module Order Form in accordance with the information or timeframes specified, notify the Customer in writing that this is the case, in which case the Parties will negotiate any necessary amendments to the relevant Module Order Form.
- 28.5 If the Contractor fails to provide a notice under clause 28.4 within the specified timeframe, it will be deemed to have accepted the relevant Module Order Form.
- 28.6 Following the Contractor's acceptance of the relevant Module Order Form, the Contractor must implement the Module Order Form in accordance with the timeframes specified in it.

28.7 Except as expressly stated in the relevant Module Order Form, the Customer is not required to purchase any Telecommunications Services for a minimum period.

29. USERS

29.1 The Contractor will make the Telecommunications Services available to such Users as may be specified by the Customer.

29.2 The Contractor must:

- (a) establish and maintain entitlements for Users, based on written directions provided by the Customer from time to time in relation to the blocking of access of any nominated Users to any Telecommunications Services (or features, specified functionality or any other specified component of the Telecommunications Services) nominated by the Customer in writing from time to time ("**User Entitlement Directions**"); and
- (b) implement the appropriate encryption and security arrangements, including user names and/or passwords, as required to implement and manage access to the Services and any other online services provided by the Contractor, in accordance with the User Entitlement Directions.

29.3 The Customer may at any time, by notice in writing to the Contractor (which notice may be given electronically), change the User Entitlement Directions and the Contractor must comply with such changes.

29.4 The Contractor must ensure that:

- (a) Users are not provided with access rights in excess of those specified in the User Entitlement Directions; and
- (b) all records of User Entitlement Directions are maintained in a safe and secure environment, and are not able to be accessed by any persons except as expressly authorised by the Customer.

30. CUSTOMER CONTENT

30.1 The Contractor does not obtain any rights in or to Customer Content.

30.2 Subject to the provisions of this clause 30, the Customer grants to the Contractor, for the Service Period, a royalty-free, non-exclusive, non-transferable licence to use the Customer Content solely for the purposes of, and to the extent necessary for, the Contractor to provide the Telecommunications Services to the Customer.

30.3 The Contractor must not, and warrants that it will not:

- (a) use the Customer Content for any purpose other than:
 - (i) to transmit the Customer Content via the Data Services in accordance with the Customer Contract; or
 - (ii) where obliged to do so under Laws;
- (b) purport to sell, let for hire, assign rights in or otherwise transfer title to any of the Customer Content;
- (c) except as expressly provided otherwise in the Customer Contract, make any of the Customer Content available to any third party, other than where the Contractor is required to do so by Law; or
- (d) commercially exploit the Customer Content.

30.4 The Contractor must:

- (a) maintain safeguards against the destruction, loss or alteration of the Customer Content in the course of delivering the Data Services that are no less rigorous than the safeguards that can reasonably be expected in relation to similar services in telecommunications networks employing best industry practices; and
- (b) not disclose, give, buy, sell or exchange the Customer Content to any third party, including when Customer Content is in transit within the Contractor's Network (except where and to the extent permitted under the Customer Contract or as otherwise permitted under any

applicable Laws).

31. TELECOMMUNICATIONS EQUIPMENT SUPPLY AND MAINTENANCE

- 31.1 If the relevant Module Order Form indicates that the Customer requires Telecommunications Equipment (including, in the case of Mobile Services, Mobile Devices) for or in relation to Telecommunications Services provided under this Module 11, subject to this clause 31, such Telecommunications Equipment will be provided by the Contractor in accordance with and subject to the terms of Module 1 unless otherwise set out in the Module Order Form.
- 31.2 Unless otherwise specified in the relevant Module Order Form, Telecommunications Equipment provided under this Module 11 will be maintained by the Contractor in accordance with Module 2. The Contractor will provide such Hardware Maintenance and Support Services under Module 2 as are specified in the relevant Module Order Form.
- 31.3 The Contractor will provide the Hardware Maintenance and Support Services specified in the relevant Module Order Form in relation to the Telecommunications Equipment specified in that Module Order Form, regardless of whether the Telecommunications Equipment is owned by the Contractor, the Customer or a third party.

PART A FIXED VOICE SERVICES

32. PROVISION OF FIXED VOICE SERVICE

- 32.1 The Contractor will provide the Fixed Voice Services:
- (a) at the Site(s) specified in the relevant Module Order Form in accordance with the Customer Contract, including, but not limited to, the Contract Specifications;
 - (b) with sufficient capacity, availability, reliability and quality throughout the Service Period to meet the requirements of the Service Levels; and
 - (c) in accordance with all other applicable requirements contained in the Customer Contract.
- 32.2 The Contractor must maintain and keep updated a list of all Sites to which the Contractor is obliged to provide Fixed Voice Services, incorporating details regarding each Site and the Fixed Voice Services provided at each Site.
- 32.3 Where a Fixed Voice Service is provided by the Contractor pursuant to applicable Universal Service Obligations, the Contractor must ensure that the Fixed Voice Service has all the functionality of a Standard Telephone Service.
- 32.4 If requested by the Customer, the Contractor shall promptly provide the Customer with information relevant to the compatibility requirements of any Telecommunications Equipment with the Fixed Voice Service.

33. FIXED VOICE TELEPHONE NUMBERS AND ADDRESSES

- 33.1 Subject to any contrary direction of the ACMA and subject to the matters specified in the relevant Module Order Form:
- (a) the Contractor shall not, unless it is reasonably necessary to do so or the Customer requests or agrees, deprive the Customer of the telephone numbers allocated to the Customer; and
 - (b) the Contractor shall, to the extent that it is reasonably practical or possible to do so, allow the Customer to retain the telephone numbers allocated to the Customer on any change of address by the Customer or any transfer to another service provider.
- 33.2 The Customer must comply with the requirements of any regulator or other body which administers telephone numbering. The Customer acknowledges and agrees that:
- (a) the Contractor does not control the allocation of telephone numbers;
 - (b) the Contractor is not liable to the Customer if the Contractor is required to change any telephone number as a result of any direction given by a regulator or other body which

administers telephone numbering; and

- (c) on cancellation of the applicable Fixed Voice Service, the Contractor will use best endeavours to procure for the Customer the right to use any related telephone number where technically feasible and where commercial arrangements exist for porting of the telephone numbers.

34. PORTING OF TELEPHONE NUMBERS

- 34.1 The Contractor agrees to allow the Customer to keep its existing telephone number upon the Customer transferring its Fixed Voice Service to and from the Contractor.
- 34.2 Upon receipt of a relevant and accurately completed number portability authorisation form, the Contractor shall use all reasonable efforts to transfer the Customer's telephone number on or before the requested Port Out Date.
- 34.3 The Customer shall be responsible for any amounts payable prior to the Port Out Date if:
 - (a) an accurately completed portability authorisation form has been provided by the Customer; and
 - (b) the Customer has not requested a date that provides less time than permitted under the applicable portability codes.

35. DOCUMENTS

- 35.1 The Contractor must provide Documents in relation to the Fixed Voice Services in accordance with clauses 5.4 to 5.7 of Part 2 (Customer Contract).

36. NETWORK REDUNDANCY

- 36.1 The Contractor must use reasonable endeavours to minimise, in accordance with its network design, the single points of failure in the infrastructure of the Network used to provide the Fixed Voice Services.
- 36.2 The Contractor acknowledges that it is responsible for the supply of Fixed Voice Services in accordance with this Module, but the parties acknowledge that the Contractor may require services from third party suppliers to enable the Contractor to supply such Fixed Voice Services.

37. LIMITATIONS OF FIXED VOICE SERVICE

- 37.1 The Contractor may suspend or limit a Fixed Voice Service if:
 - (a) the Customer vacates (except on a temporary basis) the premises to which the Fixed Voice Service is provided;
 - (b) there is an Emergency or anticipated Emergency;
 - (c) it is reasonable to do so in circumstances where the Contractor is not able to enter premises to which the Fixed Voice Service is provided in order to inspect, repair or maintain any equipment belonging to the Contractor and connected with the Fixed Voice Service;
 - (d) the continued provision of the Fixed Voice Service by the Contractor is unlawful;
 - (e) it reasonably suspects fraud, the commission of an offence against any law or interference with the Contractor's telecommunications network;
 - (f) it is required to do so by the ACMA; or
 - (g) it is unable to continue to supply the Fixed Voice Service due to a failure of any other network that is interconnected to the Contractor's network used to provide the Telecommunications Service,

provided that the Contractor must resume supply of the Fixed Voice Service as soon as practicable after the reason for the suspension is removed or addressed.

- 37.2 The Contractor shall notify the Customer of any suspension or limitation of a Fixed Voice Service pursuant to clause 37.1 as soon as it is reasonably practical to do so. The Contractor shall continue to keep the Customer informed of any progress relating to the Fixed Voice Service.

While the Fixed Voice Service is suspended under this clause 37 (excluding clauses 37.1 (a), (c) and (e)), the Customer is relieved of its obligation to pay for such Fixed Voice Service.

PART B MOBILE SERVICES

38. PROVISION OF MOBILE SERVICE

- 38.1 The Contractor using best endeavours will provide the Mobile Services:
- (a) to the SIM cards specified in the relevant Module Order Form in accordance with the Customer Contract, including, but not limited to, the Service Description and Service Specifications;
 - (b) within the timeframes specified in the Module Order Form;
 - (c) with sufficient capacity, availability, reliability and quality throughout the Service Period to meet the requirements of the Service Levels; and
 - (d) in accordance with all other applicable requirements contained in the Customer Contract.
- 38.2 The Contractor must maintain and keep updated a list of all SIM cards to which the Contractor is obliged to provide Mobile Services, incorporating details regarding each SIM card and the Mobile Services provided to each SIM card.
- 38.3 If requested by the Customer, the Contractor shall promptly provide the Customer with information relevant to the compatibility requirements of any Mobile Devices with the Mobile Service.

39. TELEPHONE NUMBERS

- 39.1 Subject to any contrary direction of the Australian Communications Authority and subject to the matters specified in the relevant Module Order Form:
- (a) the Contractor shall not, unless it is reasonably necessary to do so or the Customer requests or agrees, deprive the Customer of the telephone numbers allocated to the Customer; and
 - (b) the Contractor shall, to the extent that it is reasonably practical or possible to do so, allow the Customer to retain the telephone numbers allocated to the Customer on any change of address by the Customer or any transfer to another service provider.
- 39.2 The Customer must comply with the requirements of any regulator or other body which administers telephone numbering. The Customer acknowledges and agrees that:
- (a) the Contractor does not control the allocation of telephone numbers;
 - (b) the Contractor is not liable to the Customer if the Contractor is required to change any telephone number as a result of any direction given by a regulator or other body which administers telephone numbering; and
 - (c) on cancellation of the applicable Mobile Service, the Contractor will use best endeavours to procure for the Customer the right to use any related telephone number, where technically feasible and where commercial arrangements exist for porting of the telephone numbers.

40. PORTING OF TELEPHONE NUMBERS

- 40.1 Unless otherwise specified in the Module Order, the Contractor agrees to allow the Customer to keep its existing telephone number upon the Customer transferring its Mobile Service to and from the Contractor.
- 40.2 Upon receipt of a relevant and accurately completed number portability authorisation form, the Contractor shall use all reasonable efforts to transfer the Customer's telephone number on or before the requested Port Out Date.
- 40.3 The Customer shall be responsible for any amounts payable prior to the Port Out Date if:
- (a) an accurately completed portability authorisation form has been provided by the Customer; and

- (b) the Customer has not requested a date that provides less time than permitted under the applicable portability codes.

41. SIM CARDS

- 41.1 The Contractor must:
 - (a) maintain and provide ongoing supplies of SIM cards in accordance with the relevant Module Order Form and requests received from the Customer from time to time;
 - (b) distribute the SIM cards to any nominated Customer Sites (as specified in the relevant Module Order Form); and
 - (c) activate the SIM cards in accordance with the processes set out in the relevant Module Order Form.
- 41.2 SIM cards remain the property of the Contractor.
- 41.3 The Customer shall follow any reasonable procedures to protect SIM cards against unauthorised use.
- 41.4 The Customer shall promptly notify the Contractor if a SIM card is lost or stolen. The Customer shall be liable for all charges relating to any lost or stolen SIM card until the date and time the Contractor is notified of the loss.
- 41.5 If the SIM card contains a defect, then upon the Contractor's receipt of notice from the Customer of the defect, the Contractor shall promptly provide the Customer with a replacement SIM card at no additional cost to the Customer. Where the defect renders the mobile service unusable, the Customer will not be charged for the Mobile Service from the time the Customer has notified the Contractor of the SIM card's defect until the Customer receives a replacement SIM card.
- 41.6 Subject to clause 41.5, if reasonably instructed by the Contractor, the Customer will either promptly:
 - (a) return the SIM card containing the Defect to the Contractor; or
 - (b) destroy the SIM card containing the Defect and provide reasonable evidence to that fact.

42. MOBILE SERVICES COVERAGE COMMITMENTS

- 42.1 The Contractor must:
 - (a) use reasonable endeavours to identify and, where commercially feasible, minimise the incidents of coverage black spots;
 - (b) establish and implement processes for systematically assessing the quality of mobile coverage impacting on the Customer's Sites (including the identification of any mobile coverage black spots) and reporting to the Customer on a timely basis in respect of the same; and
 - (c) provide rectification plans on an agreed basis as set out in the relevant Module Order Form in relation to those Customer Sites identified.

43. NETWORK REDUNDANCY

- 43.1 The Contractor must use reasonable endeavours to minimise, in accordance with its network design, the single points of failure in the infrastructure of the Network used to provide the Mobile Services.
- 43.2 The Contractor acknowledges that it is responsible for the supply of Mobile Services in accordance with this Module, but the Parties acknowledge that the Contractor may require services from third party suppliers to enable the Contractor to supply such Mobile Services.
- 43.3 The Contractor must ensure that the infrastructure of the Network used to provide the Mobile Services is capable of supporting the delivery of the Mobile Services to meet or exceed the Service Levels.

44. LIMITATIONS OF MOBILE SERVICE

- 44.1 The Contractor may suspend or limit a Mobile Service if:

- (a) the continued provision of the Mobile Service by the Contractor is unlawful;
- (b) it reasonably suspects fraud, the commission of an offence against any law or interference with the Contractor's telecommunications network; or
- (c) required to do so by the ACMA,

provided that the Contractor must resume supply of the Mobile Service as soon as practicable after the reason for the suspension is removed or addressed.

44.2 The Contractor shall notify the Customer of any suspension or limitation of a Mobile Service pursuant to clause 44.1 as soon as it is reasonably practical to do so. The Contractor shall continue to keep the Customer informed of any progress relating to the Mobile Service. While the Mobile Service is suspended under this clause 44.1(a), the Customer is relieved of its obligation to pay for such Mobile Service.

PART C DATA SERVICES

NOT USED

PROCURE IT VERSION 3.2
MODULE ORDER FORM
MODULE 11 – TELECOMMUNICATIONS AS A SERVICE

Box 1 Telecommunications as a Service

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer						
Service Description (clause 2.2, 2.3, 2.4, 32.1(a), 41.1(b) and 45.1(a))							
<p>Telecommunications Services to be provided: The Telecommunications Service Definition should include the strategy for the delivery of the Telecommunications Services that is appropriate for the Customer's needs and its User population, such as:</p> <ol style="list-style-type: none"> a. identification of the Telecommunications Services to be performed; b. a mechanism to determine when the Transition In Plan is complete and the Telecommunications Services can commence; c. Users to whom such Telecommunications Services must be made available; and d. implementation of the Telecommunications Services. 	<p>Services</p> <p>The Parties agree that the Telecommunication Services are made up of:</p> <ol style="list-style-type: none"> 1. Fixed Voice Services 2. Mobile Services including EMMS <p>Service Description</p> <table border="1"> <thead> <tr> <th>Service</th> <th>Service Description</th> </tr> </thead> <tbody> <tr> <td>Fixed Voice Services</td> <td>As set out in Annexure 4 (Fixed Voice Services Terms).</td> </tr> <tr> <td>Mobile Services</td> <td>As set out in Annexure 5 (Mobile Services Terms)</td> </tr> </tbody> </table>	Service	Service Description	Fixed Voice Services	As set out in Annexure 4 (Fixed Voice Services Terms).	Mobile Services	As set out in Annexure 5 (Mobile Services Terms)
Service	Service Description						
Fixed Voice Services	As set out in Annexure 4 (Fixed Voice Services Terms).						
Mobile Services	As set out in Annexure 5 (Mobile Services Terms)						
<p>Where this is an order for Telecommunications Services subsequent to the establishment of a Transition In Plan, specify:</p> <ol style="list-style-type: none"> a. the Telecommunications Services which are the subject of the request; and b. the date from which the Customer requires the instructions under this Module Order Form to be completed. 	Not applicable						
<p>List the Sites where the Services are required (if applicable):</p>	<p>For Fixed Voice Services: the Sites where the Contractor is delivering the Services. For Mobile Services: N/A.</p> <p>Sites may be added or removed in accordance with the terms of this Customer Contract.</p>						
<p>List any Services that must be scalable:</p>	See Contract Specifications.						
<p>Does the Service involve any Contractor provided transition? Note: such a plan must be supplied and may include:</p> <ol style="list-style-type: none"> a. due diligence; b. data migration; c. Business Continuity Plans; d. testing of Services; and e. handover arrangements. 	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Note: The Telecommunication Services will be provided from the Commencement Date, and will include implementation as set out in Annexure 6 (Implementation).</p>						
<p>Due diligence may include assessment and definition of the:</p> <ol style="list-style-type: none"> a. Customer's goals, requirements and expectations in respect of the 	Not applicable						

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
<p>Telecommunications Services;</p> <ul style="list-style-type: none"> b. Contractor's understanding of the Customer's and/or User's experience and requirements in relation to the Telecommunications Services; c. objectives to be met by the Contractor; d. nature and scope of the Telecommunications Service, including the Environment, Client Contracts and Third Party Contracts (and any requirement to novate or assign any of them); e. end users who will be supported by the Telecommunications Service; f. migration of Customer Content; g. data retention and disposal requirements; h. resources required (including any Customer Supplied Items or Customer assistance); i. complexity of the project ; and j. any Transition-Out Services plan. <p>Data migration services should include the drafting of a Procedures Manual (if one does not exist as part of the Telecommunications Service Definition) for approval by the Customer (eg within 14 days). The Procedures Manual should describe the key attributes of the Services, including:</p> <ul style="list-style-type: none"> a. the governance arrangements between the Customer and the Contractor; b. the governance arrangements dealing with the Contractor and any third parties; c. the protocols for managing security issues between the Parties; d. the protocols for identifying and managing risks; e. how the key aspects of the Services will be provided to the Customer; f. the procedures for varying Services and providing additional Telecommunications Services; g. how User complaints and disputes will be managed; h. updating the Procedures Manual; and i. Data backups, if required outside of disaster recovery processes. <p>Note: Once the Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it.</p>	
<p>Is Acceptance Testing required?</p>	<p>See Item 32 of General Order Form.</p>
<p>Service Period (clause 3.1)</p>	
<p>Commencement Date for the purposes of Module 11 (or "Service Start Date"):</p>	<p>Commencement Date</p>

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer								
Expiry Date (if any):	Not applicable.								
Service Period (time from commencement to expiry) if any:	<table border="1"> <thead> <tr> <th>Telecommunication Service</th> <th>Service Commencement Date</th> </tr> </thead> <tbody> <tr> <td>Fixed Voice Services</td> <td>36 months after the Commencement Date, plus 2 x 12 month extension options that the Customer may exercise.</td> </tr> <tr> <td>Mobile Services excluding EMMS</td> <td>36 months after the Commencement Date, plus 2 x 12 month extension options that the Customer may exercise.</td> </tr> <tr> <td>Mobile Services EMMS</td> <td>12 months after the Commencement Date, plus a 12 month extension option that the Customer may exercise.</td> </tr> </tbody> </table> <p>To be clear, new Services under this Customer Contract will commence when the Services are provisioned by the Contractor and then continue for the remainder of the applicable Service Period.</p> <p>Note: A Transition-Out Period (except for Mobile Services EMMS) commences under clause 6 of the Additional Terms and Conditions at the end of the Service Periods, unless otherwise notified by the Customer.</p>	Telecommunication Service	Service Commencement Date	Fixed Voice Services	36 months after the Commencement Date, plus 2 x 12 month extension options that the Customer may exercise.	Mobile Services excluding EMMS	36 months after the Commencement Date, plus 2 x 12 month extension options that the Customer may exercise.	Mobile Services EMMS	12 months after the Commencement Date, plus a 12 month extension option that the Customer may exercise.
Telecommunication Service	Service Commencement Date								
Fixed Voice Services	36 months after the Commencement Date, plus 2 x 12 month extension options that the Customer may exercise.								
Mobile Services excluding EMMS	36 months after the Commencement Date, plus 2 x 12 month extension options that the Customer may exercise.								
Mobile Services EMMS	12 months after the Commencement Date, plus a 12 month extension option that the Customer may exercise.								
Training (clause 2.7)									
List any training to be provided:	As detailed in the Contract Specifications								
Standards (clause 5.1(b))									
Specify any specific standards that apply to the Telecommunications Services:	As detailed in the Contract Specifications								

Box 2 Data Control and Access

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Security (clause 23.1)	
<p>Is any security and encryption required for the Customer Content as defined by the Customer's Information Security Management System (ISMS)?</p> <p>Note: All NSW Government Departments, Statutory Bodies and Shared Service Providers are required to have an ISMS</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If yes, list agreed requirements:</p> <p>As detailed in the Contract Specifications</p>
Security standards (clause 23.2(e))	
List any other security standards with which the Contractor must comply:	As detailed in the Contract Specifications
Disaster Recovery/Business Continuity Plan (clause 26)	
Is a Business Continuity Plan required (including backup and disaster recovery procedures)?	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p>

	<p>If yes, detail the matters to be included:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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Box 3 Service Levels

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Service Level Agreement (clause 13.5)	
<p>Is a Service Level Agreement for the Telecommunications Services required?</p> <p>Note: it is anticipated that all Telecommunications Services will be supplied in accordance with a Service Level Agreement or the Service Levels as contained in the Contractor's Standard Form of Agreement (as at the date and time of the executed order)</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If yes, list agreed requirements: Refer to Schedule 3: Service Level Agreement of the Customer Contract.</p>
Failure to supply (clause 11.3)	
<p>Specify the number of occasions during a three-month rolling period after which the Contractor must identify and implement steps to address the cause of failure to supply the Telecommunications Service.</p> <p>Note: the default position in Module 11 is three or more consecutive occasions and the steps must be notified to and agreed with the Customer within 5 days of the third Service Level failure.</p>	<p>Default Position</p>
Service Credits (clauses 13.1 & 13.3)	
<p>Specify whether Service Credits will apply to the Telecommunications Service:</p> <p>Note: it is not expected that Service Credits are the Customer's sole remedy. For example, other remedies may include, but are not limited to:</p> <ol style="list-style-type: none"> 1. Termination for cause; 2. Transition-Out at Contractor's cost; 3. Damages; 4. Replacement of Service at Contractor's cost; and <p>Other (specify)</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If yes:</p> <p>a. Where is the calculation of the Service Credits outlined? Module 11 Order Form <input type="checkbox"/> Service Level Agreement <input checked="" type="checkbox"/></p> <p>a. Are Service Credits the Customer's sole remedy? Yes <input type="checkbox"/></p>

	No <input checked="" type="checkbox"/> If No, specify the Customer's additional remedies: All rights and remedies provided for in the Customer Contract. c. What is the period in which Service Credits accrue? (Note: default period under Module 11 is 1 month) As per Schedule 3: Service Level Agreement
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Box 4 Payment and Invoicing

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Invoicing (clause 8.4)	
Specify whether aggregated or consolidated invoicing is applicable to the Telecommunications Service (if any): Note: 'Aggregated' invoicing means an invoice specifying each Customer and that Customer's bill. 'Consolidated' invoicing means an invoice that is the sum of all Customers' bills on the one invoice with no individual Customer's details. For example, an aggregated invoice to a principal department would detail each agency's invoice within that Cluster. A consolidated invoice would have no such detail.	Aggregated <input type="checkbox"/> Consolidated <input type="checkbox"/> See Contract Specifications. (Correctly calculated invoices) The Contractor will ensure that any invoices issued for the Services are provided according to the Customer Contract. This includes ensuring that amounts contained in the invoice are correctly calculated according to the Customer Contract. (Dedicated billing services) See Annexure 2 (MBRS, BillView and Billing Specialist).

Box 5 Reports and records

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Reports (clause 15.1)	
Specify any Customer Works or non-standard reports that the Contractor must provide to the Customer, including the timing and format of such reports (if any):	As detailed in the Contract Specifications. The Reports must include monthly reporting on each of the Services compliance with the Service Levels.

Box 6 Cancellation

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Notice for transfer (clause 17.3)	
Specify the notice period that will apply where a Customer wants to transfer or redeploy a Telecommunications Service. Note: The default period under Module 11 is 60 days' Notice in Writing	See Contract Specifications.

Box 7 Transition-Out

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Transition-Out Services (clause 18.4)	
Is a disengagement (Transition-Out Services) plan required? Transition-Out Services may include: a. returning or destroying documents or materials, together with any reproduction of those documents or materials;	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, list requirements:

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
<p>b. transitioning the Telecommunications Service to a new service provider or to the Customer;</p> <p>c. ensuring technological parity with other service providers and the provision of sufficient technical documentation to enable successful and cost-effective transfer of the Customer Content; and</p> <p>d. procedures for the return/transfer or deletion of Customer Content upon termination of the Customer Contract; or in the event that the Contractor becomes subject to corporate takeover or insolvency.</p> <p>Consider issues relating to:</p> <p>a. regular (eg annual) review of the Transition-Out Services Plan; and</p> <p>b. how and when the Transition-Out-Services are brought into effect.</p> <p>Specific matters that may be covered in the plan include that the Contractor, in consultation with the Customer and as stated in the Transition-Out Services plan:</p> <p>a. provide all reasonable transition assistance for the delivery of Customer Content to the new service provider or to the Customer and the reloading of the production databases;</p> <p>b. provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties in the Transition-Out Plan);</p> <p>c. provide a list of the outstanding issues detailed on any issues register;</p> <p>d. answer questions and provide such other information as may be reasonably sought by the new service provider and/or by the Customer to assist it in the transition process;</p> <p>e. surrender any remaining Customer owned reports and documents still in the Contractor's possession;</p> <p>f. the Contractor ceases to become liable to perform any part of the Telecommunications Service after it is transitioned to a new service provider or to the Customer;</p> <p>g. the Contractor's obligations to meet the Service Levels is not reduced and the Contractor remains liable for failing to meet any Service Levels;</p> <p>h. the Customer must continue to pay the full Contract Price until the last day of the Service Period, notwithstanding that some or all of the Telecommunications Service may have been transitioned to a new service provider or to the Customer;</p> <p>i. the Contractor must, subject to clause 30, return to the Customer all Customer Content within 14 days of termination of the Customer Contract and back up and secure Customer Content for a further 60 days after termination of the Customer Contract; and</p> <p>j. not delete any Customer Content at the end of the Customer Contract without the express prior approval of the Customer.</p>	<p>As detailed in clause 6 of the Additional Terms and Conditions.</p>

Box 8 Access to Customer's Site

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Access (clause 19.1)	
Specify any requirements that apply to a	As detailed in the Contract Specifications

Contractor where the Contractor is required to access the Customer's Site(s):	including Item 25 of the General Order Form.
---	--

Box 9 Management of Networks

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Maintenance of Network (clause 24.1(a))	
Specify the agreed notice period before the Contractor may undertake planned or non-essential maintenance of a Network:	In accordance with Schedule 3 (Service Level Agreement) including requirements for a Planned Outage in Schedule 3 (Service Level Agreement).

Box 10 Incident and Problem Management

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Severity codes (clause 25.2)	
Do default severity codes apply?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If no, list severity codes & agreed resolution timeframes: As per Schedule 3 (Service Level Agreement)

Box 11 Telecommunications Equipment Supply and Maintenance

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Supply of Telecommunications Equipment (clause 31.1)	
Is equipment to be provided in connection with the Telecommunications Service(s)?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes please specify the equipment to be provided and any additional terms (if not Module 1) Yes, if Mobile and Fixed Voice phone Hardware is purchased by the Customer from the Contractor.
Are any maintenance services to be provided in connection with the Telecommunications Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please specify the maintenance services to be provided and any additional terms (if not Module 2) As set out in the Contract Specifications unless otherwise agreed by the Parties.

Box 12 Additional terms – Fixed Voice Services

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
Additional terms and conditions (clauses 32.1, 33.1 and 34.1)	
Specify any additional terms and conditions that apply to the Fixed Voice Services, including: <ol style="list-style-type: none"> the Sites where the Fixed Voice Services will be delivered; the timeframes for delivery of the Fixed Voice Services; terms that apply to Telephone Numbers and addresses (including the porting of Telephone Numbers); and 	As detailed in the Contract Specifications.

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
<p>d. any other additional requirements.</p> <p>Note: Where Telecommunications Equipment is to be provided for or in relation to Fixed Voice Services, such Telecommunications Equipment should be provided by the Contractor in accordance with and subject to the terms of Module 1 and maintained by the Contractor in accordance with and subject to the terms of Module 2.</p>	

Box 13 Additional terms – Mobile Services

Details to be included from Module 11	Order Details agreed by the Contractor and the Customer
<p>Additional terms and conditions (clauses 38.1, 39.1, 40.1 and 42.1(c))</p>	
<p>Specify any additional terms and conditions apply in relation to the provision of Mobile Services, SIM cards or mobile coverage?</p>	<p>As detailed in the Contract Specifications.</p>

Box 14 Additional terms – Fixed Data/Internet Service

Not applicable

ADDITIONAL TERMS AND CONDITIONS

1. General

These 'Additional Terms and Conditions' are structured as follows:

Additional terms and conditions
Annexure 1 – Service Delivery Part 1 – Service Delivery Management for Service Delivery Manager and Operations Manager Part 2 – Head of Service Part 3 – Service Level Manager
Annexure 2 – MBRS and T Analyst, BillView and Managed Billing Services Part 1 – MBRS and T Analyst Service Details Part 2 – BillView Service Details Part 3 – Managed Billing Services
[REDACTED]
Annexure 4 – Fixed Voice Services Terms
Annexure 5 – Mobile Services Terms Part 1 – Adaptive Mobility Services Part 2 – EMMS CSEM
Annexure 6 – Implementation
[REDACTED]
[REDACTED]

2. Definitions

"Corporate" means those parts of the Customer that are not Schools.

[REDACTED]

"Schools" means any school or educational institution operated by the Customer.

3. Transition from Existing Agreement and Existing Services

3.1 Customer and Telstra are parties to an Existing Agreement dated 30 September 2015 which includes the following:

[REDACTED]

(Existing Agreement).

Without being an exhaustive list, existing services under the Existing Agreement will continue from the Commencement Date under this Customer Contract as follows:

Existing Agreement services (Existing Services)	How Existing Services will continue after Commencement Date	Pricing Matters from Commencement Date
Fixed Voice	[REDACTED]	[REDACTED]
Mobile	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

5. NSW Government and DoE Policies

General

5.1 Telstra must, in performing all aspects of its obligations under this Customer Contract, comply (and must ensure its Personnel comply) with all New South Wales Government and the Customer policies that are publicly available or notified by the Customer to Telstra, to the extent that those policies are applicable to this Customer Contract or Telstra's obligations under this Customer Contract.

Small and Medium Enterprise and Regional Procurement Policy

5.2 SME Procurement Policy

SME has the meaning set out in NSW Government Small and Medium Enterprise and Regional Procurement Policy.

- (a) It is NSW Government policy to increase opportunities for SMEs to participate in goods and services procurement.
- (b) The Contractor must use its reasonable endeavours to increase its purchases from SMEs in the delivery of this Customer Contract.

5.3 Compliance

The Contractor will:

- (a) use reasonable endeavours to comply with the SME Participation Plan; and
- (b) report against its compliance with the SME Participation Plan as set out in the SME Participation Plan and as otherwise required by the Customer.

Aboriginal Procurement Policy

5.4 Compliance with Aboriginal Procurement Policy obligations

It is NSW Government strategic economic policy to grow NSW's First Economy. Through the Aboriginal Procurement Policy the NSW Government seeks to meet the following objectives:

- (a) support employment opportunities for Aboriginal people; and
- (b) support sustainable growth of Aboriginal Businesses by driving demand via Government procurement.

5.5 Minimum Aboriginal Participation Requirements

- (a) **Minimum Aboriginal Participation Requirements**

The Contractor must ensure Aboriginal participation in the performance of this Customer Contract through one of the following measures:

- (i) **(subcontracting to Aboriginal Businesses)** the Contractor will subcontract to Aboriginal Businesses. The value of the subcontracts must be at least the Aboriginal Participation Percentage multiplied by the APP Agreement Value. For clarity, any subcontractor must be approved in accordance with this Customer Contract; or
- (ii) **(Aboriginal Employees in its workforce)** the Contractor will ensure that its Australian based workforce includes Aboriginal Employees. The percentage of full time equivalent Aboriginal Employees in that workforce must be on average at least the Aboriginal Participation Percentage; or
- (iii) **(education, training or capability building)** the Contractor will educate, train or build the capability of Aboriginal Employees or Aboriginal Businesses.

The amount that the Contractor will spend on these measures must be at least the Aboriginal Participation Percentage multiplied by the APP Agreement Value; or

- (iv) **(combination of measures)** the Contractor will undertake a combination of the measures in clauses 5.5(a)(i), 5.5(a)(ii) or 5.5(a)(iii) such that the combined percentages of each add up to at least the Aboriginal Participation Percentage.

These are called the **Minimum Aboriginal Participation Requirements**.

An Aboriginal participation activity cannot be counted towards more than one measure. For example, if an approved subcontractor is an Aboriginal Business and has Aboriginal Employees, the activity can only be counted as 'subcontracting to an Aboriginal Business' or 'Aboriginal Employees in its workforce', but not both.

5.6 **Aboriginal Participation Plan**

The Contractor must perform its obligations under this Customer Contract and achieve the Minimum Aboriginal Participation Requirements in accordance with the Aboriginal Participation Plan and the Aboriginal Procurement Policy.

5.7 **Reporting**

The Contractor:

- (a) **(quarterly report)** will within 7 Business Days of the calendar quarters ending March, June, September and December (or as otherwise requested by the Customer), provide a report on how the Contractor is meeting the Minimum Aboriginal Participation Requirements and its commitments in the Aboriginal Participation Plan. The report must be provided in the format and with the detail and supporting information and Contractor certification nominated by the Customer;
- (b) **(final report)** will provide a final report 1 month before expiry or termination of this Customer Contract (or as otherwise requested by the Customer), on the Contractor's compliance with meeting its commitment on Minimum Aboriginal Participation Requirements and the Aboriginal Participation Plan. The report must be provided in the format and with the detail and supporting information and Contractor certification required by the Customer. The report must include the APP Agreement Value, Actual Aboriginal Participation and any Unmet Percentage as at the end of the Contract Period; and
- (c) **(complete and accurate reports)** represents and warrants that any report or information it provides to the Customer in relation to its compliance with the Minimum Aboriginal Participation Requirement and the Aboriginal Participation Plan is, to the best of its knowledge, complete and accurate.

5.8 **Contractor not meeting Aboriginal Participation Requirements**

- (a) **(Notice for payment)** If Contractor has not met the Minimum Aboriginal Participation

Requirements or complied with the Aboriginal Participation Plan, the Customer may send the Contractor a notice requiring the Contractor to pay an amount equal to the Unmet Percentage multiplied by the APP Agreement Value, as at the date of the notice. The Contractor must pay this amount to an account as directed by the Customer within 30 days of being provided the notice. The Customer may send this notice at any time from half way through the period of the Contract Period or on or after expiry or termination of this Customer Contract.

- (b) **(Recovery)** If any amounts are not paid by the Contractor in accordance with this clause 5.8, it will constitute a debt due and owing by the Contractor to the Customer.
- (c) **(Set off)** The Customer may set off any amounts due and owing by the Contractor to the Customer under this clause 5.8, against any amounts due and owing by the Customer to the Contractor under this Customer Contract.
- (d) **(Aboriginal Participation Fund)** Any payment made by the Contractor as directed by the Customer under this clause 5.8, is intended for the benefit of the Aboriginal Participation Fund.

5.9 Audit and assistance

- (a) **(Audit)** The Crown in right of the State of New South Wales (**Crown**), the Customer or an auditor engaged by the Crown or the Customer, may at any time conduct an audit of the Contractor's compliance its obligations under clauses 5.4 to 5.11. The Contractor will, and procures that its Personnel will, assist and cooperate with the audit in good faith and provide all the necessary information as requested by the Crown, the Customer or the auditor.
- (b) **(Assistance)** The Contractor must provide to the Customer any information or other assistance, as reasonably requested by the Customer, to enable the Customer to meet its obligations under the Aboriginal Procurement Policy.

5.10 Survival

The obligations of the Contractor under clause 5.8 survives expiry or termination of this Customer Contract.

5.11 Aboriginal Participation Policy obligation definitions

In clauses 5.4 to 5.11:

- (a) **Aboriginal Business** means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such through an indigenous business verification organisation specified in the Aboriginal Procurement Policy (e.g. Supply Nation and the NSW Indigenous Chamber of Commerce).
- (b) **Aboriginal Employees** means employees, secondees, agents and contractors (who are individuals) of the Contractor or any approved subcontractor of the Contractor who are people of Aboriginal or Torres Strait Islander descent as verified by the Contractor in accordance with the Aboriginal Procurement Policy.
- (c) **Aboriginal Participation Fund** means the "Aboriginal Participation Fund" or its successors managed by the Customer. The fund is designed to target skills and capacity gaps for Aboriginal people and businesses and to build the capacity and capability of Aboriginal businesses in NSW.
- (d) **Aboriginal Participation Percentage** means the percentage as set out in the Aboriginal Participation Plan that will apply to Minimum Aboriginal Participation Requirements. If no percentage is indicated in the Aboriginal Participation Plan, then the percentage will be 1.5%.
- (e) **Aboriginal Participation Plan** means the agreed "Aboriginal Participation Plan" attached to this Customer Contract or agreed subsequently, setting out how the Contractor will meet the Minimum Aboriginal Participation Requirements.
- (f) **Aboriginal Procurement Policy** means the NSW government's "Aboriginal Procurement Policy" currently published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal->

procurement-policy.

- (g) **Actual Aboriginal Participation** means, at a point in time, the percentage of actual Aboriginal participation in the performance of this Customer Contract, as determined by combining:
- (i) the percentage of the APP Agreement Value that has been subcontracted to Aboriginal Businesses;
 - (ii) the average percentage of full time equivalent Aboriginal Employees in the Contractor's Australian based workforce; and
 - (iii) the percentage of the APP Agreement Value that the Contractor has spent on an arms length basis with third parties (unless otherwise agreed in the Aboriginal Participation Plan) on education, training or capability building for Aboriginal Employees or Aboriginal Businesses.
- (h) **APP Agreement Value** means, at a point in time, the total dollar value paid or payable by the Customer under this Customer Contract.
- (i) **Minimum Aboriginal Participation Requirements** has the meaning set out in clause 5.5.
- (j) **Unmet Percentage** means, at a point in time, the difference between the Aboriginal Participation Percentage and the Actual Aboriginal Participation.

Modern slavery

- 5.12 In this clause, **Modern Slavery Laws** means the Modern Slavery Act 2018 (Cth) and any other applicable legislation addressing similar subject matter.
- 5.13 The Contractor must, in performing its respective obligations under this Customer Contract, comply with Modern Slavery Laws.
- 5.14 The Contractor will act in accordance with its:
- (a) Modern Slavery Act Statement, which sets out an overview of the Contractor's supply chain and how it discloses any material incidents in its annual Modern Slavery Act Statement; and
 - (b) Supplier Code of Conduct, which covers the Contractor's expectations of its own suppliers.
- 5.15 The Contractor acknowledges that:
- (a) the Customer is required to comply with Statutory Requirements, including any NSW legislation relating to modern slavery. Those requirements may include the following obligations on the Customer:
 - (i) monitor the effectiveness of due diligence procedures in place to ensure that the procurement of goods and services by the Customer are not the product of modern slavery;
 - (ii) comply with codes of practice and advice from the Anti-slavery Commissioner for the purpose of providing guidance in identifying modern slavery taking place within the supply chains of the Customer and steps that can be taken by the Customer to remediate or monitor identified risks of modern slavery that might be taking place in its supply chains; and
 - (iii) report on actions and steps taken in relation to any issue raised by the Anti-slavery Commissioner, and to ensure that goods and services procured by and for the Customer were not the product of modern slavery; and
 - (b) the Customer may require its goods and services providers, including the Contractor, to provide information to enable the Customer to meet its obligations under Statutory Requirements relating to modern slavery. The Contractor will provide such information as is reasonably requested by the Customer, subject to any confidentiality obligations and any applicable legal requirements, and provided that the Customer will treat any commercially sensitive information

[Redacted text block]

- (c) the Customer will then review, and if appropriate, approve the Telstra Proposed Disengagement Plan. If requested by the Customer, the Contractor and the Customer will negotiate in good faith any reasonable changes to the Telstra Proposed Disengagement Plan until it is approved by the Customer (**Agreed Disengagement Plan**);
- (d) the Contractor and the Customer will comply with the Agreed Disengagement Plan and the Contractor will comply with any reasonable directions from the Customer in relation to transition-out of the Services at specific Sites; and

[Redacted text block]

6.6 The Customer can request a Disengagement Plan be prepared for each of the different Services detailed in clause 6.2.

7. No exclusivity

Despite any other clause of this Customer Contract, this Customer Contract is a non-exclusive arrangement. DoE may procure deliverables the same as or similar to the Deliverables from any other person at DoE's discretion.

8. Our Customer Terms (OCTs)

[Redacted text block]

[REDACTED]

Annexure 1 (Service Delivery)

1 GENERAL

1.1 Definitions:

- (i) **Incidents** means an event that causes an interruption in the operation, or a perceivable reduction in the quality, of the Services which is not part of its standard operation, including an outage.
- (ii) **Service Requests** means a formal request from a user or a user's authorised representative for any addition, modification or information in relation to a service that is part of the contracted scope of services
- (iii) **Problems** means a recurring Incident or multiple recurring Incidents where the cause is not known.

2 SERVICE DELIVERY

Telstra to provide an Integrated Service Desk (**ISD**) for the Customer to raise any fixed voice and mobile Incidents, Service Requests and Problems (collectively, **Request**).

- (i) Requests by the Customer can be made by phone or email.
- (ii) Requests by Corporate are to be raised to the DoE Manager IT Customer Experience and Service Delivery (or another nominated team).
- (iii) If a Service Request is made by a School, Telstra can ask for a confirmation of the Request from the School via email.
- (iv) No portal/service catalogue access to be provided for Schools unless agreed with the DoE Manager IT Customer Experience and Service Delivery.
- (v) School ID services will be used to track Requests made by Schools.

Details on the specific process for ordering new services is set out below.

3 SCHOOL AUTHORISATION

- 3.1 Telstra is to change the School's authorisation level to a 'Cost Centre' level. Schools should not be authorised to make changes to other Schools or Corporate on the account. Telstra to allow 3 designated staff positions (not nominated individuals) per School to make Requests.
- 3.2 DoE Manager IT Customer Experience and Service Delivery and DoE Manager Accounts Payable can make changes for Corporate and Schools.

4 ESTABLISHMENT AND TRANSITION TO TELSTRA SERVICES DELIVERED OVER NBN

- 4.1 During establishment and transition of NBN, all Requests related to Telstra Services delivered over NBN will go through EDConnect to the DoE IT Customer Experience and Service Delivery team.
- 4.2 Once establishment and transition is complete, all Requests related to Telstra Services delivered over NBN will be made through Telstra's ISD.

5 NON-TELSTRA RELATED INCIDENT, SERVICE REQUEST AND PROBLEMS

- 5.1 All Non-Telstra related Incidents, Service Requests and Problems (for example in relation to a non Telstra managed PABX) will not be directed to the Telstra ISD.
- 5.2 If Telstra incidentally receives a non-Telstra related Request from a School, the ISD will assist the School by advising them to contact DoE's IT Customer Experience and Service Delivery team. DoE will provide Telstra a short response for the ISD to respond to Schools for Non-Telstra related Requests.

6 SPECIFIC TELSTRA RELATED INCIDENT, SERVICE REQUEST AND PROBLEMS

- 6.1 If any of the below listed Specific Telstra related Requests is raised by a School directly with the ISD, the School will be advised to contact DoE's IT Customer Experience and Service Delivery Team. The Specific Telstra related Requests include:
- (i) Mobile phone orders
 - (ii) TIPT Migration
 - (iii) New TIPT Handset
 - (iv) TIPT Moves/Adds Changes
 - (v) CHOWN of Mobiles across costs centres (no longer a CHOWN as one account).

7 UPDATE TO DOE

- 7.1 If Telstra is encountering numerous Specific Telstra and Non-Telstra related Requests from Schools made to the ISD, Telstra are to raise it at the monthly governance meeting with DoE.

8 ORDER PROCESS FOR NEW SERVICES

- 8.1 Service Requests by Schools for new services (**Orders**) for Fixed Voice are to be made to the ISD.
- 8.2 Service Requests for all School and Corporate Mobile Services Orders and Specific Telstra Related Service Requests are to be made to the ISD by the DoE IT Customer Experience and Service Delivery team.
- 8.3 The DoE IT Customer Experience and Service Delivery team are to make Orders for Corporate and Schools (including Specific Telstra related Service Requests) by:
- (i) raising a Service Request to the ISD by email; or
 - (ii) through the Telstra Service Catalogue
- 8.4 **Orders through the Telstra Service Catalogue**
- (i) Telstra will provide user login accounts to the Telstra Service Catalogue for the DoE IT Customer Experience and Service Delivery team. There will be no limitations on the number of user login accounts for DoE.
 - (ii) After an Order has been submitted through the Telstra Service Catalogue, the DoE IT Customer Experience and Service Delivery team user will receive a Service Request ID.
 - (iii) Telstra will enable access to the Telstra Service Catalogue only to selected and authorised DoE users.
- 8.5 **Orders made by Service Requests by email to the ISD**
- (i) Orders made by Service Requests by email to the ISD must include the following:
 - (i) Site ID
 - (ii) School or Corporate, including delivery address
 - (iii) Recipient
 - (iv) Cost Centre
 - (v) Service details (e.g., service type, quantity)
 - (ii) Once a Service Request by email has been made by the DoE IT Customer Experience and Service Delivery team, Telstra will raise a ticket once the email is read and actioned. Telstra will endeavour to action the email within 15 minutes of receipt.
 - (iii) A response email confirming the order will be generated by Telstra to the DoE IT Customer Experience and Service Delivery team with the Service Request ID
- 8.6 Telstra will fulfill all Orders made by the DoE IT Customer Experience and Service Delivery team and Schools, including delivering the Orders to the correct recipient and addresses specified in the Telstra Service Catalogue or the Service Request.

Annexure 1 (Service Delivery)

Part 1 (Service Delivery Management for Service Delivery Manager and Operations Manager)

1 SERVICE MANAGEMENT RESOURCES

- 1.1 Telstra will support the Services with the roles of the Service Delivery Manager (**SDM**), Operations Manager (**OM**), Head of Service, Service Level Manager, and other specialist service resources required from time to time.
- 1.2 Head of Service and Service Level Manager resources is covered in later Parts of this Annexure
- 1.3 This Part provides job description information for the two key resources (SDM and OM) that are mostly customer facing.

2 SERVICE DELIVERY MANAGER

- 2.1 The SDM is named in Item 27 of the General Order Form.

[Redacted]

- 2.3 The SDM must be approved by the Customer from a security perspective including in accordance Item 25 (Secrecy and Security) in the General Order Form.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

3 OPERATIONS MANAGER

3.1 The OM is named in Item 27 of the General Order Form.

[REDACTED]

3.3 The OM must be approved by the Customer from a security perspective including in accordance Item 25 (Secrecy and Security) in the General Order Form.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4 HOURS OF COVERAGE

- 4.1 The OM and SDM will each be available to perform Service Management Services during the Hours of Coverage.
- 4.2 The CSU Resources will support the Customer as required to perform the services in accordance with this Agreement including any applicable service levels.
- 4.3 The parties acknowledge that from time to time it may be necessary for the OM or SDM to be available outside the Hours of Coverage. The OM and SDM will be expected to accept a reasonable request to be available outside the Hours of Coverage on a temporary and occasional basis. If the OM and SDM are not available outside the Hours of Coverage when reasonable required by the Customer, the Customer will have access to the New South Wales Government on-call resource.

5 DOE RESPONSIBILITIES

- 5.1 The Customer must:
 - (a) cooperate with the OM and SDM as reasonably required in relation to the provision of the Service Management Services;
 - (b) provide the OM and SDM, when invited to attend the Customer's premises, with full and safe access to all premises, equipment, materials, personnel and information necessary to perform the Service Management Services;
 - (c) maintain a working environment free from risk to the health and safety of the OM and SDM;
 - (d) comply fully with all health and safety requirements specified in any applicable laws, ordinances, regulations or orders; and
 - (e) inform us of any unusual hazards or risks, within the Customer's knowledge, that may arise at a Site which directly affects the OM or and SDM.

6 DEFINITIONS

6.1 In this Part, unless otherwise stated:

Business Day means any day other than a Saturday, Sunday or recognised public holiday in New South Wales.

Head of Service is responsible for the service delivery function supporting the account.

Hours of Coverage means between 08:30 to 17:00 hours (AEST) on a Business Day.

Incident means an event that causes an interruption in the operation, or a perceivable reduction in the quality, of the Services which is not part of its standard operation, including an outage.

Operations Manager means the person nominated by us from time to time to perform the Operations Manager Services.

Operations Manager Services means the functions of the Operations Manager as described in clause 3 of this Part.

Problem means a recurring Incident or multiple recurring Incidents where the cause is not known.

Problem Management means using reasonable endeavours to:

- (a) investigate Incident patterns for incidents reported to the service desk;
- (b) classify problems identified during incident trend analysis by cause, type, category and prioritise based on urgency and impact;
- (c) identify an appropriate workaround should the incidents re-occur;
- (d) perform root cause analysis;
- (e) initiate, or recommend, corrective action for the problem, as appropriate;
- (f) notify the Customer of problems being investigated and any appropriate workaround; and
- (g) notify the Customer of the corrective actions taken by us to address problems.

Service Delivery Manager means the person nominated by us from time to time to perform the Service Delivery Manager Services.

Service Delivery Manager Services means the functions of the Service Delivery Manager as described in clause 2 of this Part.

Service Management Services means the Operations Manager Services and the Service Delivery Manager Services.

Site means the Customer's offices located at 8 Central Avenue Everleigh NSW 2015.

Annexure 1 (Service Delivery)
Part 3 (Service Level Manager)

- (a) The Service Level Manager (SLM) must be approved by the Customer from a security perspective including in accordance Item 25 (Secrecy and Security) in the General Order Form.

[REDACTED]

Annexure 2 (MBRS and T Analyst, BillView and Managed Billing Service)

1 GENERAL

- 1.1 This Annexure sets out the details of:
- (i) the Managed Billing and Reporting System (MBRS) and T Analyst Service, the details for which are set out in Part 1 to this Annexure;
 - (ii) the BillView, the details for which are set out in Part 2 to this Annexure; and
 - (iii) the Managed Billing Service which is set out in Part 3 to this Annexure, (together the **(Billing Services)**).

**Annexure 2 (MBRS and T Analyst, BillView and Managed Billing Service)
Part 1 (MBRS and T Analyst Service Details)**

[Redacted]

[Redacted]

On termination of access to MBRS the Customer must:

- (i) immediately delete all User IDs and Passwords and any copies of them that are in the User's custody, possession or control; and
- (iii) ensure that each User immediately deletes all copies of all User IDs and Passwords in their possession or control.

[Redacted]

COMMERCIAL IN CONFIDENCE

Annexure 2 (MBRS and T Analyst, BillView and Managed Billing Service) Part 2 (BillView Service Details)

1 SERVICE DESCRIPTION

- 1.1 The integrated expense management service is a range of services which allow the Customer to have greater visibility and control over the Customer's overall telecoms expenses from Telstra. The specific scope of integrated expense management services to be provided to the Customer are set out in the Statement of Work (**BillView**).
- 1.2 BillView will be provided [REDACTED] to the Customer.
- 1.3 Telstra will supply BillView on the terms of this Customer Contract including Module 10 (As A Service) and the Statement of Work in Attachment 1.
- 1.4 BillView consists of asset and invoice lifecycle management services as described in the Statement of Work, and includes services such as bill reporting and analytics, consulting services and support services to manage the Customer's telecoms solutions, each as set out in the Statement of Work.
- 1.5 Telstra will not be required to provide any integrated expense management services that are not expressly set out in the Statement of Work. Where the Customer requires additional scope for the integrated expense management services it may provide a written request to Telstra and will follow any reasonable ordering process notified to it by Telstra in relation to that request. Any additional scope for integrated expense management services will be subject to the parties agreeing and executing a further statement of work.

2 SERVICE AND DELIVERABLES

- 2.1 The Customer must provide the Customer's inputs (each of which is a CSI for the purposes of the Customer Contract) at the times reasonably agreed with Telstra in order to meet Telstra's obligations to the Customer.
- 2.2 Telstra will perform the services in this Part and deliver to the Customer BillView according to the Contract Specifications. Telstra aims and will use its reasonable endeavours to meet each relevant Delivery Date but does not guarantee to meet it.
- 2.3 Nothing in this Part obligates the Customer to use BillView. The Customer may use another expense management solution for all or part of its expense management needs if it decides to do so.

3 ACCEPTANCE OF DELIVERABLES

- 3.1 The Customer and Telstra will reasonably agree details required for Acceptance Tests under this Customer Contract. Acceptance will apply to the completion of On-Boarding as a whole, not individual Deliverables as part of On-Boarding.
- 3.2 Telstra will not be responsible for configuration issues in BillView that cause BillView to not achieve acceptance under the Customer Contract, to the extent that those configurations issues were caused by incorrect information provided by the Customer.

4 TELSTRA'S PERSONNEL

- 4.1 Telstra will provide the Customer with an account manager from the BillView operator called FastLane

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**Annexure 2 (MBRS and T Analyst, BillView and Managed Billing Service)
Part 3 (Managed Billing Service)**

1 MANAGED BILLING SERVICE

1.1 Telstra will, for the duration of the Contract Period, provide a Managed Billing Service to ensure the effective and accurate billing to the Customer, with the following FTE:

Contract year	FTE
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

In this Part, "Managed Billing Service" means the services detailed in this Part.

[REDACTED]

1.3 The Managed Billing Service will be available full-time during Business Days from the hours of 08:30 – 17:00.

1.4 The Managed Billing Service will provide services across all Services including Fixed Voice Services and Mobile Services.

[REDACTED]

1.6 The Billing Specialist's transition activities responsibilities will be outlined in the RACI contained within the agreed PMP.

2 CUSTOMISED BILLING SOLUTION

2.1 Telstra will, for the duration of the Contract Period, unless otherwise agreed with the Customer in writing, provide a customised billing solution for the Services as part of the Billing Services delivered to

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the Customer.

2.2 Invoicing will be delivered as follows:

- (i) one monthly invoice for Mobile Services and Fixed Voice Services for Schools and Corporate Services
- (ii) invoices will be issued by core billing systems
- (iii) all invoices will be aligned to a single bill cycle for Schools and Corporate. Invoices are to be delivered on the same day for all Fixed Voice and Mobiles Services on a day agreed between both parties,
- (iv) Billing information to be split to show individual spend for Schools and Corporate (by Cost Centre). A CSV file showing this information will be provided by Telstra to the Customer.

2.3 Reporting:

BillView will be the source of reporting for billing.

3 BILL DISPUTES REPORTING

3.1 Cost centres (e.g. Corporate cost centres or Schools) will raise bill disputes directly to Telstra via the ISD.

3.2 Telstra will prepare a Billing Dispute Report for DoE (via data from the ISD). The Billing Dispute Report will include:

- (i) Site ID (recorded in ticket fields)
- (ii) Reporting School/Service (i.e. Corporate)
- (iii) Cost Centre
- (iv) Date lodged
- (v) Date resolved
- (vi) Dispute description
- (vii) Resolution actions
- (viii) Any credits that need to be applied to the correct cost centre identifying who the credit is for
- (ix) Other details reasonably required by DoE

3.3 Telstra will present the billing dispute report as part of DoE and Telstra's monthly service management meeting with the SDM and Ops Manager. The report will be provided at least 24 hours before the meeting.

3.4 Telstra will apply credits in the same Billing Period after billing dispute resolution. Where the timing of the resolution does not allow the credit to be applied in the same Billing Period, it will be processed as part of the next Billing Period and not later.

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Annexure 4: Fixed Voice Services Terms

1. This Part

A reference in this Part to a Service is a service for carriage of voice communications.

2. OCTs

Fixed Voice Services	OCT
Basic Telephone Service	<ul style="list-style-type: none">• OCT_fixed-general
T-Biz Voice	<ul style="list-style-type: none">• OCT_t-biz-voice• OCT_nbnservices• OCT_fixed-general
ISDN	<ul style="list-style-type: none">• OCT_Part A - isdn-general• OCT_Part B - BusinessLine Complete - bg-isdn-businesscustomers• OCT_Part C - isdn-othercalltypes
Telstra Inbound Network Services	<ul style="list-style-type: none">• OCT_Part A - inb-general• OCT_Part C - isdn-othercalltypes• OCT_fixed-othercalltypes
Telstra SIP Connect Telstra SIP Complet	<ul style="list-style-type: none">• OCT_sip-connect
Telstra IN-Control Online	<ul style="list-style-type: none">• OCT_inb-incontrol
TIPT	<ul style="list-style-type: none">• OCT_telstra-ipt• OCT_liberate-unified-and-mobile
Liberate	<ul style="list-style-type: none">• OCT_liberate-unified-and-mobile

See clause 8 of the Additional Terms and Conditions for how OCTs will apply to this Customer Contract.

[Redacted text block]

4. Adding Services

- 4.1 The Customer may add any Services for the Fixed Voice Services detailed in the table at clause 2 any time during the Contract Period for the [Redacted text]
- 4.2 The parties may from time to time add other services to Fixed Voice Services by agreeing a Change Request.

[Redacted text block]

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6. Eligibility Criteria

- 6.1 The Customer acknowledges that eligibility criteria for Services are set out the OCTs and that it must meet such eligibility criteria before it orders a Service. Before accepting an order for a Service, Telstra will confirm that the Customer satisfies that eligibility criteria.
- 6.2 Eligibility criteria in the OCTs that are not met by the Customer for a Service already provisioned by the Customer will not apply to any additional Services ordered by the Customer.

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- 7.2 Eligibility criteria in the OCTs that are not met by the Customer for a Service already provisioned by the Customer will not apply to any additional Services ordered by the Customer.

8. CMP & EFP Discontinuation

- 8.1 The Customer acknowledges and agrees that, if Customer purchases and the Contractor provides any CMP or EFP Mobile Services then:
- (a) that neither Corporate Mobile Plus or Enterprise Fleet Plan is available for new service connections or service changes on and from 1 January 2023 and will be discontinued and exited from 30 March 2023 (CMP and EFP Discontinuation Notice). Telstra announced it will switch off its 3G (850 MHz) service on 30 June 2024 and the Services and related products the Customer acquires under this Customer Contract may be impacted and may not work from 30 June 2024; and
 - (b) if the Customer is using a 3G only device, the Customer's device will no longer work from this date. If the Customer is using a non-4G voice calling enabled 4G device, Push to Talk (PTT) will no longer work and the Customer's device will not be able to make voice calls from this date (3G Closure Notice).

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Annexure 5: Mobile Services Terms Part 1 (Adaptive Mobility Services)

1 ADAPTIVE MOBILITY SERVICES

SERVICE	DESCRIPTION
Adaptive Mobility Plans As specified in the Adaptive Plans worksheet of the [REDACTED]	<ul style="list-style-type: none"> Service-specific terms set out in this Part 1 (Adaptive Mobility Services) of the Annexure; and the applicable terms for Adaptive Mobility found at https://www.telstra.com.au/customer-terms/digitalterms, (Adaptive Mobility Terms), as amended by the Contractor from time to time. See clause 2 below.
International Roaming	An add-on to an Adaptive Mobility Service Plan that allows Telstra to use the Customer's compatible device to make/receive calls, use data services and send/receive SMS and/or MMS overseas and have the charges according to the [REDACTED] This Service is subject to the: <ul style="list-style-type: none"> Service-specific terms set out in section 4.6 of the Adaptive Mobility Terms
International Roaming Day Pass	An add-on to an Adaptive Mobility Service Plan that provides a daily allowance for standard voice calls, SMS and data for use in Eligible Countries during each day calculated from 00.01 to midnight AEST This Service is subject to the: <ul style="list-style-type: none"> Service-specific terms set out in section 4.6 of the Adaptive Mobility Terms
Optional Services	An add on to Adaptive Mobility Service Plan that are further described in the Adaptive Mobility Terms

2 CHANGES TO ADAPTIVE MOBILITY SERVICES OR ADAPTIVE MOBILITY SERVICE TERMS

2.1 From time to time, the Contractor may make changes to the Adaptive Mobility Services and the Adaptive Mobility Service Terms. When making such changes, the Contractor will act reasonably in line with the timeframes below

2.2

	Type of change	Notice and when change takes place
Neutral / Beneficial	The Contractor reasonably thinks the change is neutral or likely to benefit the Customer	The Contractor may make these changes immediately without telling the Customer .
Detrimental	The Contractor reasonably thinks the change may be detrimental to the Customer	The Contractor will tell the Customer at least 30 days before making the change.
Urgent	The Contractor needs to make urgent changes required by law, to prevent fraud , or for security or technical reasons	The Contractor will try to tell the Customer at least 3 days before making the change. Otherwise, the Contractor will give the Customer as much notice as the Contractor reasonably can in the circumstances.

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[REDACTED]

3 ADAPTIVE MOBILITY PLANS

- 3.1 For clarity, in addition to the Adaptive Mobility Plans specified in the [REDACTED] the Customer may order or change to any Adaptive Mobility Plans made available through the TPA from time to time.
- 3.2 The Adaptive Mobility Plans are not compatible with any other Telstra mobile plan or offer and must reside on one or more separate account(s).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 DEFINITIONS

- 5.1 In this Annexure 5, unless otherwise indicated:
Adaptive Mobility Plans means the plans described in the [REDACTED]

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Annexure 6 (Implementation)

1. Project Management

- 1.1 The Parties will in good faith agree a project management plan for Implementation of the Telecommunication Services within 60 days of the Commencement Date (the **Project Management Plan**). The Project Management Plan will include a Project Implementation Schedule that is consistent with the document titled 'High Level Project Implementation Schedule' referred to in Schedule 2. If the parties cannot agree a Project Management Plan for implementation within 60 days of the Commencement Date, the resolution of any outstanding issues within the Project Management Plan will be resolved in accordance with clause 24 (Dispute Resolution) of Part 2 (Customer Contract).

This document will be called the '**Project Management Plan**'.

- 1.2 The Project Management Plan will set out each party's role and responsibilities during implementation as set out elsewhere in this Customer Contract for the Telecommunication Services.

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