

CLIENT-SPECIFIC PROCURE IT AGREEMENT

VERSION 2.1.3

EXECUTION OF AGREEMENT [PART ONE]
STANDARD TERMS AND CONDITIONS [PART TWO]
DICTIONARY [PART THREE]
SCHEDULES [PART FOUR]
MODULES [PART FIVE]
SERVICE LEVEL AGREEMENT [PART SIX]



Procurement

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EXECUTED AS AN AGREEMENT

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

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

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

Signature of Principal's Representative

Signature of Witness

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

in accordance with s127 of the Corporations Act 2001 by:

Signature Director

Signature of Director/Secretary

Print name

Print name

END OF PART ONE

PART 2 - STANDARD TERMS AND CONDITIONS

STANDARD TERMS AND CONDITIONS

1. Agreement Administration

1.1 AUTHORISED REPRESENTATIVES

- 1.1.1 Each Party must nominate in the Agreement Details, their duly authorised representatives.
- 1.1.2 Each Party warrants that their respective nominated representatives have the power and authority to provide such consents as are required and to issue instructions for the fulfilment of the terms of this Agreement.
- 1.1.3 Where the Principal is required to give consent under the terms of this Agreement, it may do so upon such reasonable conditions as it sees fit to impose.

1.2 NOTICES

Form

- 1.2.1 Any notice to or by a Party under this Agreement shall be by Notice in Writing sent by an authorised representative of the Party.

Service method

- 1.2.2 Any Notice in Writing must be sent to the receiving Party's Service Address.

Receipt

- 1.2.3 Any Notice in Writing shall be deemed to be received for the purposes of this Agreement at 9.00 am on the next business day following receipt of the notice at the receiving Party's Service Address.

2. Agreement Operation

2.1 TERM

This Agreement commences on the date specified in the Agreement Details and will continue for the period specified in the Agreement Details. The Contractor agrees that the Principal may by Notice in Writing extend this Agreement on the same terms for the period specified in the Agreement Details.

2.2 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Contractor and the Principal. Any prior arrangements, agreements, or undertakings by the Contractor and the Principal are superseded and shall have no effect.

3. Management of Agreement

3.1 CO-OPERATION

The Principal and Contractor must do all they reasonably can to co-operate in all matters relating to this Agreement, but their rights and responsibilities under this Agreement remain unchanged unless the Parties agree in writing to vary them.

3.2 DUTY NOT TO HINDER PERFORMANCE

Each Party must do all it reasonably can to avoid hindering the performance of the other under this Agreement.

3.3 CONTRACTOR'S WARRANTIES

The Contractor warrants that:

- (a) it has the right and authority to enter into this Agreement;
- (b) to the best of its knowledge, no Conflict of Interest of the Contractor or its Personnel exists or is likely to arise in the performance of their obligations under this Agreement;
- (c) the information provided by the Contractor as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel is correct and complete;
- (d) it has obtained all licences, approvals and consents necessary to grant any rights or perform any obligations under this Agreement;
- (e) the Deliverables do not infringe the Intellectual Property or Moral Rights of a third party;
- (f) the Deliverables conform to the Contract Specifications and any standards specified in the Agreement Details; and
- (g) if a Virus is introduced into the Principal's Systems as a result of the supply by the Contractor of a Deliverable or any wrongful act (including negligent) or omission by the Contractor or its Personnel, then the Contractor, must at its own cost and expense (at the election of the Principal), immediately remove or allow the Principal to remove the Virus and reinstate the affected Deliverable.

3.4 AGREEMENT DETAILS

This Agreement shall not be valid and legally effective unless the Parties mutually agree and complete all applicable Agreement Details.

3.5 ISSUE RESOLUTION

3.5.1 The Parties agree to resolve any conflicts or issues between them in relation to this Agreement in accordance with the provisions of clauses 3.5 to 3.7 inclusive and Schedule 5.

3.5.2 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below must be followed in this priority until the issue is resolved:

- (a) Amicable resolution (clause 3.6);
- (b) Expert determination (clause 3.7 and Schedule 5).

3.6 AMICABLE RESOLUTION

- 3.6.1 A Party may submit Notice in Writing to the other Party of an issue, including a dispute or difference (“the Issue Notice”), about the meaning or effect of the Agreement or any matter arising under or out of this Agreement.
- 3.6.2 The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue to the other Party’s authorised representative.
- 3.6.3 The Parties must follow the issue resolution process in this clause 3.6 and Schedule 5, before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 3.6.4 If a Party submits an Issue Notice under this clause, each Party will nominate in writing a senior executive within 7 days. The nominated senior executives must promptly confer at a time and place that is mutually convenient to resolve the issue.

3.7 REFERRAL TO EXPERT DETERMINATION

- 3.7.1 A Party is not entitled to refer an issue for expert determination in accordance with Schedule 5, until 21 days after submitting the Issue Notice.
- 3.7.2 A Party may only refer an issue to expert determination by submitting Notice in Writing to the other Party’s authorised representative specifying the issue to be decided (“the Referral Notice”).
- 3.7.3 If a Referral Notice has not been submitted within 28 days of becoming entitled under clause 3.7.1 then the issue is barred from expert determination or any other action or proceedings (including court proceedings).
- 3.7.4 Unless the Parties otherwise agree in writing, clauses 3.5 to 3.7 do not apply to disputes the subject matter of which exceeds the amount nominated in Item 8 of Schedule 1. In the event that the Parties are unable to agree on the amount of the subject matter, then either Party may submit an Issue Notice to the other Party and the provisions of clauses 3.5 to 3.7 shall be followed for the sole purpose of determining the amount in dispute.

3.8 NOTIFICATION OF CHANGE IN CONTROL OR TRANSFER OF OWNERSHIP

During the Term, the Contractor must immediately notify the Principal in writing of any proposed or other Change in Control or any proposed or other action to reconstruct or amalgamate itself.

3.9 NOTIFICATION OF CONTRACTOR’S INSOLVENCY

The Contractor must immediately notify the Principal in writing of the Contractor’s Insolvency and disclose the details of any action taken in relation to the Contractor’s Insolvency in so far as it affects this Agreement.

3.10 TAXES, DUTIES AND GOVERNMENT CHARGES

- 3.10.1 The Contractor is liable for all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of any Contract arising out of this Agreement, except taxes to which clauses 3.10.2 to 3.10.5 inclusive, apply.
- 3.10.2 No amount is payable under this Agreement until a Correctly Rendered Invoice is received.
- 3.10.3 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor’s net dollar margin for the Supply remains the same.
- 3.10.4 Any contract entered into by a Party to this Agreement or a contract with a third party which

involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to this clause 3.10.

- 3.10.5 The Parties agree that all amounts payable or Consideration given by a Party to the other under this Agreement are inclusive of GST.

4. Risk Management

4.1 MINIMUM INSURANCE REQUIREMENTS

- 4.1.1 The Contractor must hold and maintain, and must take all reasonable steps to satisfy itself that its subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term:

- (a) a broad form liability policy of insurance that includes:
 - (i) public liability insurance of the value of at least the amount specified in the Agreement Details in respect of each claim;
 - (ii) products liability insurance of the value of at least the amount specified in the Agreement Details for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover;
- (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees;
- (c) professional indemnity insurance to the value of at least the amount specified in the Agreement Details. The professional indemnity insurance must:
 - (i) cover the Contractor's liability to the Principal in respect of the Services and any Products supplied ancillary to the Services;
 - (ii) be maintained by the Contractor for the period specified in the Agreement Details; and
 - (iii) include a description of the risk covered by the policy; and
- (d) such other insurances as are specified in the Agreement Details.

- 4.1.2 All policies of insurance must be effected with an insurer Rated A- or better by AM Best or an equivalent rating organization. 4.1.3 The Contractor must, and must ensure that subcontractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.

- 4.1.4 During the Term, the Contractor must when requested in writing by the Principal:

- (a) supply proof that all insurance policies required by this Agreement are current; and
- (b) if required, arrange for its insurer to complete and sign a "Confirmation of Insurances Obtained Form" substantially in the form of Schedule 6, and provide this to the Principal within 30 days of the request. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Principal.

- 4.1.5 If the Contractor fails to comply with clauses 4.1.1 and 4.1.2, the Principal may treat the failure as a Substantial Breach of the Agreement.
- 4.1.6 Where the Contractor is insured under a foreign parent company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor in accordance with clause 4.1.1.
- 4.1.7 The Contractor's compliance with this clause 4.1 does not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

4.2 FINANCIAL SECURITY

- 4.2.1 The Principal may from time to time on reasonable grounds notify the Contractor in writing that it must provide a Financial Security substantially in the form of the agreement set out in Schedule 7.
- 4.2.2 The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under this Agreement.
- 4.2.3 The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution ("Issuer") acceptable to the Principal.
- 4.2.4 If the Contractor fails to properly perform and complete its obligations under this Agreement and the Principal suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Principal may deduct any or all such loss or damage (as ascertained and certified by the Principal) from the Financial Security.
- 4.2.5 If the Financial Security is not sufficient to meet payment of all the loss or damage suffered by the Principal, the balance remaining will be a debt due and owing from the Contractor to the Principal and may be recovered by the Principal in accordance with clause 12.3.
- 4.2.6 The Contractor agrees that the Principal will have no liability of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor where the Principal exercises its rights under this clause in good faith.
- 4.2.7 The Contractor waives any rights it may have to obtain an injunction or otherwise prevent the Principal from making a claim or receiving a payment under the Financial Security. This clause 4.2.7 does not prevent the Contractor from taking action to recover from the Principal any amount invalidly received by the Principal under any such Financial Security.
- 4.2.8 The Financial Security must be released to the Contractor (or to whom the Contractor directs) if:
 - (a) the Contractor has fully performed and discharged all of its obligations under this Agreement; and
 - (b) in the reasonable opinion of the Principal as applicable, there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to the Principal.

4.3 PERFORMANCE GUARANTEE

If requested by the Principal on reasonable grounds, the Contractor must arrange for a guarantor approved in writing by the Principal to enter into an agreement with the Principal substantially in the form of the agreement set out in Schedule 8.

4.4 THIRD PARTY INDEMNITY

- 4.4.1 The Contractor must indemnify the Principal (including its Personnel) against a loss or liability that has been incurred by the Principal as the result of a claim made by a third party:
- (a) where that loss or liability was caused or contributed to by any wrongful (including negligent) act or omission by the Contractor or its Personnel;
 - (b) where and to the extent that loss or liability relates to personal injury, death or property damage; or
 - (c) where that loss or liability arises from a claim made or threatened against the Principal in which it is alleged that a Deliverable (including the Principal's use of a Deliverable) infringes the Intellectual Property, including the Moral Rights of a third party or individual who has performed work under this Agreement on behalf of the Contractor.
- 4.4.2 For the purposes of clause 4.4.1(c) an infringement of Intellectual Property rights includes unauthorised acts which would, but for the operation of the Patents Act (Cth) 1990 s.163, the Designs Act (Cth) 1906 s.40A, the Copyright Act (Cth) 1968 s.183 and the Circuits Layout Act (Cth) 1989 s.25, constitute an infringement.
- 4.4.3 The Principal may in its discretion permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow a claim under clause 4.4.1, subject to the Contractor agreeing to comply at all times with the Principal's reasonable directions and government policy relevant to the conduct of the litigation.
- 4.4.4 Where the Principal permits the Contractor to handle the claim, the Principal will, upon the Contractor confirming its obligations under the indemnity in clause 4.4.1, provide the Contractor with reasonable assistance in defending, settling or otherwise conducting the claim at the Contractor's expense.
- 4.4.4 Without prejudice to the Principal's rights under clause 4.4.1 if a claim of infringement of Intellectual Property rights is made or threatened by a third party, the Contractor must with the consent of the Principal, at the Contractor's expense, either:
- (a) obtain for the Principal the right to the continued use of the Deliverable; or
 - (b) replace or modify the Deliverable so that the alleged infringement ceases and the replaced or modified Deliverable provides the Principal with equivalent functionality and performance as required in the Contract Specifications.
- 4.4.5 This clause 4.4 will survive the termination or expiry of this Agreement.

4.5 LIABILITY UNDER THE AGREEMENT

- 4.5.1 The liability of a Party to the other Party for breach of this Agreement, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Agreement, shall be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.
- 4.5.2 The liability of a Party for loss or damage sustained by the other Party will be reduced proportionately but only to the extent that any wrongful (including negligent) act or omission of the other Party or its Personnel caused or contributed to the loss.

4.6 LIMITATION OF LIABILITY

4.6.1 Liability under this Agreement may not be capped unless a risk management plan consistent with AS/NZ 4360:2004 is completed. The risk management plan must be provided substantially in the form of Schedule 13 and must include at least:

- (a) a description of the procurement context;
- (b) an identification and schedule of potential risks and their impacts;
- (c) an assessment of risk likelihood and consequences;
- (d) a risk management plan; and
- (e) a risk treatment plan.

4.6.2 The Parties will each bear their own costs in completing the risk assessment.

4.6.3 The liability of a Party under this Agreement, in respect of each occurrence giving rise to an action described in clause 4.5 shall, except in relation to liability for:

- (a) personal injury (including sickness and death);
- (b) loss of, or damage to, tangible property;
- (c) liability for which an indemnity provided for under this Agreement;
- (d) breach of a Statutory Requirement; or
- (e) infringement of a third party's intellectual property rights,

be limited to an amount specified in the Agreement Details.

4.6.4 In clause 4.6.3 "occurrence" means either a single occurrence, or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.

4.6.5 The Parties' liability does not include Consequential Loss.

5. Information Management

5.1 CONFIDENTIALITY

5.1.1 Except to the extent necessary to comply with any Statutory Requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information except in accordance with this Agreement, unless the other Party gives its prior written consent.

5.1.2 Each Party may disclose the Confidential Information to its Personnel where the disclosure is essential to carrying out their duties for the purposes of this Agreement.

5.1.3 Each Party must ensure that any Confidential Information is used solely in connection with, or for the purposes of fulfilling its obligations under this Agreement.

5.1.4 The Principal may at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement to execute without delay a Deed of Confidentiality substantially in the form of Schedule 9.

5.1.5 This clause 5.1 shall survive the termination or expiry of this Agreement for a period of six years.

5.2 INTELLECTUAL PROPERTY

Principal's Intellectual Property

- 5.2.1 Subject to clause 5.2.3, all Intellectual Property rights in the Deliverables shall immediately vest upon their creation in the Principal without further need for assurance.
- 5.2.2 To the extent that the Contractor needs to access or use the Principal's Materials for the provision of the Deliverables, the Principal grants the Contractor a non-exclusive, non-transferable licence for the Term to use such materials.

Intellectual Property to vest in both Principal and Contractor

- 5.2.3 To the extent specified in the Agreement Details, Intellectual Property rights in the Deliverables shall vest in the Contractor. In that event, the Contractor grants a perpetual, non-exclusive and non-transferable licence to the Principal to use, reproduce and adapt such Deliverables to support the Principal's business and administrative processes.

Pre-existing Intellectual Property Rights

- 5.2.4 Nothing in this clause 5.2 will affect the ownership of any pre-existing Intellectual Property rights in any tools, object libraries, methodologies and materials ("Materials") used to produce or that are incorporated with the Deliverables. Where such Materials are owned by the Contractor or a third party, the Contractor grants and will ensure that relevant third parties grant to the Principal, at no additional cost a perpetual, non-exclusive, non-transferable licence:
- (a) to use, reproduce and adapt such Materials for its own use in connection with, or for the operation, support and/or use of the Deliverable; and
 - (b) where and only to the extent specified in the Agreement Details, to perform any other act with respect to copyright or to manufacture, sell, hire or otherwise exploit the items or to license any third party to do any of those things in respect of the Materials.

Survival of clause 5.2

- 5.2.5 This clause 5.2 will survive the termination or expiry of this Agreement.

6. Security and Access

6.1 ACCESS TO PRINCIPAL'S SITE

- 6.1.1 Where the Principal provides the Contractor with access to the Principal's Site, the Contractor shall:
- (a) ensure that all Personnel comply with the reasonable requirements and directions of the Principal with regard to conduct, behaviour, safety and security; and
 - (b) be liable for any damage caused by the Contractor or its Personnel on the Principal's Site.
- 6.1.2 Access to the Principal's Site may be temporarily denied or suspended by the Principal, at its sole discretion.
- 6.1.3 Except where denial of access is due to an investigation into the conduct or due to the wrongful conduct, of the Contractor or its Personnel, the Principal must give a reasonable extension of time to complete any obligations affected by the denial of access.

- 6.1.4 The Principal must reimburse the Contractor its reasonable, unavoidable and substantiated costs caused by the denial of access (except where the denial is related to an investigation into the conduct or due to the wrongful conduct of the Contractor or its Personnel). Reimbursement of those costs shall be in total satisfaction of the liability of the Principal to the Contractor in respect of the denial of access.

6.2 PRIVACY

- 6.2.1 The Contractor must comply with the obligations set out in Schedule 10 and any Statutory Requirements relating to privacy.
- 6.2.2 The Contractor must immediately notify the Principal when the Contractor becomes aware of or receives a complaint relating to a breach of this clause 6.2 by the Contractor or its Personnel.
- 6.2.3 The Contractor will indemnify the Principal in respect of any loss, liability or expense incurred arising out of or in connection with a breach of any obligations under or pursuant to this clause 6.2.
- 6.2.4 The Principal must give the Contractor fourteen days Notice in Writing of an intention to assume a liability, loss or expense in accordance with clause 6.2.3 including in that notice an explanation of how that liability or expense was assessed and the Contractor's proposed share of that liability.
- 6.2.5 This clause 6.2 will survive the termination or expiry of this Agreement for a period of six years.

6.3 SECRECY AND SECURITY

The Contractor shall comply and shall ensure that its Personnel comply, with the secrecy and security requirements of the Principal as set out in the Agreement Details, or as notified by the Principal to the Contractor from time to time.

7. Contractor's Obligations under this Agreement

7.1 PRODUCT AND SERVICE WARRANTIES

Product warranty

- 7.1.1 In relation to a Deliverable that comprises Products, the Contractor warrants that each Product:
- (a) will be supplied in accordance with the requirements of this Agreement;
 - (b) will be free from any charge or liability;
 - (c) shall be new, unless otherwise specified in the Agreement Details and shall conform to the Contract Specifications;
 - (d) shall conform to the description and model number provided by the Contractor; and
 - (e) shall be free from material defects in workmanship.

Service warranty

- 7.1.2 In relation to a Deliverable that comprises Services, the Contractor warrants that:
- (a) the Contractor will provide the Services in accordance with the requirements of this Agreement and with due care and skill;

- (b) if specified in the Agreement Details that they are required, the Contractor has established quality assurance arrangements for the provision of the Services and will comply with and maintain those quality assurance arrangements during the Term; and
- (c) the Contractor will not enter into any arrangement that impedes or is likely to hinder its provision of the Services in a manner, and to a standard, that is not satisfactory to the Principal without obtaining the Principal's prior written consent.

7.2 RECTIFICATION OF DEFECTS

- 7.2.1 If a Defect occurs during the Warranty Period, the Contractor will promptly undertake any remedial work or supply a replacement in respect of the affected Deliverable at no charge including where applicable, supplying an Update or New Release.
- 7.2.2 The Contractor warrants to the same extent as the Deliverable, any remedial work or Deliverable replacement provided in accordance with clause 7.2.1 from completion of that rectification work or the replacement.
- 7.2.3 Where the Contractor does not comply with clause 7.2.1 within a reasonable time of becoming aware of a Defect, the Principal may perform or have performed the necessary rectification work and the reasonable costs incurred shall be recoverable in accordance with clause 12.3.
- 7.2.4 Subject to clause 7.2.5, any work performed by or on behalf of the Principal pursuant to clause 7.2.3 shall not have the effect of invalidating any warranty provided by the Contractor under this Agreement. The Contractor shall not be required to provide a warranty for the work performed or to fix any problems caused solely by a third party arising from the rectification work.
- 7.2.5 The Contractor shall not be liable at any time under this clause 7.2 for any Defect in any Deliverable resulting from any failure of the Principal to use the Deliverable in compliance with any Documentation supplied to the Principal.

7.3 THIRD PARTY WARRANTY

- 7.3.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor shall as soon as reasonably practical provide to the Principal written notification of any details of any warranties given by the third parties.
- 7.3.2 The Contractor must if requested by the Principal, procure the assignment of those third party warranties to the Principal within a reasonable period of the request. Any third party warranties so assigned do not relieve the Contractor from its obligation to comply with the Contractor's warranties under this Agreement.

7.4 COMPLIANCE WITH LAWS, STANDARDS AND CODES

The Parties must, in performing their obligations under this Agreement, comply with:

- (a) all Statutory Requirements;
- (b) the codes, policies, and guidelines specified in the Agreement Details;
- (c) those standards specified in the Agreement Details; and
- (d) 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.

7.5 INDUSTRIAL RELATIONS ISSUES

The Contractor must immediately notify the Principal of any industrial relations issues that adversely affect or are likely to adversely affect the Contractor's or its Personnel's performance under this Agreement.

7.6 LICENCES AND APPROVALS

All licences, approvals and consents obtained by the Contractor in relation to this Agreement are to be obtained at the Contractor's cost.

7.7 KEEPING OF RECORDS AND ACCESS TO RECORDS

The Contractor must keep accurate and detailed financial records and other information relevant to the performance of this Agreement. The Contractor must give the Principal reasonable access to and copies of such records and information within a reasonable time of a written request from the Principal.

7.8 CREDIT/DEBIT CARD OR ELECTRONIC FACILITY

The Principal may pay any amount due under this Agreement by credit/debit card or electronic facility as specified in the Agreement Details.

7.9 CONTRACTOR'S OBLIGATIONS IN RELATION TO THE PRINCIPAL'S MATERIALS

7.9.1 The Contractor must:

- (a) not use any of the Principal's Materials other than for the purposes of this Agreement without the prior written consent of the Principal;
- (b) not part with possession of any of the Principal's Materials unless the Principal has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any of the Principal's Materials;
- (c) take all reasonable care of all of the Principal's Materials including accounting for, preserving, installing or handling of the Principal's Materials;
- (d) pay the costs, if any, set out in the Agreement Details, for the Principal's Materials;
- (e) not modify any of the Principal's Materials without the prior written consent of the Principal;
- (f) promptly inform the Principal of any loss, destruction or damage to any of the Principal's Materials; and
- (g) comply with any instruction of the Principal for preserving, forwarding or disposal of any damaged Principal's Materials.

7.9.2 The Contractor shall indemnify the Principal for any loss or destruction of, or damage to any of the Principal's Materials caused by a breach of this Agreement or by any unlawful or negligent act or omission of the Contractor.

7.9.3 If no longer required for the purposes of this Agreement, the Principal's Materials must be returned to the Principal as soon as practicable unless other arrangements are agreed by the Parties.

7.10 REPORTS

The Contractor must provide to the Principal the reports specified in the Agreement Details in the time frame and format either as specified in the Agreement Details or as required by the Principal.

8. Principal's Obligations

8.1 PRINCIPAL TO PROVIDE INFORMATION

- 8.1.1 The Principal must provide the Contractor with its Statement of Requirements.
- 8.1.2 During the Term the Principal must, when required under this Agreement or as otherwise reasonably required by the Contractor, as soon as possible:
- (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings and other materials; and
 - (b) answer queries made by the Contractor relating to the Principal's requirements in connection with this Agreement.

8.2 PRINCIPAL'S MATERIALS

- 8.2.1 The Principal must provide the Principal's Materials specified in Schedule 1.
- 8.2.2 The Principal's Materials must comply with the Contract Specifications.
- 8.2.3 Provided the Contractor complies with its obligations under clause 7.9, the Principal must repair or replace the Principal's Materials within a reasonable time of becoming aware that the Principal's Materials do not comply with the Contract Specifications.

8.3 PRINCIPAL'S PERSONNEL

- 8.3.1 The Principal shall make available personnel to work with the Contractor and the Parties will identify such personnel and their roles in Schedule 1.
- 8.3.2 The Principal must use reasonable efforts to ensure that personnel made available to work with the Contractor have the requisite competencies, skills, and experience to perform the tasks.
- 8.3.3 The Contractor must ensure a safe system of work for any personnel made available by the Principal who perform work under the control and direction of the Contractor.

8.4 SITE PREPARATION

Subject to clause 11.5, the Principal is responsible for Site preparation and maintenance of Site conditions to enable the supply of a Deliverable, unless otherwise specified in the Agreement Details.

9. Personnel

9.1 RESTRICTION ON ENGAGING PERSONNEL OF OTHER PARTY

- 9.1.1 The Principal and the Contractor agree that neither Party may, without the prior agreement 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 this Agreement to enter into a contract for service or a contract of employment with it.
- 9.1.2 The restriction referred to in clause 9.1.1 shall apply during the performance of this Agreement and for a period of six months after termination or expiry of this Agreement.
- 9.1.3 A general solicitation for employment such as a newspaper advertisement shall not constitute a breach of this clause 9.1.

9.2 CONTRACTOR'S PERSONNEL

- 9.2.1 The Contractor must ensure that its personnel, including any Specified Personnel, supply the Deliverables in accordance with this Agreement.
- 9.2.2 The Contractor must employ only such persons in respect of this Agreement who:
- (a) are skilled and experienced in the provision of the Services or similar Services; and
 - (b) hold all necessary licences, permits and authorities (where applicable).

9.3 REMOVAL OF SPECIFIED PERSONNEL

If Specified Personnel are unable or not suitable in the reasonable opinion of the Principal to undertake the work assigned to them the Contractor shall promptly provide replacement personnel acceptable to the Principal at no additional charge.

9.4 SUB-CONTRACTING

- 9.4.1 The Contractor must not subcontract any work under this Agreement without obtaining the prior written consent of the Principal, which consent may be given on such conditions as the Principal thinks fit.
- 9.4.2 The Contractor:
- (a) must ensure that the subcontractor is aware of all the terms and conditions of this Agreement that are relevant to the subcontractor's performance of any work;
 - (b) shall not be relieved of its liabilities and obligations arising out of this Agreement by subcontracting any work and shall be responsible for all the subcontractors' acts or omissions;
 - (c) must ensure that it has the right to terminate any subcontract in accordance with the provisions of clause 14.1; and
 - (d) must ensure that the subcontractor immediately ceases work upon receipt of a Notice in Writing from the Principal of withdrawal of the consent given under clause 9.4.1.
- 9.4.3 If required by the Principal, the Contractor shall obtain from the subcontractor a signed statutory declaration substantially in the form of Schedule 4.

10. Performance of this Contract

10.1 DELIVERY NOTIFICATION

The Principal must specify in the Agreement Details any Deliverables required by the Principal, specifying:

- (a) the required nature and volume of the Deliverables;
- (b) the dates for the delivery of those Deliverables; and
- (c) the Site for that delivery.

10.2 DELIVERY

- 10.2.1 The Contractor must deliver any Deliverables as specified in the Agreement Details or as otherwise agreed between the Contractor and the Principal from time to time.

10.2.2 The Contract Price is inclusive of any additional or separate delivery costs, except where otherwise specified in the Agreement Details.

10.3 REJECTION AND ACTUAL ACCEPTANCE DATE

10.3.1 The Principal may reject Deliverables in the event that the Deliverables:

- (a) are defective or are not in good order and condition; or
- (b) do not comply with or perform substantially in accordance with the Contract Specifications; or
- (c) fail any Acceptance Tests.

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

- (a) where Acceptance Tests are not required, five business days or such other period that is specified in the Agreement Details following the delivery of a Deliverable in accordance with this Agreement; or
- (b) where Acceptance Tests are required, on the date the Principal issues a certificate of acceptance within the Acceptance Notification Period.

10.3.3 The AAD for a Deliverable will occur, in all cases other than those specified in clause 10.3.2, on the date acceptance is deemed to have occurred in clause 10.5.10.

10.4 REJECTION NOTIFICATION

The Principal may in any rejection notice provide instructions, which may include a reduction in the Contract Price, to the Contractor relating to the removal, replacement, modification, rectification and/or redelivery of any rejected Deliverables.

10.5 ACCEPTANCE TESTING

10.5.1 If specified in the Agreement Details, Acceptance Tests must be conducted in relation to the Deliverables and the following provisions in this clause 10.5 will apply.

10.5.2 The Principal must, in consultation with the Contractor, prepare an Acceptance Test plan that may include:

- (a) identification of the Deliverables or part thereof to be tested;
- (b) allocation of each Party's responsibilities in relation to testing;
- (c) scheduling of Acceptance Tests;
- (d) the testing methodology to be applied; or
- (e) any other information specified in the Agreement Details.

Acceptance Criteria

10.5.3 The Principal is responsible for setting the Acceptance Criteria for the acceptance of a Deliverable and the preparation, reliability and effectiveness of any data, methodology or process related to any Acceptance Test, as specified in or is relevant to the Acceptance Criteria.

Principal's Availability

10.5.4 The Principal's representative must be available between the hours of 9.00am and 4.00pm on a business day to give any instruction necessary for prompt commencement of any Acceptance Test.

Assistance and Participation

10.5.5 Each Party shall provide all reasonable cooperation and assistance to enable the performance of any Acceptance Test.

10.5.6 The Parties shall be entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Test.

Acceptance Test Completion

10.5.7 The Party conducting the Acceptance Test must provide a written test notification specifying:

- (a) a written summary of that Acceptance Test; and
- (b) the results achieved from that Acceptance Test.

Supplementary Tests

10.5.8 The Principal may at any time during the Acceptance Period require the Contractor to carry out Supplementary Tests.

Failure

10.5.9 Where a Deliverable fails an Acceptance Test or part thereof, the Principal may:

- (a) waive the requirement for the Acceptance Test to be satisfactorily completed;
- (b) require that further reasonable Acceptance Tests be conducted at the Contractor's expense, such tests to be satisfactorily completed in accordance with this clause 10.5 within the period agreed by the Parties;
- (c) conditionally accept the Deliverable, subject to the Contractor agreeing at its own cost to deliver a work-around or to otherwise rectify any outstanding deficiency, acceptable to the Principal;
- (d) accept the Deliverable subject to an agreed reduction in the Contract Price; or
- (e) subject to the Principal having provided the Contractor with at least one opportunity to conduct further Acceptance Tests, the Principal may without limiting any other remedy, reject and require the removal of the Deliverable or any materials associated with the rejected Deliverable.

Acceptance

10.5.10 The Principal shall be treated as having accepted any Deliverables in the event that the Principal:

Original delivery

- (a) notifies the Contractor that the Principal has accepted the Deliverables;

Replacement delivery

- (b) notifies the Contractor that the Principal has accepted any previously rejected Deliverables following replacement, modification, rectification and/or redelivery by the Contractor in compliance with any instruction by the Principal;

Test failure

- (c) fails to perform any Acceptance Test within the Acceptance Period for any reason, except for any delay resulting from any action of the Contractor unless otherwise agreed by the Parties;

Notification failure

- (d) fails to notify to the Contractor delivery rejection of the Deliverables within the Acceptance Notification Period unless otherwise agreed; or

Use prior to acceptance

- (e) uses the Deliverable for its business purposes without the written consent of the Contractor.

10.6 DOCUMENTATION

- 10.6.1 The Contractor must provide, at no additional cost to the Principal, at least one copy of the Documentation and such Documentation as the Contractor usually makes available free to its other customers, upon supply of the Deliverable to the Principal.
- 10.6.2 Additional copies of the Documentation must, if requested by the Principal, be provided by the Contractor at the Price specified in Schedule 3 or if the Price is not specified, free of charge.
- 10.6.3 The Contractor must amend inaccurate Documentation and must promptly supply to the Principal a duly amended version of the Documentation at no additional cost to the Principal.
- 10.6.4 The Principal may use the Documentation for any training purposes associated with the Deliverables.

10.7 EXTENSION OF TIME

- 10.7.1 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 timing, cost or quality of the Deliverables. The Parties must then investigate how to avoid or minimise any adverse effects on this Agreement.
- 10.7.2 The Principal may consent to a request for extension of time in relation to a delay provided that the Contractor provides the Principal with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of any delay.
- 10.7.3 Unless a delay has occurred because of the Principal's failure to perform its obligations in accordance with this Agreement, the Contractor will not be entitled to any increase in the Contract Price or any damages, costs or expenses incurred in connection with any delay.

10.8 ESCROW OF SOURCE CODE

- 10.8.1 If specified in the Agreement Details or otherwise requested in writing by the Principal, the Contractor must arrange:
 - (a) for the Contractor, the Principal and an escrow agent approved by the Principal to enter into an Escrow Agreement in relation to the Escrow Materials; or

- (b) for the Principal to become a party to an escrow arrangement which already covers the Escrow Materials which the Principal regards as a satisfactory arrangement.

10.8.2 Any escrow arrangements to which the Principal becomes a Party under this clause 10.8 must endure for at least the period specified in the Agreement Details unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in writing.

10.8.3 The Contractor must consult with and comply with the reasonable directions of the Principal in any negotiations with the escrow agent arising under this clause 10.8.

10.9 ADDITIONAL SERVICES

The Contractor may, if requested by the Principal, provide in accordance with the terms of this Agreement, additional products and services to the Principal at the Price or on the Time and Materials basis set out in Schedule 3 or as otherwise agreed between the Parties from time to time.

11. Project Management

11.1 APPLICATION OF PROJECT MANAGEMENT CLAUSES

The following clauses 11.1 to 11.12 inclusive apply only if and to the extent specified in the Agreement Details.

11.2 MANAGEMENT COMMITTEE

11.2.1 By the date specified in the Agreement Details, the Parties must mutually agree and establish a management committee and a process for the conduct of the committee's business.

11.2.2 The management committee must, unless the Parties agree otherwise in writing, consist of the persons specified in the Agreement Details.

11.2.3 The management committee must:

- (a) review and monitor progress under this Agreement and report to the Principal's authorised representative or other person nominated by the Principal from time to time; and
- (b) carry out such other functions as set out in the Agreement Details.

11.2.4 The members of the management committee or their authorised representatives must meet weekly at the Principal's offices (unless the Parties agree otherwise) at a time agreed between the Parties.

11.2.5 All members of the management committee must be duly authorised and properly qualified, informed and instructed to enable the committee to properly assess progress under this Agreement.

11.3 PROGRESS REPORTING

11.3.1 The Parties must each nominate their respective project managers or officers in the Agreement Details or the Project Implementation and Payment Plan (PIPP).

11.3.2 At least 24 hours prior to a management committee meeting, the Contractor's project manager must submit to the Principal's project officer a report of progress under this Agreement, including:

- (a) details (including dates) of Deliverables and Milestones commenced, completed or accepted;

- (b) any delays or defaults, including reasons and plans for the management of such delays and defaults in respect of the supply of the Deliverables;
- (c) draft updates of relevant parts of the Contract Specifications; and
- (d) any proposed variations in accordance with clause 13 to the terms of this Agreement.

11.3.3 If the Principal disagrees with the facts recorded in the report, then the Principal must place on the record its version of the facts.

11.4 CONTRACT REVIEW PROCEDURES

11.4.1 The Parties must at regular intervals, unless otherwise specified in the Agreement Details, conduct a service and performance review of the Contractor's performance of this Agreement including its obligations under any Service Level Agreement.

11.4.2 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. Either Party may request the involvement of the Principal in any review.

11.5 SITE SPECIFICATION

The Contractor must inspect the Site and provide the Principal with a Site Specification for approval. The Contractor must make any amendment to the Site Specification that is reasonably required by the Principal.

11.6 IMPLEMENTATION PLANNING STUDY (IPS)

11.6.1 Within the time specified in the Agreement Details and prior to the commencement of a project to be implemented under this Agreement, the Contractor must complete an implementation planning study.

11.6.2 The implementation planning study must meet the objectives specified in the Agreement Details, which may include:

- (a) the Contractor's assessment of the scope and complexity of the project;
- (b) required Deliverables;
- (c) resources required (including any resources to be made available by the Principal);
- (d) development of a PIPP and/or a Service Level Agreement as relevant; or
- (e) any other requirements specified in the Agreement Details.

11.7 PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP) – IF APPLICABLE

11.7.1 The Parties must perform their obligations under this Agreement in accordance with the PIPP, which must include the information specified in Schedule 3.

11.7.2 The Contractor must prepare the PIPP for the approval of the Principal, which when approved will form part of the Contract Specifications.

11.7.3 The Parties must perform their respective obligations under this Agreement at the times and in the manner set out in the PIPP.

11.7.4 Subject to clause 13, either Party may periodically review the PIPP and may recommend or request a change to the PIPP. Any change to the PIPP may be implemented as a Change Request in accordance with the variation procedures set out in Schedule 12.

11.8 STAGED IMPLEMENTATION AND THE RIGHT TO TERMINATE

11.8.1 The Parties agree to perform this Agreement in accordance with the Stages set out in the PIPP.

11.8.2 The signing of this Agreement by both Parties is deemed to be sufficient notification for the purposes of this clause 11.8 to proceed with work in Stage one. The Contractor must not commence any work on Stage two or any subsequent Stage until it receives prior written notification from the Principal to proceed with the work in that Stage.

11.8.3 Nothing in this Agreement shall be construed as obliging the Principal to give the notification referred to in clause 11.8.2 in respect of Stage two or any other subsequent Stage.

11.8.4 The Principal shall not be liable to the Contractor in any way for not proceeding to a subsequent Stage.

11.9 SERVICE LEVEL AGREEMENT – IF APPLICABLE

11.9.1 The Parties must in consultation with each other prepare and mutually agree in writing the particulars of a Service Level Agreement, which must be signed by the authorised representatives of each Party.

11.9.2 Subject to clause 11.9.1, the Parties must perform their obligations in accordance with the Service Level Agreement.

11.9.3 Subject to clause 13, either Party may periodically review the Service Level Agreement and may recommend or request a change to the Service Level Agreement. Any change to the Service Level Agreement may be implemented as a Change Request in accordance with the procedures set out in Schedule 12.

11.10 TIME OF THE ESSENCE

11.10.1 The Contractor acknowledges that time is of the essence in completing any obligations under this Agreement where the due date for their performance has been specified in the Agreement Details or the PIPP (“Due Date”).

11.10.2 Excluding a delay caused:

- by an Event,
- by the Principal, or
- in relation to which an extension of time has been granted under clause 10.7;

where the Contractor has not completed obligations by the Due Date, the Contractor must, if notified by the Principal, pay the Principal liquidated damages.

11.10.3 Liquidated damages must be calculated in accordance with the method set out in the Agreement Details. Each Party acknowledges that liquidated damages are a genuine pre-estimate of the loss and damage the Principal will suffer as a result of a delay in meeting the Due Date.

11.10.4 The Contractor must pay the liquidated damages from the Due Date until:

- (a) the Contractor successfully completes the obligations in relation to which liquidated damages have been applied; or

- (b) the Principal terminates this Agreement;

whichever first occurs but always to a maximum number of days specified in the Agreement Details.

11.10.5 Liquidated damages paid under this clause 11.10:

- (a) will be the Principal's sole remedy for any liability arising out of the delay in respect of which liquidated damages were paid; but
- (b) will not relieve the Contractor from any other liability or from meeting any other obligation under this Agreement.

11.11 RETENTION OF MONEYS

11.11.1 The Principal may withhold a proportion of the payment for any Milestone in the amount and for the period identified in a PIPP for the due and proper performance and completion of the Contractor's entire obligations under this Agreement.

11.11.2 The Principal must upon the completion of the Contractor's entire obligations in accordance with this Agreement pay to the Contractor any amount withheld under clause 11.11.1.

11.12 BUSINESS CONTINGENCY ARRANGEMENTS

11.12.1 The Contractor must within the time specified in the Agreement Details or as otherwise agreed in writing between the Parties, prepare a Business Contingency Plan for the approval of the Principal.

11.12.2 The Business Contingency Plan must be documented in a form acceptable to the Principal and must be available at all reasonable times for review by the Principal.

11.12.3 The Business Contingency Plan must be reviewed, updated and tested by the Contractor at the intervals specified in the Agreement Details to ensure its relevance and effectiveness.

11.12.4 All affected Deliverables must be reinstated by the Contractor in accordance with the Business Contingency Plan in the event of an interruption to the Principal's business that is contemplated by the plan. The Principal must provide the Contractor with any assistance reasonably required by the Contractor to implement the Business Contingency Plan.

12. Payment

12.1 PAYMENT OF CONTRACT PRICE

12.1.1 In consideration for the Contractor providing a Deliverable in accordance with this Agreement, the Principal must pay the Contractor the Contract Price in the amounts and at the times specified in Schedule 3.

12.1.2 The Contract Price shall be fixed for the Term, unless the Parties have agreed and specified in the Agreement Details a price adjustment mechanism that is to apply periodically.

12.2 INVOICES AND TIME FOR PAYMENT

12.2.1 The Parties agree subject to the further provisions of this clause 12.2, that payment for the Deliverables must be made within 30 days after receipt of a Correctly Rendered Invoice.

12.2.2 The Contractor must provide any further details in regard to an invoice that are reasonably requested by the Principal from the Contractor.

12.2.3 The making of a payment is not an acknowledgment that the Deliverables have been supplied or accepted in accordance with this Agreement.

12.2.4 If the Principal disputes the invoiced amount the Principal must:

- (a) certify the amount it believes is due for payment; and
- (b) pay that amount and the liability for any outstanding claims must be determined in accordance with clauses 3.5 to 3.7 inclusive.

12.3 SET-OFF/MONEY RECOVERABLE BY THE PRINCIPAL

Any damages, rebates, losses, fees or other expenses ('Loss') recoverable by the Principal from the Contractor may be deducted from any money then due to the Contractor under this Agreement or Financial Security. If the money due to the Contractor is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be recovered from the Contractor by the Principal in any court of competent jurisdiction.

12.4 SUSPENSION OF PAYMENTS

The Principal may by Notice in Writing to the Contractor withhold payments to the Contractor without penalty if the Contractor refuses, neglects or fails to perform its obligations under this Agreement, until such obligations are completed in accordance with this Agreement.

13. Variations

13.1 Subject to any other rights given under this Agreement to vary its terms and the following provisions of this clause 13, a variation to the terms and conditions of this Agreement shall not be valid unless agreed in writing and signed by both the Principal and the Contractor.

13.2 If specified in the Agreement Details, the Parties must effect a variation to the terms and conditions of this Agreement in accordance with the procedures set out in Schedule 12.

14. Termination

14.1 TERMINATION FOR CONVENIENCE

14.1.1 The Principal may by Notice in Writing at any time terminate this Agreement in whole or in part. The Contractor must immediately comply with any directions given in the notice and must do everything possible to mitigate its losses arising in consequence of termination or suspension of this Agreement under this clause 14.1.

14.1.2 The Principal shall indemnify the Contractor against any liabilities or expenses, which are reasonably and properly incurred by the Contractor in connection with this Agreement to the extent that those liabilities or expenses were incurred as a result of termination or suspension of this Agreement in accordance with this clause 14.1. Unless otherwise specified in the Agreement Details, no further compensation will be payable to the Contractor in respect of a termination or suspension under this clause 14.1.

14.1.3 This clause 14.1 does not apply to termination or suspension in accordance with clause 15.2 or termination occurring because of a default by the Contractor as specified in clause 14.2.

14.1.4 The Contractor must, in each sub-contract with any subcontractor for the purposes of this Agreement, reserve a right of termination or suspension to take account of the Principal's right of termination or suspension under this clause.

14.2 TERMINATION OF THIS AGREEMENT FOR BREACH BY CONTRACTOR

- 14.2.1 The Principal may terminate this Agreement for Substantial Breach or Contractor's Insolvency by Notice in Writing without prejudice to any other right of action or remedy that has accrued or may accrue to either Party.
- 14.2.2 In the case of Substantial Breach the Principal must first by Notice in Writing give the Contractor notice that it has 7 days to remedy the Substantial Breach or such other period specified in the notice.
- 14.2.3 If the Contractor fails to give the Principal a notice containing clear evidence that it has remedied a Substantial Breach, or fails to propose steps reasonably acceptable to the Principal to remedy the Substantial Breach, the Principal may terminate this Agreement by Notice in Writing to the Contractor.

14.3 EFFECT OF TERMINATION OF AGREEMENT

In the event of termination, the Principal may:

- (a) obtain from any other source a reasonably similar alternative to the Deliverable in which case the Contractor shall be liable to the Principal for any reasonable expenses incurred and any losses sustained by the Principal; and/or
- (b) by Notice in Writing to the Contractor, require the Contractor at its expense to remove Deliverables or to dismantle or remove work from the Principal's premises by the date specified in that notice.

14.4 TERMINATION FOR BREACH BY THE PRINCIPAL

- 14.4.1 If the Principal fails to pay the Contractor any amount in accordance with this Agreement, which is not in dispute, or commits any fundamental breach of this Agreement, then the Contractor may by Notice in Writing require the Principal to remedy the default within 28 days after receiving the notice.
- 14.4.2 If the Principal fails to remedy the breach, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may by Notice in Writing terminate this Agreement without prejudice to any other right of action or remedy which has accrued or might accrue to either Party.

15. General

15.1 DISCLOSURE OF CONFLICTS OF INTEREST

The Contractor must:

- (a) notify the Principal in writing immediately upon becoming aware of the existence or possibility of a Conflict of Interest; and
- (b) comply with any reasonable direction given by the Principal in relation to managing that Conflict of Interest.

15.2 15.2 EVENTS

- 15.2.1 A Party is excused from performing its obligations to the extent it is prevented by an Event, except an Event that is the subject of a Business Contingency Plan.

15.2.2 Each Party must make all reasonable efforts to minimise the effects of the Event. If the affected Party is prevented by the Event from performing its obligations under this Agreement for 30 days or such other period as the Parties agree in writing, then the other Party may in its sole discretion immediately terminate this Agreement by giving Notice in Writing of termination to the other Party.

15.2.3 Where this Agreement is terminated by the Principal in accordance with clause 15.2.2:

- (a) the Contractor shall be entitled to payment for work completed in accordance with this Agreement 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 this Agreement.

15.3 **15.3 ASSIGNMENT OR NOVATION**

15.3.1 The Contractor must not, or attempt to, assign in whole or in part or novate this Agreement without obtaining the prior written consent of the Principal, which consent may be withheld at its absolute discretion.

15.3.2 The Contractor acknowledges that the Principal may conduct financial and other inquiries or checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

15.3.3 The Principal at its own cost, may assign or novate this Agreement where by operation of statute the Principal is reconstituted into a new legal entity, to the new legal entity. If the assignment or novation increases the scope of the obligations or Deliverables to be provided by the Contractor under this Agreement, a variation in accordance with clause 13 must be effected.

15.4 **WAIVER**

A waiver in respect of a breach of a term of this Agreement by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

15.5 **SEVERABILITY**

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

15.6 **COUNTERPARTS**

If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

15.7 **APPLICABLE LAW**

The laws of the State govern this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of the Commonwealth or the State.

15.8 **RIGHTS CUMULATIVE**

The rights and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

15.9 NO AGENCY, EMPLOYEE OR PARTNERSHIP RELATIONSHIP

The Contractor agrees that it will not be taken to be, nor will it represent that it is the employee, partner, officer and/or agent of the Principal, or the Principal.

END OF PART TWO

PART 3 - DICTIONARY

DICTIONARY

1. INTERPRETATION

1.1 DEFINITIONS

In this Agreement, unless the contrary intention appears:

“Acceptance Criteria” means the criteria to be applied in the performance of any Acceptance Test.

“Acceptance Notification Period” means the period specified in the Agreement Details within which acceptance of a Deliverable must be notified.

“Acceptance Period” means the period for the performance by the Contractor of any Acceptance Tests for any Deliverable, as specified in the Agreement Details, or such other period agreed between the Parties in writing.

“Acceptance Tests” means any acceptance tests detailed or referred to in the Agreement Details.

“Actual Acceptance Date” or **“AAD”** means the date when acceptance is notified in accordance with clause 10.3.2.

“Agreement” means all the parts of this Agreement between the Principal and the Contractor, which includes the Standard Terms and Conditions, the Dictionary, the Schedules and the Modules, referenced in the Agreement Details.

“Agreement Details” means all of the details, information or other particulars specified in this Agreement to be included in the part of this Agreement entitled “Agreement Details”.

“Business Contingency Plan” means a plan detailing the nature and scope of the business contingency Services to be provided by the Contractor to the Principal to overcome any interruption to the Principal’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 information specified in the Agreement Details.

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

- (a) through the removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least ten percent of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

“Change Request” means a change requested by either Party in respect of operational or project management issues related to this Agreement.

“Commencement Date” means in relation to this Agreement either:

- (a) the Commencement Date specified in the Agreement Details; or
- (b) if no Commencement Date is specified in the Agreement Details the date the Agreement is signed by both Parties.

“Confidential Information” means information that:

- (a) is by its nature confidential; or
- (b) is communicated by the Principal to the Contractor as confidential; or
- (c) the Contractor knows or ought to know is confidential; and

includes but is in no way limited to:

- (d) the Deliverables;
- (e) the Principal’s Materials including the financial, the corporate and the commercial information of the Principal;
- (f) any material which relates to the affairs of a third party;
- (g) information relating to the policies, strategies, practices and procedures of the State and any information in the Contractor’s possession relating to the State public service.

“Conflict of Interest” includes engaging in any activity, or obtaining any interest, likely to restrict the Contractor in performing, or which conflicts with the performance by the Contractor of, its obligations under this Agreement. A Conflict of Interest also includes any matters materially affecting the Contractor’s ability to perform any of its obligations under this Agreement that include but are not limited to:

- (a) any material litigation or proceeding whatsoever, actual or threatened, against the Contractor; or
- (b) the existence of any material breach or default or alleged breach or default of any agreement, order or award binding upon the Contractor;
- (c) matters relating to the commercial, technical or financial capacity of the Contractor or in the knowledge of the Contractor of any subcontractor proposed to be engaged in respect of this Agreement; or
- (d) any obligation under another contract which compliance with may place the Contractor in breach of this Agreement.

“Consequential Loss” means any loss recoverable at law (other than a loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business; or
- (e) loss of value of any equipment,

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

“Consideration” has the same meaning as provided for in the GST Law.

“Contract Price” means the total of all Prices payable by the Principal to the Contractor for the Deliverables supplied under this Agreement.

“Contract Specifications” means the totality of any technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable provided by a Party under this Agreement and may include:

- (a) any specifications agreed to and brought into existence by the Principal and the Contractor in the performance of their obligations under and in accordance with the terms of this Agreement;
- (b) any specifications detailed or referred to by the Principal in the Statement of Requirements; and/or
- (c) those specifications generally published or made publicly available by the Contractor which specifically relates to the Deliverables under this Agreement; and

to the extent that there is any inconsistency between the Contract Specifications referred to in (a), (b) and (c), the priority shall be in the order (a) to (c) to the extent of any inconsistency.

“Contractor” means the person or body corporate referred to in the Agreement Details who agrees to supply the Deliverables and includes its Personnel.

“Contractor’s Insolvency” means any of the following:

- (a) the Contractor becoming unable to pay its debts as and when they fall due;
- (b) the Contractor no longer has the resources to perform this Agreement or any Contract;
- (c) an application for winding up is made regarding the Contractor and not stayed within 14 days;
- (d) a winding up order is made against the Contractor;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the Contractor;
- (f) a mortgagee enters into the possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

“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 Principal to ascertain what the invoice covers and the Contract Price payable;
- (c) the invoice is accompanied by documentary evidence that signifies that acceptance has occurred in accordance with this Agreement; and
- (d) the invoice is addressed to the officer specified in the Agreement Details to receive invoices.

“Cyber terrorism” means a terrorist attack on, or by means of information systems.

“Defect” means a defect, error, Virus or malfunction that causes a Deliverable to not comply with or not perform in accordance with the Contract Specifications.

“Deliverable” means any Product or Services and any associated material offered for supply or provided by the Contractor in accordance with this Agreement.

“Dictionary” means the glossary of definitions of words and expressions used in this Agreement contained in this Part 3 of the Agreement.

“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; and/or
- (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.

“Documentation” means any Document that enables the full use, operation and maintenance of the Deliverables in accordance with the Contract Specifications. The Documentation must be:

- (a) of a reasonable standard in terms of its presentation, accuracy and scope;
- (b) a resource that provides a comprehensive explanation of functions, capacity and operations of the Deliverables;
- (c) the most current and up-to-date version available;
- (d) in the English language; and
- (e) of a form where all key terms, words and symbols are adequately defined.

“Due Date” means the date agreed between the Parties for the completion of an obligation detailed in this Agreement, which date has been specified in the Agreement Details or the Project Implementation and Payment Plan (PIPP).

“Escrow Agreement” means an Agreement substantially in the form of Schedule 11.

“Escrow Fee” means the fee set out in Attachment 1 of Schedule 11.

“Escrow Materials” means the source code and/or object code of any Deliverable and all other computer programs, Documentation, drawings and plans necessary to keep the Deliverables in good order and repair that are specified in the Agreement Details or otherwise notified by the Principal to the Contractor in writing from time to time.

“Event” means a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time. An Event is limited to:

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

“Financial Security” means the security described in the Agreement Details.

“GST” is a goods and services tax and has the same meaning as in the GST Law.

“GST Law” means any law imposing or relating to a GST and includes *A New Tax System (Goods & Service Tax) Act (Cth)*, *A new tax system (Pay As You Go) Act 1999* and any regulation based on those Acts.

“Information Privacy Principles or IPP” means the principles contained in the Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Act (NSW) 1988*.

“Intellectual Property” means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trade marks or name and other protected rights, trade, business or company names, or related rights, existing worldwide, whether created before or after the date of this Agreement; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a).

“Milestones” means the tasks or groups of tasks to be performed or provided by the Contractor under this Agreement in relation to the Deliverables.

“Module” means Modules 1 to 12 of Part 5.

“Moral Rights” means a person’s moral rights as defined in the *Copyright Act (Cth) 1968*.

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

“Notice in Writing” means a notice signed by a Party’s authorised representative which is either given to, served on, emailed or faxed to the other Party.

“Parties” means the Principal and the Contractor.

“Performance Guarantee” means the performance guarantee described in item 11 of the Agreement Details.

“Personal Information” means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“Personnel” means in the case of either Party, that Party’s employees, officers, agents and subcontractors.

“Price” means an itemised price (including a rate for a quality unit) set out in Schedule 3, payable by the Principal for a Deliverable under this Agreement.

“Principal” means the entity described in the Agreement Details and includes its Personnel.

“Principal’s Materials” means the items set out in Schedule 1 to be supplied by the Principal under this Agreement.

“Product” means an item set out in the Agreement Details that the Contractor must provide to the Principal in accordance with this Agreement.

“Project Implementation and Payment Plan” or “PIPP” means a plan including information relevant to the implementation of the project and associated payment arrangement as specified in Schedule 3.

“Recipient” has the same meaning as provided for in the GST Law.

“Schedules” means Schedule 1 to 13 of the Agreement.

“Service” means the services set out in the Agreement Details including any associated materials that the Contractor must provide to the Principal in accordance with this Agreement.

“Service Address” means:

- (a) in the case of the Principal, at the address set out in the Agreement Details or such other address notified in writing by the Principal for notices to be served on it from time to time;
- (b) in the case of the Contractor, at the address set out in the Agreement Details or such other address as is notified in writing by the Contractor for notices to be served on it from time to time.

“Service Level Agreement” means the Document that forms part of this Agreement that defines the performance expectations of the Parties and which includes the benchmarks for measuring the performance of the Services.

“Site” means the place or places specified in the Agreement Details where a Deliverable is to be provided.

“Site Specification” means the Document that details the environmental, operational, safety and management requirements in relation to the Site, that are necessary for the provision of the Deliverables.

“Specified Personnel” means the key personnel of the Contractor nominated in the Agreement Details as the personnel required to undertake the provision of the Deliverables or part of the work constituting the Deliverables.

“Stage” means a stage identified in the Project, Implementation and Payment Plan for the performance of this Agreement.

“Statement of Requirements” means the Principal’s statements set out in Schedules 1, 2 and 3 of any requirements that the Contractor must fulfil in respect of the Deliverables which may include all relevant instructions, information, data, documents, specifications, plans, drawings and other materials and particulars.

“Statutory Requirements” means the laws, regulation or by-laws relating to the performance of this Agreement or the lawful requirements of any authority with respect to the performance of this Agreement.

“Substantial Breach” means a substantial breach of this Agreement by the Contractor, including any of the following:

- (a) breaching any warranty under clauses 3.3, 7.1.1 or 7.1.2;
- (b) failing to effect and maintain insurance policies as required under clause 4.1;
- (c) failing to provide a Financial Security as required under clause 4.2;
- (d) failing to provide a Performance Guarantee as required under clause 4.3;
- (e) failing to provide suitable replacement personnel as required under clause 9.3 which prevents the Contractor from performing fundamental obligations under this Agreement;
- (f) where a delay continues beyond the extension of time granted under clause 10.7.2;

- (g) failing to pass Acceptance Tests which results in rejection of the Deliverable by the Principal under clause 10.5.9 (e);
- (h) the existence of a Conflict of Interest which in the Principal's reasonable opinion prevents the full and proper performance of this Agreement by the Contractor; and
- (i) where the Contractor breaches a time of the essence obligation imposed on the Contractor in accordance with clause 11.10 in relation to the performance of this Agreement.

"Supplementary Tests" means the further Acceptance Tests that are required by the Principal to demonstrate that a Deliverable complies with the Contract Specifications if the initial Acceptance Tests fail to demonstrate such compliance.

"Supplier" has the same meaning as provided for in the GST Law.

"Supply" has the same meaning as provided for in the GST Law.

"Tax Invoice" has the same meaning as provided for in the GST Law.

"Taxable Supply" has the same meaning as provided for in the GST Law.

"Term" means the term of this Agreement, set out in the Agreement Details and any extension of the Term in accordance with clause 2.1.

"The Standard Terms and Conditions" means the terms and conditions included in Part 2 of this Agreement.

"Time and Materials" basis means the fee agreed to by the Parties as specified in Schedule 3 for any additional services to be supplied by the Contractor.

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

"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 its Contract Specifications.

"Warranty Period" means:

- (a) in relation to Hardware or a Software Solution, a period of 365 days, or such longer period as is specified in the Agreement Details; and
- (b) in relation to any Deliverables other than Hardware or a Software Solution provided under this Agreement, a period of 90 days, or such longer period as is specified in the Agreement Details.

"Work" means literary, artistic, musical, and dramatic works and cinematographs as defined in the *Copyright Act (Cth)* 1968.

1.2 RULES FOR INTERPRETING THIS AGREEMENT

- 1.2.1 In this Agreement, unless the contrary intention appears, headings are for the purpose of convenient reference only, and do not affect interpretation or form part of the Agreement.

1.2.2 The following rules also apply in interpreting this document, 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 person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) a business day means any day other than Saturday, Sunday or a day that is a public holiday for the Principal.
- (b) If this Agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.
- (c) A singular word includes the plural, and vice versa.
- (d) The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.

END OF PART 3

PART 4 - SCHEDULES

Schedule 1 – Agreement Details

Item 1	Agreement Number	
Item 2	Principal’s Name	<hr/>
	Authorised Representative	<hr/>
Item 3	Contractor’s Name/Address and ABN/ACN	<hr/> <hr/>
	Authorised Representative	<hr/>
Item 4	State and Applicable Law	<i>[Insert the name of the State or Territory (the laws of which govern this Agreement)]</i> <hr/>
Item 5	Modules agreed between the Parties <i>[Indicate by marking with an X, the Modules that apply]</i>	
	Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>
	Module 2 – Hardware Maintenance Services	<input type="checkbox"/>
	Module 3 – Licensed Software	<input type="checkbox"/>
	Module 4 – Development Services	<input type="checkbox"/>
	Module 5 – Software Support Services	<input type="checkbox"/>
	Module 6 – IT Personnel	<input type="checkbox"/>
	Module 7 – Professional Services	<input type="checkbox"/>
	Module 8 – Data Management	<input type="checkbox"/>
	Module 9 - Telecommunications Services	<input type="checkbox"/>
	Module 9A - Telecommunications Services – Special Terms for GTA Category 1B Services (Broadband Local Access)	<input type="checkbox"/>
	Module 9B - Telecommunications Services – Special Terms for GTA Category 2 Services (Broadband Internet Access)	<input type="checkbox"/>
	Module 10 – Web Services	<input type="checkbox"/>
	Module 11 – Managed Services	<input type="checkbox"/>
	Module 11A – Special Terms Relating to Management of GTA Category 1B Services and Core Network Services	<input type="checkbox"/>
	Module 12 – Systems Integration Services	<input type="checkbox"/>
Item 6	Schedules to apply <i>[Indicate by marking with an X, the Schedules that apply]</i>	
	Schedule 1 – Agreement Details	<input type="checkbox"/>
	Schedule 2 – Agreement Documents	<input type="checkbox"/>
	Schedule 3 – Product and Service List	<input type="checkbox"/>
	Schedule 4 – Statutory Declaration by Subcontractor	<input type="checkbox"/>
	Schedule 5 – Expert Determination Procedure	<input type="checkbox"/>
	Schedule 6 – Confirmation of Insurances	<input type="checkbox"/>

Item 6	Schedules to apply <i>[Indicate by marking with an X, the Schedules that apply]</i>	
	Schedule 7 – Financial Security	<input type="checkbox"/>
	Schedule 8 – Performance Guarantee	<input type="checkbox"/>
	Schedule 9 – Deed of Confidentiality	<input type="checkbox"/>
	Schedule 10 – Privacy	<input type="checkbox"/>
	Schedule 11 – Escrow Agreement	<input type="checkbox"/>
	Schedule 12 – Variation Procedures	<input type="checkbox"/>
Item 7	Term (clause 2)	
	(i) Commencement Date of this Agreement:	
	(ii) Duration of this Agreement: (Where appropriate, specify that the period for service, e.g. hardware/software support & maintenance, will commence from expiry of relevant warranty period)	
Item 8	(iii) Period of extended term (if any): (clause 2.1)	
	Issue Resolution (clause 3.5 and Schedule 5) Specify the expert determination amount:	
Item 9	Broad Form Liability Insurance Policy Amount (clause 4.1.1)	
	(a) Public Liability Insurance Limit of Indemnity: \$AUS M:	
	(b) Product Liability Insurance Limit of Indemnity: \$AUS M:	
	(c) (if requested in 4.1.1) Professional Indemnity Insurance Limit of Indemnity: \$AUS M:	
Item 10	The Principal is to state the period that the Contractor must maintain its Professional Indemnity Insurance. If the Contractor is a member of occupational association with an approved scheme under <i>The Professional Standards Act (NSW) 1994</i> or similar State or Territory legislation, then the insurance amount may be limited by the Principal, accordingly.	
	(d) Insert other insurances required (if requested in 4.1.1)	
Item 11	Financial Security (clause 4.2 and Schedule 7)	
	(i) Specify here if Financial Security is required: (Yes / No)	
Item 12	(ii) Amount:	
	Performance Guarantee (clause 4.3 and Schedule 8)	
Item 12	(i) Specify here if Performance Guarantee is required: (Yes / No)	
	(ii) Guarantor (clause 4.3):	
Item 12	Liability (clauses 4.5 and 4.6)	
	(i) Parties to specify if liability is to be capped under this Agreement and the amount or method of determining the amount in accordance with clause 4.6.3:	
	(ii) Parties to annex risk management assessment plan:	

Item 13	Information Management (clause 5.1)
	(i) Principal to specify and/or annex any information that the Contractor must treat as Confidential Information:
	(ii) Contractor to specify any information that the Principal must treat as Confidential Information:
	(iii) Specify if limited disclosure of Confidential Information is permitted by a Party and set out the conditions of disclosure:
Item 14	Intellectual Property (clause 5.2)
	(i) Specify any Deliverables that the Contractor will own (clause 5.2.3):
	(ii) Specify if IP rights in Deliverables shall vest in both the Principal and the Contractor (clause 5.2.3): <i>Annex to the Agreement Details the terms of agreement to apply to share-ownership of the Deliverables.</i>
	(iii) Specify the Principal's rights to use the Contractor's pre-existing IP (clause 5.2.4):
Item 15	Secrecy and Security (clause 6.3) Specify any secrecy or security requirements with which the Contractor is to comply during the Term:
Item 16	Product and Service Warranties (clause 7.1)
	(i) Specify whether Deliverables are new or otherwise (clause 7.1.1(c)): (ii) Specify any quality assurance and compliance arrangements required (clause 7.1.2(b)):
Item 17	Compliance with Laws and Standards and Codes (clause 7.4)
	(i) Specify any codes, policies or guidelines with which the Contractor is to comply: (ii) Specify any standards to apply:
Item 18	Credit/Debit Card (clause 7.8) Specify any credit/debit card or electronic facility that the Principal may use to pay the Contractor:
Item 19	Principal's Materials (clause 7.9)
	(i) Specify Principal's Materials: (ii) Specify costs for Principal's Materials:
Item 20	Reports (clause 7.10) Specify reports required (if any), time for provision and format:
Item 21	Site Preparation and Maintenance (clause 8.4) Specify the Party responsible:
Item 22	Specified Personnel (clause 9.2) Nominate the key personnel (if any) who are to be dedicated to provide the Deliverables:
Item 23	Subcontractors (clause 9.4)
	(i) Principal is to specify if statutory declaration from subcontractors, substantially in the form of Schedule 4, is required: (ii) List of Subcontractors:

Item 24	Delivery (clauses 10.1 and 10.2)
	Specify for each Module the:
	(i) Nature of the Deliverable:
	(ii) Volume of the Deliverable:
	(iii) Date of delivery:
	(iv) Site to be delivered to:
	(v) Hours of delivery:
	(vi) Delivery costs to be applied:
Item 25	AAD (clause 10.3)
	If Acceptance Tests are not required, specify if the Actual Acceptance Date (AAD) will occur in five business days or another number of days following the delivery of a Deliverable (clause 10.3.2):
Item 26	Acceptance Testing (clause 10.5)
	Specify for each Module:
	(i) If Acceptance Testing is required:
	(ii) The Party to conduct Acceptance Tests:
	(iii) Detail to be included in Acceptance Test plan:
	(iv) The Acceptance Period:
	(v) Acceptance Notification Period:
	(vi) The Acceptance Criteria:
	(vii) The number of hours on each normal working day for the running of the Acceptance Tests:
	(viii) The commencement date for Acceptance Tests:
Item 27	Documentation (clause 10.6)
	(i) Specify any additional publications or aids to be made available by the Contractor and the charge (if any):
	(ii) Specify the number of additional copies of the Documentation being purchased by the Principal and the charge:
	(iii) Specify dates for delivery of Documentation:
Item 28	Escrow (clause 10.8)
	(i) Specify if an Escrow arrangement is required:
	(ii) Specify time for Escrow arrangement to endure:
	(iii) List Escrow Materials:
Item 29	Management Committee (clause 11.2)
	(i) Specify if clause 11.2 applies:
	(ii) Specify by when management committee and its processes to be established:
	(iii) Specify the persons on the management committee and any additional functions they are to carry out:

Item 30	Progress Reporting (clause 11.3)
	(i) Specify if clause 11.3 applies:
	(ii) Nominate Project Manager/Officer for each Party:
Item 31	Contract Review Procedures (clause 11.4)
	(i) Specify if clause 11.4 applies:
	(ii) Specify any specific time intervals for service and performance reviews:
	(iii) Specify any other matters to be reviewed:
Item 32	Site Specification (clause 11.5)
	(i) Specify if clause 11.5 applies:
	(ii) Specify if the Contractor is to provide a Site Specification:
Item 33	Implementation Planning Study (clause 11.6)
	(i) Specify if clause 11.6 applies:
	(ii) Insert IPS objectives and time for provision of study:
Item 34	Project Implementation and Payment Plan (clause 11.7)
	Specify if clause 11.7 applies:
Item 35	Staged Implementation and Right to Terminate (clause 11.8)
	Specify if clause 11.8 applies:
Item 36	Service Level Agreement (clause 11.9)
	Specify if clause 11.9 applies:
Item 37	Time of the Essence (clause 11.10)
	(i) Specify if clause 11.10 applies:
	(ii) Due Date for performance and Milestones:
	(iii) Method of calculation of Liquidated Damages (LD's):
	(iv) Number of days LD's are to be applied:
Item 38	Retention of Moneys (clause 11.11)
	(i) Specify if clause 11.11 applies:
	(ii) Specify percentage of Contract Price is to be retained by the Principal until AAD of a Deliverable:
Item 39	Business Contingency Plan (clause 11.12)
	(i) Specify if clause 11.12 applies:
	(ii) Specify by when BCP to be provided:
	(iii) Specify the BC Services it requires and the period of the services:
	(iv) State the periods that the BCP must be updated by the Contractor:
	(v) Specify the time periods that the Contractor is to test the operability of the BCP:
	(vi) Specify any information to be included in the BCP:

Item 40	<p>Payment (clause 12)</p> <p>(i) Specify whether the Contract Price is fixed:</p> <hr/> <p>(ii) Specify price variation mechanism:</p> <hr/>
Item 41	<p>Variations (clause 13)</p> <p>Specify whether Schedule 12 to apply:</p> <hr/>
Item 42	<p>Termination for Convenience (clause 14.1.2)</p> <p>Specify whether further compensation is payable and amount:</p> <hr/>
Item 43	<p>Warranty Period for Deliverables:</p> <hr/> <p>Module 1 - Hardware Acquisition and Installation:</p> <p>Specify Warranty Period, if greater than 365 days:</p> <hr/> <p>Module 3 - Licensed Software:</p> <p>Specify Warranty Period, if greater than 90 days:</p> <hr/> <p>Module 4 - Development Services:</p> <p>Specify Warranty Period, if greater than 365 days:</p> <hr/> <p>Module 12 - Systems Integration Services:</p> <p>Specify Warranty Period, if greater than 90 days:</p> <hr/>
Item 44	<p>Notices (clause 1.2)</p> <p>The Principal's contact details and Service Address:</p> <p>(Insert details of Government party)</p> <p>Name:</p> <hr/> <p>Address:</p> <hr/> <p>Position:</p> <hr/> <p>Telephone:</p> <hr/> <p>Facsimile:</p> <hr/> <p>The Contractor's contact details and Service Address:</p> <p>Name:</p> <hr/> <p>Address:</p> <hr/> <p>Position:</p> <hr/> <p>Telephone:</p> <hr/> <p>Facsimile:</p> <hr/>

Schedule 3 – Product and Service List

General:

Include details of Products and Services to be provided including all pricing details (GST exclusive, GST component and GST inclusive pricing) in Australian dollars, and specify whether any price variation mechanism is to apply.

Include reference to critical milestones in process (appropriate to each Module), including contracted achievement dates (where appropriate).

Include requirements for acceptance testing to be carried out at each milestone.

Special conditions applicable to Modules agreed between the Parties (refer Item 5, Schedule 1 – Agreement Details):

Module 1 – Hardware Acquisition and Installation

Hardware being supplied (clause 1.2 of Module 1):

Specify the Hardware to be provided

Delivery and installation (clause 2 of Module 1):

- (i) Specify if the Contractor is to install the Hardware
- (ii) Specify if the Contractor is to remove all packing materials
- (iii) Specify if the Contractor is required to demonstrate the use of the Hardware
- (iv) Specify any additional costs for installation and demonstration
- (v) Specify any additional costs for removal of packaging

Integration and Training (clause 3 of Module 1):

- (i) Specify any integration services the Contractor is to carry out
- (ii) Specify any training to be carried out by the Contractor and any additional costs
- (iii) Specify any training materials the Contractor is to provide

Module 2 – Hardware Maintenance Services

Hardware Maintenance Services (clause 1.2 of Module 2):

- (i) Specify the Hardware Maintenance Services to be provided
- (ii) Specify the Hardware that is the subject of the Hardware Maintenance Services

Contract Period (clause 2 of Module 2):

Specify the Contract Period of the Hardware Maintenance Services

Commencement Date (clause 2 of Module 2):

Specify the Commencement Date of the Hardware Maintenance Services

Contract Specifications and SLA (clause 3 of Module 2):

- (i) Annex or reference the Contract Specifications (clause 3.1)
- (ii) Annex or reference the SLA, if any (clause 3.1) – N.B. Include response times in the SLA for rectification of Defects

Site (clause 3.2 of Module 2):

- (i) Specify the Site at which the Hardware Maintenance Services are to be performed
- (ii) Specify any other facilities that the Principal is to provide to enable the Contractor to provide the Hardware Maintenance Services

Preventative Maintenance (clause 4.1 of Module 2):

- (i) Specify the times Preventative Maintenance Services are to be performed, if any
- (ii) Annex or reference if applicable the Preventative Maintenance schedule

Remedial Maintenance (clause 5.1 of Module 2):

- (i) Specify the Remedial Maintenance Services
- (ii) Specify the times Remedial Maintenance Services are to be performed
- (iii) Specify the charge payable for any Remedial Maintenance Services performed outside the maintenance period

Module 3 – Licensed Software**Licensed Software** (clause 1.2 of Module 3):

Specify the Licensed Software to be provided

Licence Period (clause 1.2 of Module 3):

Specify if the Licence is not to be a perpetual licence and specify the term of the Licence

Class of Licence (clause 2.1 of Module 3):

- (i) Specify the Class of Licence
- (ii) Specify the number of copies of the Licensed Software to be provided to the Principal

Licence Rights (clause 4.1 of Module 3):

Specify any additional licence rights that the Contractor must provide to the Principal

Protection and Security of the Licensed Software (clause 6 of Module 3):

Specify if the Principal must maintain records of the location of all copies of the Licensed Software

Updates and New Releases (clause 7 of Module 3):

- (i) Updates and New releases (clause 7.1 of Module 3):
Specify any costs for New Releases
Specify if the Contractor is to supply Updates and New Releases during any Software Support Services and the costs (if any)
- (ii) Training (clause 7.2): Specify any training the Contractor is to provide and the costs (if any) to enable the Principal and its Personnel to operate an Update or New Release
- (iii) Installation (clause 7.4(a)):
Specify any installation costs
Time and materials rates to be listed

- (iv) Additional Software (clause 7.4 (g)):
Specify any additional software that is not an Update or New Release and its cost

Designated Equipment and Location (clause 8 of Module 3):

- (i) Specify if the use of the Licensed Software is restricted to any Designated Equipment
(ii) Specify if the Licensed Software may only be operated at specific locations

Consequences of termination (clause 10 of Module 3):

- (i) Specify if the Principal is to destroy or return to the Contractor all copies of the Licensed Software and all related Documentation after the termination of the Licence
(ii) Specify if the use of Licensed Software for archival purposes will be subject to any restrictions

Reverse Engineering (clause 12 of Module 3):

Specify any specific rights the Principal has to reverse assemble or reverse compile the Licensed Software in addition to any rights the Principal may have under the Copyright Act 1968 (Cth)

Module 4 – Development Services

Licensed Software (clause 1.2 of Module 4):

- (i) Specify the Services the Contractor is to perform to develop the Software Solution
(ii) Annex the implementation planning study (clause 4 of Module 4)
(iii) Annex the Project Implementation and Payment Plan (PIPP) (clause 5 of Module 4) specifying the Development Services the Contractor is to perform
(iv) Specify any additional Development Services the Contractor is to perform other than those detailed in the PIPP

Software Solution (clause 1.2 of Module 4):

- (i) Specify the Software Solution or Product to be created by the Contractor for the Principal
(ii) Specify if the Principal is to own the Software Solution or Product

Designated Operating Environment (clause 1.2 of Module 4):

Specify the Designated Operating Environment in which the Software Solution is designed to be used

Methodology for Software Development Procedure (clause 8 of Module 4):

Specify any additional methodologies, or any other requirements to those specified in clause 8, to be adhered to by the Contractor

Source Code (clause 9 of Module 4):

- (i) Specify if the source code of Software Solution is not to be placed in escrow
(ii) Specify if the Contractor must deliver to the Principal all the source code for software tools used in the development of the Software Solution required by the Principal to operate and support the Software Solution
(iii) Specify if the Contractor grants a licence to the Principal to use software tools, object libraries or other devices or methodologies for the purpose of maintaining and enhancing the Software Solution

Updates and New Releases (clause 12 of Module 4):

- (i) Specify any costs for Updates and New Releases
- (ii) Specify if the Contractor is to install Updates and New Releases during any Software Support Services and the costs (if any)
- (iii) Time and Materials rates to be specified

Module 5 – Software Support Services**Software Support Services** (clause 1.2 of Module 5):

- (i) Specify the Software Support Services to be provided including, but not limited to, telephone support, e-mail and fax support, web-based support and on-site support
- (ii) Specify the support period
- (iii) Specify the Support Service Fees
- (iv) Specify Time and Materials rates for additional services
- (v) Specify the Support Software to be supported
- (vi) Annex the SLA (if any) that the Parties have agreed to in relation to the Software Support Services

Designated Equipment (clause 1.2 of Module 5):

Specify the Designated Equipment on which the Supported Software is to be installed and/or used

Contract Period (clause 2 of Module 5):

Specify the period of the Software Support Services

Commencement Date (clause 2 of Module 5):

Specify the Commencement Date of the Software Support Services

Additional Services (clause 3.4 of Module 5):

- (i) Specify any additional services to be provided that are not included in Software Support Services
- (ii) Specify Time and Materials rates

Service Levels (clause 7 of Module 5):

Specify any performance rebates for not meeting Service Levels, or reference any relevant Service Level Agreement provision

Module 6 – IT Personnel**IT Personnel Services** (clause 1.2 of Module 6):

- (i) Specify the IT Personnel Services (*may entail the writing and placement of an advertisement, interviewing and preselection of IT Personnel candidates, forwarding IT Personnel candidate names and CV's, arranging interviews with the Principal, etc*)
- (ii) Specify the IT Personnel to be provided and detail their qualifications and experience

Services (clause 3 of Module 6):

Specify the Services the IT Personnel are to perform

Period of Services (clause 6 of Module 6):

Specify the period of the Services of IT Personnel

Module 7 – Professional Services**Professional Services** (clause 1.2 of Module 7):

Specify the Professional Services

Period of Services (clause 2 of Module 7):

Specify the period of the Professional Services

Commencement Date (clause 2 of Module 7):

Specify the Commencement Date of the Professional Services

Specified Personnel (clause 3 of Module 7):

Specify any Specified Personnel (key) to provide the Professional Services and their roles or responsibilities

Project Implementation and Payment Plan (clause 4 of Module 7):

Annex the Project Implementation and Payment Plan (if any) that has been agreed between the Parties

Module 8 – Data Management**Data Management Services** (clause 1.2 of Module 8):

Specify the Services to be provided by the Contractor in respect of the Principal's Data, which may include Data Cleansing, Data Conversion and Migration and Data Warehousing

Principal's Data (clause 1.2 of Module 8):

Specify the Principal's Data

Period of Services (clause 2 of Module 8):

Specify the period of the Data Services

Commencement Date (clause 2 of Module 8):

Specify the Commencement Date of the Data Services

Data Management Services (clause 3 of Module 8):

Annex or reference (if any) the Contract Specifications and/or SLA

Project Implementation and Payment Plan (clause 4 of Module 8):

Annex or reference the Project Implementation and Payment Plan

Data Cleansing (clause 5 of Module 8):

- (i) Specify if the Contractor must conduct an analysis of the Principal's Data
- (ii) Specify any reports the Contractor is to provide to the Principal which may include a report of the trends within the Principal's business, industry and client base
- (iii) Specify any accuracy or consistency requirements that the Contractor is to meet for the Data Cleansing
- (iv) Specify any tasks or responsibilities the Principal is to perform for the Data Cleansing

Principal's Data for Migration (clause 6 of Module 8):

Specify if the Principal must extract and provide the Principal's Data to the Contractor for Data Migration and Conversion in accordance with the PIPP

Contractor's Tools and Methodologies (clause 8 of Module 8):

Specify if the Contractor is required to provide the Principal with a licence to use tools, object libraries or other devices or methodologies for the purpose of maintaining and enhancing the Data Migration Software

Data Warehousing (clause 10 of Module 8):

- (i) Specify any variations or additional requirements of the Principal in relation to Contractor's Data Warehouse
- (ii) Specify if the Contractor must provide management of the Data Warehouse in accordance with the PIPP

Module 9 – Telecommunications Services**Telecommunications Services** (clause 1.2 of Module 9):

Specify the Telecommunications Services to be provided by the Contractor

Period of Services (clause 2 of Module 9):

Specify the period of the Telecommunications Services

Commencement Date (clause 2 of Module 9):

Specify the Commencement Date of the Telecommunications Services

Location (clause 3 of Module 9):

Specify locations, if any, where the Telecommunications Services are to be provided

Contract Specifications and Service Level Agreement (clause 3.2 of Module 9):

- (i) Annex or reference the Contract Specifications
- (ii) Annex or reference the Service Level Agreement (if any)

Scalability (clause 4 of Module 9):

Specify any adjustments to the capacity, availability and quality of the Telecommunications Services to be provided by the Contractor during the period of service, including the cost thereof

Contract Price (clause 7 of Module 9):

In addition to the price to be paid for the Telecommunications Services, separately identify establishment costs such as installation fees and set up fees

Billing (clause 8 of Module 9):

Billing details:

- (i) Specify the billing period, if other than monthly
- (ii) Specify the format of bill to be delivered
- (iii) Specify the details for any aggregate or consolidated billing

Billing (clause 8 of Module 9) – cont.:

Audits:

Default position for the number of audits the Principal may undertake is once per 6 months...specify the required frequency, if other than this level

Back Billing:

Specify if Back Billing Period is to be greater than 3 months

Benchmarking (clause 13 of Module 9):

- (i) Specify the type of benchmarking of the Telecommunications Services that may be conducted by the Principal
- (ii) Specify remedies available if the Telecommunications Services fail the benchmarking

Module 10 – Web Services**Internet, Filtering and Hosting Services** (clause 1.2 of Module 10):

- (i) Specify the Filtering Services, and the times the Filtering Services are to be performed
- (ii) Specify the Web Services to be provided by the Contractor
- (iii) Specify the Hosting Services to be provided by the Contractor

Period of Web Services (clause 2 of Module 10):

Specify the period of the Web Services

Commencement Date (clause 2 of Module 10):

Specify the Commencement Date of the Web Services

Internet Services (clause 4.1 of Module 10):

Annex or reference the Contract Specifications

Access (clause 4.1 of Module 10):

- (i) Specify if the Principal is not to provide telephone lines, modems, computer hardware and software and all other equipment within the Principal's network necessary to enable Users to access the Internet Services
- (ii) Specify any Remote Access Services the Contractor is to provide

Directory Data (clause 6 of Module 10):

- (i) Include information about the Principal's database of User accounts (the Directory Data)
- (ii) Specify the structure of the levels of User access to the Internet Services required by the Principal

Scalability (clause 7 of Module 10):

Specify any adjustments to the capacity, availability and quality of the Web Services to be provided by the Contractor during the period of Web Services, including the costs of adjustments

Hosting Services (clause 8 of Module 10):

Specify if the Contractor is responsible for content maintenance

Domain Names (clause 9 of Module 10):

Specify if the Contractor is to secure a Domain Name on behalf of the Principal

Intellectual Property Rights (clause 10 of Module 10):

Specify if IP is not to immediately vest in the Principal

Contract Price (clause 13 of Module 10):

In addition to the price to be paid for the Internet Services, separately identify establishment costs such as installation fees and set up fees

Billing (clause 14 of Module 10):

Billing details:

- (i) Specify the billing period, if other than monthly
- (ii) Specify the format of bill to be delivered
- (iii) Specify the details for any aggregate or consolidated billing

Audits:

Default position for the number of audits the Principal may undertake is once per 6 months...specify the required frequency, if other than this level

Back Billing:

Specify if Back Billing Period is to be greater than 3 months

Service Levels (clause 16 of Module 10):

- (i) Annex or reference the SLA's (if any)
- (ii) Specify any Service Level or rectification arrangements not required in the SLA
- (iii) Specify any reports the Contractor is to provide to the Principal in relation to the Service Levels

Benchmarking (clause 17 of Module 10):

- (i) Specify the purpose and scope of the benchmarking of the Web Services that may be conducted by the Principal (*N.B. Such benchmarking reviews may compare the Services and Service Levels against similar services available in the Australian market, to ensure that the Services and Service Levels remain competitive within the industry during the Term of the Agreement*)
- (ii) Specify remedies available if the Web Services fail the benchmarking

Transition (clauses 19 & 20 of Module 10):

- (i) Annex transition plans (if any)
- (ii) Specify any additional transition requirements of the Principal

Module 11 – Managed Services**Managed Services** (clauses 1.2 & 3.1 of Module 11):

Specify the Managed Services the Contractor is to provide

Period of Services (clause 2 of Module 11):

Specify the period of the Managed Services

Commencement Date (clause 2 of Module 11):

Specify the Commencement Date of the Managed Services

Contract Specifications and SLA (clause 3.2 of Module 11):

- (i) Annex or reference the Contract Specifications
- (ii) Annex or reference the SLA
- (iii) Annex or reference the transition in and transition out plans

Other Deliverables to be procured (clause 3.4 of Module 11):

- (i) Specify if the Contractor is to procure any other Deliverables
- (ii) List the Deliverables and indicate if the Contractor is to purchase these Deliverables as a Nominee Purchaser of the Principal or otherwise

Transition In (clause 4 of Module 11):

- (i) Specify additional obligations of the Contractor other than those specified in clause 4, if any
- (ii) Specify the Contractor's obligations regarding the transfer or management of third party contracts
- (iii) Specify any other items to be included in a procedures manual, other than those specified in clause 4(f), if any

Transition Out Plan (clause 6 of Module 11):

Specify the hourly rate (Time and Materials) for the Contractor to provide a transition out plan

Transition Out (clause 7 of Module 11):

Specify if the Contractor is not required to perform the transition out services specified in clause 7 and/or is to provide additional transition out services

Module 12 – Systems Integration Services**Systems Integration Services** (clause 1.2 of Module 12):

- (i) Specify the Systems Integration Services
- (ii) Specify the System the Contractor must provide after it has performed the Systems Integration Services

Period of Systems Integration Services (clause 2 of Module 12):

Specify the period of the Systems Integration Services

Commencement Date (clause 2 of Module 12):

Specify the Commencement Date of the Systems Integration Services

Systems Integration Services (clause 4 of Module 12):

- (i) Specify any additional services the Contractor is to perform that are not described in the Project Implementation and Payment Plan
- (ii) Specify if the Stages in clause 6 are to be varied or are not to be included
- (iii) Specify which Party will complete the Contract Specification for the Systems Integration

Statement of Requirements (clause 4 of Module 12):

Annex or reference the Principal's Statement of Requirements

Implementation Planning Study (clause 5 of Module 12):

Annex the implementation planning study

Project Implementation and Payment Plan (clause 6 of Module 12):

Annex or reference the Project Implementation and Payment Plan

Maintenance of Principal's Materials (clause 7 of Module 12):

Specify if the Contractor is to manage any existing maintenance obligations in respect of the Principal's Materials

System Warranty (clause 9 of Module 12):

Annex or reference the Contract Specifications

Transition Out Plan (clause 10 of Module 12):

Specify the hourly rate (Time and Materials) for the Contractor to provide a transition out plan

Transition Out (clause 11 of Module 12):

Specify if the Contractor is not required to perform the transition out services specified in clause 11 and/or is to provide additional transition out services

Schedule 4 – Statutory Declaration by Subcontractor

Oaths Act (NSW), 1900 Ninth Schedule

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

1. [insert full subcontractor company name and its ACN/ABN] (“the Declarant”) has been selected as a subcontractor to, [insert name of the Contractor] (“the Contractor”) under an agreement between the [insert name of the Principal] for and on behalf of the Crown in right of the State and the Contractor for the supply of the Deliverables to the Principal (“the Agreement”).
2. The Declarant is aware of the terms and conditions as set out in the Agreement.
3. The Declarant offers to sub-contract on terms that:
 - (a) are consistent with the standard terms and conditions of the Agreement; and
 - (b) will enable compliance by the Contractor with clause 9.4 of the Agreement.
4. There are no reasons of which I am aware that prevent a subcontract from being signed and performed in a manner that will allow the satisfactory and timely performance of any relevant Contractor responsibilities under the Agreement.

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

Declared at

the day of 20

Before me,

Schedule 5 – Expert Determination Procedure

EXPERT DETERMINATION

- 1 If a Referral Notice is submitted under clause 3.7.2 of the Agreement, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Commercial Disputes Centre, of the State.
- 2 The expert nominated must be a lawyer and an information technology expert unless otherwise agreed. The expert must not be:
 - (a) an employee of the Parties;
 - (b) a person who has been connected with this Agreement or has a Conflict of Interest, as the case may be; or
 - (c) a person who the Parties have not been able to agree on.
- 3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
 - (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for the determination set out in this Schedule; and
 - (d) any other matter which is relevant to the engagement.
- 4 **Submissions**
- 4.1 **The procedure for submissions to the expert is as follows:**
 - (a) The Party to the Agreement that has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 3.
 - (b) The other Party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
 - (c) The Party referred to in clause 4.1 (a) may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
 - (d) The other Party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
 - (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 4.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
 - (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
 - (g) All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the expert, it must at the same time give a copy to the other Party.
- 5 **Conference**
- 5.1 The expert may request a conference with both Parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 5.2 The Parties agree that such a conference is considered not to be a hearing that would give anything under this Expert Determination Procedure the character of arbitration.
- 6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.

7 Questions to be determined by the Expert

7.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):

- (a) Is there an event, act or omission that gives the claimant a right to compensation under the Agreement:
 - (i) for damages for breach of the Agreement, or
 - (ii) otherwise in law?
- (b) If so:
 - (i) what is the event, act or omission?
 - (ii) on what date did the event, act or omission occur?
 - (iii) what is the legal right which gives rise to the liability to compensation?
 - (iv) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- (c) In the light of the answers to clause 7.1(a) and (b) of this Expert Determination procedure:
 - (i) What compensation, if any, is due from one Party to the other and when did it fall due?
 - (ii) What interest, if any, is due when the expert determines that compensation?

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

8 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.

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

10 Unless a Party has a right to commence litigation under clause 9 of this Schedule:

- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

11 Role of Expert

11.1 The expert:

- (a) acts as an expert and not as an arbitrator;
- (b) must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise; and
- (c) must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 3.

11.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Schedule 6 – Confirmation of Insurances

Insurer:

Contractor: (The Insured)

Re: Agreement for the provision of [insert Contract title]

between the Insured and the “Principal” [insert Principal title]

It is confirmed that:

1. The Insured has obtained the following policies (the Insurance Policies)
 - (a) A public liability policy to the value of \$AUD
(the Limit of Indemnity) in respect of each claim;
 - (b) A products liability policy to the value of \$AUD
for the total aggregate liability for all claims arising out of the Insured’s products
for the period of cover.
 - (c) Professional Indemnity Insurance to the value of \$AUD

Expiry / 20
 - (d) Workers Compensation Insurance

2. The respective rights and interests of the Principal and any sub-contractors of the Insured are noted on the Insurance Policy(ies) 1(a) and 1(b).

3. The Insurer will accept a notice of claim given by the Insured, the Principal or any sub-contractor as being a claim given by all of the insured under insurance policies 1(a) and 1(b).

4. The insurance policies conform with the requirements of clause 4.1 of the Agreement between the Principal and the Insured.

Attach a Certificate of Currency for the policy/ies above.

Specify below any exclusions for the Insurance Policies.

Signature of authorised representative of Insurer/Broker

Print name

Position

Date

Schedule 7 – Financial Security

Deed of Agreement dated the day of 20

Between [insert name of the Principal] ('the Principal')

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

What is agreed:

1. _____ [insert name of the Contractor and the ACN/ABN] ('Contractor') has agreed to supply Deliverables to the Principal pursuant to a contract ('Agreement'). The following undertaking is given in respect of the Agreement:

The Guarantor unconditionally agrees to pay to the Principal on demand without reference to the Contractor and separate from any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of \$ [insert dollar amount]
2. The Guarantor's liability under this Financial Security will be a continuing liability until payment is made up to the maximum aggregate sum or the Principal notifies the Guarantor that this Financial Security is no longer required.
3. This Financial Security shall be governed by and construed in accordance with the laws in force in the State or Territory of the Principal's registered address.
4. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by any other means.
5. The address for services of notice for a party is, in the case of the:

Guarantor

Physical address
Postal address
Phone number
Fax number
Email address

Contractor

Physical address
Postal address
Phone number
Fax number
Email address

Principal

Physical address
Postal address
Phone number
Fax number
Email address

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

6. A notice or other communication under this Schedule is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after three (3) working days;
 - (c) sent by post from or to an address outside Australia, after ten (10) working days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
 - (e) sent by electronic mail, the next working day; or
 - (f) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

EXECUTED AS A DEED

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

By [insert name of Principal's representative]

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

Signature of Principal's representative

Signature of Witness

Print name

Print name

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

was affixed by [authority of the Board of Directors]

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

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

Schedule 8 – Performance Guarantee

Deed of Agreement dated the day of 20

Between [insert name of the Principal] ('the Principal')

And [insert name and ACN/ABN of the Guarantor] ('the Guarantor')

Purpose [insert name and ACN/ABN of the Contractor] ("the Contractor") has agreed to supply Deliverables to the Principal pursuant to the contract ("the Agreement").

The Guarantor agrees to provide the guarantees and indemnities stated below in respect of the Agreement.

What is agreed:

The Guarantor guarantees to the Principal the performance of the obligations undertaken by the Contractor under the Agreement on the following terms and conditions:

1. If the Contractor (unless relieved from the performance of the Agreement by the Principal or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Agreement, the Guarantor will, if required to do so by the Principal, complete or cause to be completed the undertakings contained in the Agreement.
2. If the Contractor commits any breach of its obligations, and the breach is not remedied by the Guarantor as required by clause 1 and the Agreement is then terminated for default, the Guarantor will indemnify the Principal against costs and expenses directly incurred by reason of such default.
3. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee and the Principal may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor.
4. The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Contractor and Principal with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
5. The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.
6. The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed the obligations and liabilities of the Contractor under the Agreement.
7. This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the State or Territory of the Principal's registered address.
8. Where the Contractor has failed to perform under the Agreement, the obligations of the Guarantor will continue even though the Contractor has been dissolved or has been made subject to external administration procedures under Chapter 5 of the Corporations Law or any other law.
9. The rights and obligations under this Guarantee will continue until all obligations of the Contractor under the Agreement have been performed, observed and discharged.
10. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means.

11. The address for services of notice under this schedule for a party is, in the case of the:

Guarantor

Physical address
Postal address
Phone number
Fax number
Email address

Contractor

Physical address
Postal address
Phone number
Fax number
Email address

Principal

Physical address
Postal address
Phone number
Fax number
Email address

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

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

- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
- (b) sent by post from and to an address within Australia, after three (3) working days;
- (c) sent by post from or to an address outside Australia, after ten (10) working days;
- (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
- (e) sent by electronic mail, the next working day; or
- (f) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

EXECUTED AS A DEED

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

By [insert name of Principal's representative]

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

Signature of Principal's representative

Signature of Witness

Print name

Print name

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

was affixed by [authority of the Board of Directors]

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

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

Schedule 9 – Deed of Confidentiality

Deed of Agreement dated the day of 20

Between [insert name of the Government Party] ('the Disclosing Party')

And [insert name and address of Confidant] ('the Confidant')

RECITALS:

- a. In the course of the Confidant supplying certain Deliverables for the Disclosing Party (whether directly or indirectly) pursuant to the Agreement, the Confidant will have access to and may become aware of Confidential Information belonging to or in the possession of the Disclosing Party.
- b. Improper use or disclosure of the Confidential Information would severely damage the Disclosing Party's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the Disclosing Party.
- c. The Disclosing Party requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Disclosing Party's Confidential Information is kept confidential and that the Confidant provides the Deliverables faithfully and without any conflicting interest.
- d. This Deed sets out the terms on which the Confidant will have access to the Confidential Information.

What is agreed:

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

2. Interpretation

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

“**Agreement**” means the agreement between the Principal and the Contractor for the supply of the Deliverables dated [insert date]

“**Confidential Information**” means information that

- (a) is by its nature confidential; or
- (b) is communicated by the discloser to the Confidant as confidential; or
- (c) the Confidant knows or ought to know is confidential; and
- (d) includes but is in no way limited to:
 - (i) the Deliverable;
 - (ii) materials including the financial, the corporate and the commercial information;
 - (iii) any material which relates to the affairs of a third party;
 - (iv) information relating to the strategies, practices and procedures of the State and any information in the Contractor's possession relating to the State public service.

But does not include anything which the Confidant establishes:

- (i) was in the public domain at the time it was received by the Confidant; or
- (ii) entered the public domain after being received by the Confidant,
- (iii) that the Confidential Information was disclosed pursuant to the terms of this Agreement,

unless it entered the public domain due to a breach of confidentiality by the Confidant; or which the Confidant establishes was received by it from another person before or after it was received from the Principal, if the other person did not breach any law or agreement by giving it to the Confidant.

“**Contractor**” means [insert name of Contractor]

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

“**Express Purpose**” means the Confidant performing the obligations under the Agreement.

“**Intellectual Property Rights**” includes copyright, moral rights, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia.

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

“**Principal**” has the same meaning as in the Agreement.

“**Principal’s Materials**” means any documentation, information or material supplied by or on behalf of the Principal.

“**Records**” includes any information, documents or data brought into existence by any means and stored by any means in connection with the performance of the Agreement.

“**State**” means the State of **[insert jurisdiction]**.

2.2 General

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

2.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) anything (including a right, obligation or concept) includes each part of it.

2.2.3 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.

2.2.4 A singular word includes the plural, and vice versa.

2.2.5 A word which suggests one gender includes the other gender.

2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

3.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Disclosing Party.

3.2 The Disclosing Party may grant or withhold its consent in its discretion.

3.3 If the Disclosing Party grants its consent, it may impose conditions on that consent, including a condition that the Confidant procures the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.

3.4 If the Disclosing Party grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 Despite clause 3.1, the Confidant may disclose the Confidential Information to its directors, officers, employees, and contractors (“permitted recipients”) where such disclosure is essential to carrying out their duties owed to the Disclosing Party or in accordance with this Deed.

3.6 Before disclosing the Confidential Information to a permitted recipient, the Confidant will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.

- 3.7** The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Disclosing Party, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.8** The Disclosing Party may at any time require the Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.9** If any person being any director, officer, contractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.
- 3.10** The requirements of this Deed do not affect the obligation of the Confidant to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

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

5. Survival

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

6. Rights of the Disclosing Party

- 6.1** Production of Documents
- 6.1.1** The Disclosing Party may demand the delivery up to the Disclosing Party of all documents in the possession or control of the Confidant containing the Confidential Information.
- 6.1.2** The Confidant must immediately comply with a demand under this clause 6.
- 6.1.3** If the Disclosing Party makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose the Disclosing Party or control they lie.
- 6.1.4** In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.
- 6.2** Legal Proceedings. The Disclosing Party may take legal proceeding against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Indemnity and release

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

8. No exclusion of law or equity

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

9. Waiver

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

10. Remedies cumulative

- 10.1** Cumulative. The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.
- 10.2** Other Instruments. Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.

11. Variations and amendments

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

- 12.** Applicable law. This Deed will be governed and construed in accordance with the laws of the State and the Commonwealth of Australia.

13. Notices

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

EXECUTED AS A DEED

Signed, sealed and delivered by [name and position of person signing]

for and on behalf of the [insert name of Disclosing Party]

for and on behalf of the Crown in right of the State of [insert name of State]

but not so as to incur any personal liability.

Signature of Disclosing Party

Signature of Witness

Print name

Print name

Signed, sealed and delivered by

Signature of Confidant

In the presence of

Signature of Witness

Print name

Print name

Schedule 10 - Privacy

CONTRACTOR'S PRIVACY OBLIGATIONS

Pursuant to clause 6.2 of the Agreement, the Contractor agrees:

- 1 to use, access, retain or disclose Personal Information obtained during the course of providing the Deliverables under the Agreement only for the purpose for which the Personal Information was acquired;
- 2 not to do any act or engage in any practice that would breach an Information Privacy Principle, or which if done or engaged in by the Principal, would be a breach of that IPP;
- 3 to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the IPP's as if it were the Principal carrying out and discharging those obligations;
- 4 to notify the Principal immediately upon becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this Schedule, whether by the Contractor or its Personnel;
- 5 to notify the individuals affected, that complaints about acts or practices in relation to such individuals' Personal Information may be investigated by the Privacy Commissioner;
- 6 to comply with all reasonable directions of the Principal in relation to the care and protection of Personal Information held in connection with the Agreement and in addition thereto, take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
- 7 to ensure that any Personnel of the Contractor who is required to deal with the Personal Information for the purposes of the Agreement is made aware of the obligations of the Contractor under this Schedule; and
- 8 to ensure that any other agreement with any Personnel who may be fulfilling a requirement in relation to the Agreement which includes the handling of Personal Information, contains the same or equivalent obligations to this Schedule which are enforceable by the Contractor against the Approved Party or the subcontractor, as applicable.

Schedule 11 – Escrow Agreement

Deed of Agreement dated the day of 20

Between [insert name, and ACN/ABN, if applicable] (in this Agreement called the “Escrow Agent”) of the first part

And [insert name, and ACN/ABN if applicable and the Principal Agreement Number] (in this Agreement called “the Contractor”) of the second part

And [insert name of Government Party] (in this Agreement referred to as “the Principal”) of the third part

RECITALS:

- a. By Agreement made on the day of20.., the Contractor has agreed to grant a licence to the Principal to use the Licensed Software.
- b. The Contractor and the Principal have agreed to appoint an escrow agent and the Escrow Agent has agreed to act as Escrow Agent and to hold the Source Code for the Licensed Software on the following terms and conditions.

NOW THIS CONTRACT WITNESS:

1. Interpretation

In this Agreement the following words have the following meaning:

“**Agreement**” means the agreement pursuant to which the Contractor has granted a licence to the Principal to use the Licensed Software;

“**Contract Specifications**” has the same meaning as in the Agreement;

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

“**Escrow Fee**” means the fee set out in Attachment 1 of this Schedule;

“**Licensed Software**” means the software specified in Attachment 2 of this Schedule and includes any Update or New Release of that software provided to the Principal under the Agreement and any material related to the Licensed Software such as, but not limited to, flow charts, logic diagrams and listings that the Contractor makes generally commercially available from time to time;

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

“**Source Code**” means the Licensed Software expressed in human-readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of the Licensed Software and that is deposited with the Escrow Agent in accordance with this Agreement;

“**Supporting Material**” means all of the material and data developed and used in and for the purpose of creating the software including (but not limited to) compiled object code, tapes, operating manuals and other items listed in Attachment 3;

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

1.2 In this Agreement, unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a clause or subclause is a reference to a clause or subclause of this Agreement;
- (h) a reference to an Attachment is a reference to an Attachment to this Document;
- (i) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

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

2. Duration

This Agreement is in force until the Source Code is released in accordance with this Agreement or the Agreement is otherwise terminated.

3. Appointment of Escrow Agent

The Escrow Agent is hereby appointed jointly by the Principal and the Contractor and, subject to the terms and conditions of this Agreement, is granted full power and authority to act on behalf of each Party to this Agreement.

4. Contractor’s Obligations

4.1 The Contractor shall deliver to, and deposit with, the Escrow Agent one copy of the Source Code and the Supporting Material within 7 days of the date of this Agreement (or time as otherwise agreed).

4.2 The Contractor shall maintain, amend, modify, up-date and enhance the Source Code and Supporting Material at all times and shall ensure that the Source Code and Supporting Material deposited with the Escrow Agent is kept fully up-to date and accurately reflects the Licensed Software including all modifications, amendments, Updates and New Releases made to, or in respect of, the Licensed Software.

4.3 The Contractor warrants to the Principal that the Source Code is, to the best of the knowledge of the Contractor, free from any virus or program device which would prevent the Licensed Software from performing its desired function or which would prevent or impede a thorough and effective verification thereof.

5. Escrow Agent’s Obligations

5.1 The Escrow Agent shall accept custody of the Source Code on the date of delivery in accordance with subclause 4.1 of this Agreement and, subject to the terms and conditions of this Agreement, shall hold the Source Code on behalf of the Principal and the Contractor.

5.2 The Escrow Agent shall take all reasonable necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Source Code while it is in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an atmosphere which does not harm the Source Code and the Supporting Material.

5.3 The Escrow Agent shall bear all risks of loss, theft, destruction of or damage to the Source Code while it is in the Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by negligence default, willful damage or recklessness of the Escrow Agent or its employees or agents.

5.4 If the Source Code is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent shall, at its own expense, obtain from the Contractor a further copy of the Source Code.

5.5 The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the Source Code lodged with it.

6. Escrow Fee and Expenses

6.1 The Principal shall pay the Escrow Fee.

6.2 All expenses and disbursements incurred by the Escrow Agent in connection with this Agreement shall be borne wholly and completely by the Escrow Agent.

6.3 All expenses and disbursements incurred by the Contractor in connection with this Agreement shall be borne wholly and completely by the Contractor.

7. Testing and Verification

7.1 The Principal may, in the presence of and under the supervision of the Contractor, analyse and conduct tests in relation to the Source Code and Supporting Material for verification purposes.

7.2 The Principal may engage an independent assessor to undertake analysis and tests of the Source Code and Supporting Material for verification purposes, on its behalf.

7.3 The Escrow Agent shall release the Source Code and Supporting Material to the independent party upon presentation of a Release form signed by the Principal and the Contractor specifying the material to be released and identifying the person to whom that material may be released.

7.4 The Source Code and Supporting Material released pursuant to clause 7.3 must be returned to the Escrow Agent or its employees or agents.

8. Release of the Source Code and Supporting Material

8.1 The Escrow Agent shall not release, or allow access to, the Source Code and Supporting Material except in accordance with the provisions of this Agreement.

8.2 The Escrow Agent shall release the Source Code to the Principal upon written notice from the Principal that:

- (a) the Contractor has become subject to any form of insolvency administration;
- (b) the Contractor has ceased for any reason to maintain or support the Licensed Software;
- (c) the Principal Agreement has been terminated by the Principal for breach of contract by the Contractor; or
- (d) if this Agreement is terminated.

8.3 Where the Agreement has been terminated by the Contractor or where the Principal has agreed to the release the Escrow Agent shall, upon written request from the Contractor, release the Source Code and Supporting Material to the Contractor.

9. Termination

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

9.2 The Principal and the Contractor may jointly terminate this Agreement immediately if the Escrow Agent:

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

9.3 If this Agreement is terminated in accordance with this clause while the Agreement remains in force, the Principal and the Contractor shall enter into a new Escrow Agreement on the same terms and conditions as are set out in this Agreement, with an alternative escrow agent who is acceptable to both the Principal and the Contractor.

9.4 The Principal and the Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Agreement, however no refund of advance payment of the Escrow Fee will be payable.

10. Confidentiality

10.1 The Escrow Agent shall not, except as permitted by this Agreement, make public or disclose to any person any information about this Agreement or the Source Code.

10.2 The Escrow Agent shall not reproduce, or cause to have reproduced, a copy of the Source Code or any part thereof.

10.3 The obligations under this clause shall survive the termination of this Agreement.

11. Compliance with Laws

The Escrow Agent shall in carrying out this Agreement comply with the provisions of any relevant Statutes, Regulations, By-Laws and the requirements of any Commonwealth, State or local authority.

12. Resolution of Disputes

Any party under this Agreement may notify in writing a dispute in respect of a matter arising under this Agreement. The Parties shall within 7 days of such notice consult to agree a method for resolving the dispute by way of:

- (a) negotiation;
- (b) alternative dispute resolution procedures; or
- (c) arbitration; and shall commence procedures for dispute resolution within a reasonable time of agreeing a method.

13. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws from time to time in force in [insert appropriate jurisdiction].

14. Variation and Waiver

14.1 This Agreement shall not be varied either in law or in equity except by agreement in writing signed by the Escrow Agent, the Principal and the Contractor.

14.2 A waiver by one Party of a breach of a provision of this Agreement by another Party shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Agreement. The failure of a Party to enforce a provision of this Agreement shall not be interpreted to mean that Party no longer regards that provision as binding.

15. Assignment

The Contractor and the Escrow Agent, or either of these, shall not assign, in whole or in part, its benefits under this Agreement without the written consent of the Principal and such consent shall not be unreasonably withheld.

16. Severability

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

17. Notices

- 17.1** A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means. The address for services of notice for a party is, in the case of the:

Escrow Agent

Physical address
Postal address
Phone number
Fax number
Email address

Contractor

Physical address
Postal address
Phone number
Fax number
Email address

Principal

Physical address
Postal address
Phone number
Fax number
Email address

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

- 17.2** A notice or other communication is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after three (3) working days;
 - (c) sent by post from or to an address outside Australia, after ten (10) working days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
 - (e) sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or
 - (f) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

EXECUTED AS A DEED

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

was affixed by [authority of the Board of Directors]

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

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

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

was affixed by [authority of the Board of Directors]

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

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

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

By [insert name of Principal's representative]

in the presence of [insert name of witness not a party to this Deed]

Signature of Principal's Representative

Signature of Witness

Print name

Print name

Escrow Agreement

ATTACHMENT 1

Details of Escrow fees:

Deposit Fee:	<input type="text"/>
Storage Fee:	<input type="text"/>
Retrieval Fee:	<input type="text"/>
Release Fee:	<input type="text"/>
Collection Fee:	<input type="text"/>

Escrow Agreement

ATTACHMENT 2

Details of licensed software to be held in Escrow

Source Code:	<input type="text"/>
Flow Charts:	<input type="text"/>
Diagrams:	<input type="text"/>
Listings:	<input type="text"/>

Escrow Agreement

ATTACHMENT 3

Supporting materials

Insert details of support material relevant to the Licensed Software, for example:

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

<input type="text"/>
<input type="text"/>
<input type="text"/>

Schedule 12 – Variation Procedures

1. PROCEDURES

- 1.1 Each variation request or recommendation must be submitted in a form substantially similar to the form attached to this Schedule.
- 1.2 For each variation request or recommendation submitted:
- (a) the Government party must evaluate the request or recommendation and, as appropriate:
 - i. request further information;
 - ii. provide an Agreement, Price and performance impact summary including amendments to the terms of the Agreement;
 - iii. notify recommendation to accept or rejection to the other party of the variation;
 - iv. submit the variation to the Principal for its written approval.
 - (b) a sequential number to the variation must be allocated by the Parties;
 - (c) the variation must be logged and its progress documented by recording its status from time to time by the Contractor as follows:
 - i. requested;
 - ii. under evaluation;
 - iii. awaiting authorisation;
 - iv. cancelled;
 - v. pending;
 - vi. approved/authorised;
 - vii. expired;
 - viii. in progress;
 - ix. applied;
 - x. delivered;
 - xi. accepted.
- 1.3 Time limits apply for Contract Variation evaluation and authorisation as follows:
- (a) the Government party or Contractor (as appropriate) will respond to a Contract Variation request or recommendation by providing an evaluation in accordance with paragraph 1.2 of this Schedule within 10 working days of receipt of the request or recommendation; and
 - (b) the Contractor must act on the Contract Variation within 7 days of the Contract Variation being approved and signed by the Parties.
- 1.4 Notwithstanding the foregoing, if after a variation has been approved and signed by both Parties, and the Principal no longer wishes to proceed with the variation, the Principal must:
- (a) notify the Contractor accordingly in writing;
 - (b) pay the reasonable costs incurred by the Contractor incidental to implementing the Contract Variation;

and the variation shall thereafter cease to have effect. The Parties shall continue to perform their obligations under the Agreement as if the variation request or recommendation had never been made.

VARIATION REQUEST FORM

Guide Note: If the proposed variation will vary the Agreement terms, specifications or any other documents forming part of the Agreement, draft amendments must be attached.

Variation request no

Date proposed

Date of expiry of validity of variation request

Originator

Variation proposal: *(full details of variation including specifications, document identification, and reason for Variation)*

Clauses affected by variation request: *(Insert amendments to clauses in the Agreement, relevant Schedules including Service Level Agreement) (note that variations to the Agreement Clauses require the Principal's approval)*

Impact of variation: *(Contractor to advise)*

Effect on Charges

Manpower required

Effect of variation on performance

Effect on Documentation

Effect on training

Effect on users of system

Any other matters which the parties require to be considered

The means of Implementing the variation: (Contractor to advise)

Implementation plan and timetable:

Personnel:

The responsibilities of the Parties for implementing the variation

The date the variation is to be ready for Acceptance Testing

Charges payable to the Contractor by the Principal or as varied by variation

Payment Profile: (Charges to apply)

**THE AGREEMENT IS VARIED IN ACCORDANCE
WITH THE TERMS OF THIS CONTRACT VARIATION REQUEST**

The (Principal) hereby endorses its consent to this Variation.

Signed by [name and position of person signing]

for and on behalf of the [insert name of Principal]

in the presence of

Signature of Principal's representative

Signature of Witness

Signed by [name and position of person signing]

for and on behalf of the [insert name of Contractor]

in the presence of

Signature of Contractor

Signature of Witness

Request No

Schedule 13 – Risk Management

FORMAT OF A RISK MANAGEMENT PLAN

- 1 Procurement context
 - 1.1 Description of the procurement
 - 1.2 Identify the procurement environment and stakeholders
 - 1.3 Identify the risk criteria of the procurement
 - 1.4 Plan the key stages of the procurement

- 2 Risk identification
 - 2.1 Identify and schedule potential risks and their impacts
 - 2.2 Risk analysis
 - 2.3 Assess risk likelihood and consequences
 - 2.4 Determine risk levels

- 3 Risk assessment
 - 3.1 Undertake risk priority ranking
 - 3.2 Determine risks to be accepted and monitored
 - 3.3 Identify risks to be treated

- 4 Risk treatment
 - 4.1 Evaluate and select risk treatment options
 - 4.2 Prepare risk treatment plans and implementation strategies

- 5 Ongoing monitoring
 - 5.1 Develop schedule for ongoing review

PART 5 - MODULES

MODULE 01 HARDWARE ACQUISITION AND INSTALLATION

1. INTERPRETATION

1.1 The terms and conditions included in this Module 1 form part of the Agreement and apply to the supply of Hardware.

1.2 In this Module, unless the contrary intention appears:

“**Hardware**” means the Product specified in the Agreement, and includes each individual item, unit or component of Hardware (including firmware).

“**Integration**” or “**Integrate**” in respect of the Hardware includes the implementation and setting to work of the Hardware with or within the Principal's system so that it is ready for use by the Principal.

“**Warranty Period**” means for Hardware, the first 365 days after the AAD or any greater period specified in the Agreement Details.

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

2. DELIVERY AND INSTALLATION OF THE HARDWARE

2.1 If specified in the Agreement, the Contractor must install and demonstrate the use of the Hardware in accordance with the Contract Specifications.

2.2 If specified in the Agreement, the Contractor must by the AAD for the Hardware, remove all packing materials used for the delivery of the Hardware to the Site.

3. INTEGRATION AND TRAINING

3.1 The Contractor shall integrate the Hardware and provide training to the Principal as specified in the Agreement.

4. WARRANTY PERIOD

4.1 The Contractor must promptly rectify any Defect that occurs during the Hardware Warranty Period.

5. CONTINUED AVAILABILITY OF HARDWARE

- 5.1** The Contractor warrants that, for a period of three years commencing on the AAD, it shall:
- (a) continue to supply the Hardware and any associated firmware (including replacements, upgrades or attachments); or
 - (b) supply appropriate substitutes for the Hardware if for any reason it is no longer available.
- 5.2** The Contractor warrants that, for a period of three years commencing on the AAD, it will:
- (a) continue to provide support and spare parts for the Hardware and any associated firmware, or any replacement, upgrade or substitute for the Hardware; and
 - (b) if specified in the Agreement, provide training and such other assistance reasonably required by the Principal to enable the Principal to continue to use and maintain the Hardware.
- 5.3** The Contractor must give a minimum of 6 months notice if after 3 years from the AAD of the Hardware the Contractor intends to cease supplying spare parts for the Hardware, to allow the Principal to purchase spare parts to enable its continued use and maintenance of the Hardware.

MODULE 02

HARDWARE MAINTENANCE SERVICES

1. INTERPRETATION

1.1 The terms and conditions included in this Module 2 form part of the Agreement and apply to the provision of Hardware Maintenance Services.

1.2 In this Module, unless the contrary intention appears:

“**Hardware**” means the Product and associated firmware specified in the Agreement and includes each individual item, unit or component of Hardware (including firmware).

“**Hardware Maintenance Services**” means the Services specified in the Agreement in respect of the Hardware and consists of all necessary Preventative Maintenance and/or Remedial Maintenance.

“**Preventative Maintenance**” means the Services required to be performed on a scheduled basis to ensure the preservation of the Hardware in good operating condition.

“**Remedial Maintenance**” means the Services required to be performed, whether on-site or off-site, to restore the Hardware to a condition allowing performance in accordance with the Contract Specifications.

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

2. PERIOD OF SERVICES

2.1 The Hardware Maintenance Services must be provided for the period of the Agreement unless the Agreement is terminated earlier in accordance with the provisions thereof.

2.2 In relation to Hardware purchased under the Agreement, the Commencement Date in respect of the Hardware Maintenance Services shall not occur until the expiry of any relevant Hardware Warranty Period for that Hardware.

3. HARDWARE MAINTENANCE SERVICES

3.1 The Contractor must provide the Hardware Maintenance Services to a standard that ensures continuity of performance of the Hardware in accordance with the Contract Specifications and/or any performance and availability requirements specified in the Service Level Agreement.

3.2 The Principal will co-operate with the Contractor by providing access to the Site and any other facilities as reasonably necessary to enable the Contractor to provide the Hardware Maintenance Services to the required standard.

3.3 Without limiting any other rights of the Principal, the Contractor will promptly rectify any Defects in the Hardware that occur as a result of the provision of the Hardware Maintenance Services during the Hardware Warranty Period.

4. PREVENTATIVE MAINTENANCE

4.1 If Preventative Maintenance Services are specified in the Agreement, the Contractor must ensure that the Preventative Maintenance:

- (a) is carried out in accordance with a Preventative Maintenance schedule agreed between the Parties;
- (b) is consistent with the Principal's operating requirements and the Contract Specifications; and
- (c) includes, as a minimum, preservation of the Hardware in good operating condition, problem detection, systems checks, replacement of unserviceable parts (excluding consumable items), cleaning and where possible lubrication, and adjustment of mechanical and electro-mechanical devices.

5. REMEDIAL MAINTENANCE

5.1 Where the Contractor is required to provide Remedial Maintenance Services, it must, after being notified of a fault or possible fault in the Hardware, promptly restore the Hardware to good working order and shall, as necessary:

- (a) replace or repair parts;
- (b) comply with any response and rectification times specified in the Agreement or the Service Level Agreement;
- (c) to the extent that it is practical, implement measures to minimise disruption to the Principal's operations during maintenance work and perform the Services at times likely to cause the least possible disruption to the Principal's business and in all cases only by prior arrangement with the Principal; and

comply with any other requirements specified in the Agreement or the Service Level Agreement.

6. SPARES, TEST EQUIPMENT AND DIAGNOSTIC ROUTINES

6.1 The Contractor may store Contractor's Documentation, tools and test equipment at the Site as required for the purposes of the Agreement. The Principal agrees not to use any such material without the Contractor's consent.

6.2 Where the Contractor replaces parts of the Hardware:

- (a) the replacement parts must be new or warranted as new unless otherwise agreed by the Principal;
- (b) the replacement parts become the property of the Principal on installation;
- (c) the components that have been replaced become the property of the Contractor and the Contractor must comply with any directions given by the Principal concerning the protection of the Principal's Confidential Information; and
- (d) the Principal must reimburse the Contractor any reasonable and substantiated costs incurred by the Contractor in complying with any directions given under clause 6.2 (c).

6.3 Interchange of parts between the Hardware and any other equipment for any purpose whatsoever must not be carried out without the prior knowledge and consent of the Principal.

6.4 The replacement of any Hardware component does not modify nor vary any of the Contractor's obligations under the Agreement.

6.5 In addition to any other rights the Principal has under the Agreement any Hardware component that arrives damaged or fails to meet the Contract Specifications must be replaced by the Contractor at the Principal's request if the Principal makes the request within 21 days of delivery to the Principal in accordance with the Agreement. The Hardware Warranty Period for any Hardware component will run from the time the replacement Hardware is delivered to the Principal.

- 6.6 The Contractor must maintain up-to-date lists of significant spares, Documentation, tools, test plant and engineering diagnostic routines required for the Hardware Maintenance Services and have sufficient replacement parts available to effect the Hardware Maintenance Services in accordance with the Agreement for the period thereof.
- 6.7 Diagnostic programs designed to check the correct functioning of specified units of Hardware must be run according to the relevant manufacturer's specifications.
- 6.8 The Contractor warrants that it has all necessary facilities and equipment to perform the Hardware Maintenance Services for the period of the Agreement.
7. ENGINEERING CHANGES
- 7.1 The Contractor must implement as part of the Hardware Maintenance Services engineering changes and upgrades designed to improve the safety, performance or reliability of the Hardware and the Principal's system described in the Agreement.
- 7.2 All engineering changes authorised by the manufacturer or supplier and:
- (a) classified by the manufacturer or supplier as mandatory, must be included in the Hardware Maintenance Services and provided to the Principal at no additional cost; or
 - (b) classified by the manufacturer or supplier as discretionary, must be implemented as a Contract Variation.
- 7.3 The Contractor is not liable under this clause 7 for any costs incurred by the Principal, which result directly from the Principal not implementing an engineering change, or upgrade offered to the Principal by the Contractor.
8. MODIFICATION OR ATTACHMENT OF ADDITIONAL EQUIPMENT
- 8.1 Where the Principal acquires additional equipment for attachment to or use in connection with the Hardware maintained by the Contractor, the Contractor must provide all reasonable assistance and co-operation to the Principal and any alternative supplier in effecting the system interfaces involved.
9. REMOVAL OR SUBSTITUTION OF HARDWARE
- 9.1 The Principal may for any reason during the period of the Agreement:
- (a) substitute an item of Hardware of the same or similar type to those covered by the Hardware Maintenance Services; or
 - (b) withdraw an item of Hardware from the Hardware Maintenance Services; by giving to the Contractor not less than 14 days Notice in Writing.
- 9.2 Where the Principal exercises its rights under clause 9.1, the Principal shall indemnify the Contractor against all liabilities or expenses which the Contractor has reasonably and properly incurred as a result of the substitution or removal of the Hardware.
10. MOVEMENT OF HARDWARE
- 10.1 Subject to subclause 10.4, the Principal must give the Contractor at least 30 days Notice in Writing of its intention to relocate from the Site any Hardware being maintained under the Agreement.
- 10.2 Charges for the Hardware Maintenance Services cease on the day the Hardware is decommissioned for relocation and resume on the day following the recommissioning of the Hardware at the new location.
- 10.3 Where the Hardware is portable or may be moved without operational dislocation, the Principal may move the Hardware without prior reference to the Contractor without any reduction of the Contractor's obligations under the Agreement. The Contractor is not responsible for any damage that occurs due to such movement. The Principal must inform the Contractor of the new location of the Hardware concerned.

10.4 If the Hardware is not relocated by the Contractor then the Principal must inform the Contractor of the new location of the Hardware and confirm that the operation of the Hardware conforms to the Contract Specifications.

10.5 If the Contractor dispatches any of the Hardware away from the Site for overhaul or repair then, unless otherwise agreed between the Parties, the Contractor must bear all the costs, including those of packing, carriage and insurance that are incurred in the dispatch, overhaul, repair, return and reinstallation of the Hardware.

11. MAINTENANCE RECORDS

11.1 The Contractor must keep full records of its Hardware Maintenance Services and will provide copies of those records to the Principal within four (4) days of a request.



MODULE 03

LICENSED SOFTWARE

1. INTERPRETATION

1.1 The terms and conditions included in this Module 3 form part of the Agreement for the provision of Licensed Software.

1.2 In this Module, unless the contrary intention appears:

“**Class**” means the class of licence applicable to the Licensed Software specified in the Agreement.

“**Designated Equipment**” means the equipment specified in the Agreement upon which the Licensed Software is installed.

“**Licence**” means the licence granted by the Contractor to the Principal in respect of the Licensed Software under the Agreement.

“**Licensed Software**” means the software specified in the Agreement.

“**Licence Period**” means the period of the Licence specified in the Agreement or if no period is specified the Contractor grants to the Principal a perpetual, royalty-free licence to use the Licensed Software from the AAD in accordance with the Agreement.

“**Software Support Services**” means the Services the Contractor agrees to provide for the Licensed Software, where Module 5 forms part of this Agreement.

“**Warranty Period**” means for Licensed Software, the first 90 days after the AAD or any greater period specified in the Agreement Details.

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

2. SCOPE OF LICENCE

2.1 The Contractor grants to the Principal a non-exclusive Licence of the Class specified in the Agreement to use the Licensed Software on the Designated Equipment (if any) in machine-readable form together with the Documentation for the Licence Period.

2.2 Subject to clause 4.1(f) the Licence granted to the Principal is non transferable.

3. CONTRACTOR'S RIGHTS IN THE LICENSED SOFTWARE

3.1 The Principal acknowledges that ownership in the Licensed Software does not pass to the Principal and the Principal may use the Licensed Software only in accordance with the Agreement.

- 3.2** The Principal agrees that it will not:
- (a) use the Licensed Software contrary to the provisions of clauses 4, 6, or 12 of this Module; or
 - (b) do anything that would prejudice the Contractor's right, title or interest in the Licensed Software except in accordance with its rights under the Agreement.

4. LICENCE RIGHTS

- 4.1** Unless otherwise specified in the Agreement, the Contractor grants the Principal a non-exclusive licence to:

- (a) install the Licensed Software without affecting any applicable warranty provided by the Contractor under the Agreement;
- (b) carry out Acceptance Tests in respect of the Licensed Software;
- (c) use and adapt to the extent reasonably necessary and reproduce the Licensed Software to the extent permitted under the Copyright Act (Cth) 1968 ("the Act"), including but not limited to rights granted to the Principal under sections 47B(3) and sections 47C, 47D, 47E or 47F of the Act. Any provision which is inconsistent with any such subsection or section of the Act will be read down or otherwise deemed to be varied to the extent necessary to preserve the operation of such subsection, section or sections;
- (d) use the Documentation supplied by the Contractor in support of the Principal's use of the Licensed Software;
- (e) make such number of copies of the Licensed Software as are reasonably required for:
 - (i) operational use, backup and security; or
 - (ii) in-house educational and training purposes; and
- (f) transfer the Licence to another agency within the same tier of government as the Principal, subject to giving prior written notice to the Contractor and to the other agency consenting to the terms of the Agreement.

5. WARRANTY PERIOD

- 5.1** Without limiting any other rights of the Principal, the Contractor must promptly rectify any Defect in the Licensed Software that occurs during the Warranty Period in accordance with clause 7.2 of Part 2 of the Agreement.

6. PROTECTION AND SECURITY OF THE LICENSED SOFTWARE

- 6.1** The Principal will:
- (a) if and to the extent required by the Order, maintain records of the location of all copies of the Licensed Software;
 - (b) refrain from altering or removing a copyright statement or other notice of ownership of Intellectual Property rights which accompanies the Licensed Software; and

ensure that, prior to the disposal of any media, any Licensed Software contained on it has been erased or destroyed.

- 6.2** The Principal will upon reasonable written notice from the Contractor allow the Contractor to make investigations in any reasonable manner to verify the Principal's compliance with the Licence.

7. UPDATES AND NEW RELEASES

- 7.1** The Contractor must offer the Principal all Updates to and New Releases of the Licensed Software during the Licence Period. The Contractor warrants that the Update or New Release is capable of providing the function and performance specified in the Contract Specifications

- 7.2** The Contractor must provide training at the costs set out in the Order to enable the Principal including its Personnel, to operate the Update or New Release on the Designated Equipment.
- 7.3** The Principal is to notify the Contractor if it rejects the offer by the Contractor, of an Update or New Release. The Contractor must continue to maintain the version of the Licensed Software which the Principal is using until the expiry of 18 months (or such other period agreed in writing between the Parties) from the date of the formal rejection of the Update or New Release by the Principal provided that the Principal continues to possess a valid licence for that version of the Licensed Software.
- 7.4** If the Principal accepts the Update or New Release:
- (a) the Contractor if requested by the Principal shall install an Update or New Release of the Licensed Software, co-ordinating and scheduling such installation with the Principal. The cost of such installation services (if any) will be on a Time and Materials basis;
 - (b) the Contract Specifications of the Licensed Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Contract Specifications;
 - (c) the Principal must upon request return to the Contractor all copies of the original Licensed Software or the part that has been superseded by the Update or New Release or otherwise deal with all such copies in accordance with the Contractor's directions;
 - (d) the Contractor must offer to the Principal Updates for the Licensed Software including any enhancements or modifications to the Licensed Software as they become available at no additional charge;
 - (e) the Contractor must offer to the Principal New Releases for the Licensed Software including for any enhancements or modifications to the Licensed Software as they become available at no charge where the Contractor makes such New Releases generally available to other customers under similar circumstances at no charge; and where there is a charge, the charges shall be as specified in the Agreement;
 - (f) the Contractor must offer to the Principal any Updates or New Releases as they become available for Licensed Software during any Software Support Services that it provides to the Principal for the Licensed Software; and
 - (g) the Contractor must specify in the Agreement any additional software that it considers does not fall within an Update or New Release and which it intends to charge the Principal for during the period of the Agreement.

8. CHANGE OF DESIGNATED EQUIPMENT

- 8.1** If use of the Licensed Software is specified in the Agreement to be restricted to use on Designated Equipment, the Principal may:
- (a) by way of Change Request, transfer the Licensed Software to alternative equipment of substantially the same purpose, capacity and performance standards; and
 - (b) use the Licensed Software on any back-up hardware while the Designated Equipment is for any reason temporarily inoperable.
- 8.2** If the Principal requires the Contractor to assist with the transfer of the Licensed Software, then a Change Request is to be raised.

9. TERMINATION

- 9.1** The Principal may terminate the Licence for convenience by providing the Contractor with 30 days prior Notice in Writing of its intention to terminate the Licence, in which case no refund will be available.

9.2 Unless earlier terminated in accordance with the Agreement or otherwise surrendered by the Principal, the Licence remains in force for the duration of the Licence Period.

10. CONSEQUENCES OF TERMINATION OF LICENCE

10.1 If specified in the Agreement, the Principal will after termination of the Licence destroy or return to the Contractor all copies of the Licensed Software and all related Documentation, save that the Principal may retain a copy of the Licensed Software and its related Documentation as may be reasonably required by the Principal to comply with any relevant Statutory Requirements.

10.2 The Principal 's obligation to make any payments under the Agreement for use of the Licensed Software shall cease after the date of termination or revocation of the Licence.

11. NEW LICENCE

11.1 Where the Principal wishes to terminate the Licence and

- (a) convert to a different Class of Licence that is offered by the Contractor in respect of the Licensed Software; and
- (b) the Contract Price agreed for the new Licence is equal to or greater than the Contract Price that applies to the terminated Licence; the Parties will establish a new Contract and the Contractor shall allow the Principal to set-off against the new Licence the amount that is payable for the balance of the Licence Period by the Principal in respect of the new Licence, an amount that, on a pro-rata basis, is attributable to the balance of the Licence Period.

12. REVERSE ENGINEERING

12.1 Subject to the Agreement, the Principal shall not, in contravention of the Copyright Act 1968 (Cth), reverse assemble or reverse compile the Licensed Software in whole or in part.

MODULE 04

DEVELOPMENT SERVICES

1. INTERPRETATION

1.1.1 The terms and conditions included in this Module form part of the Agreement and apply for the provision of Development Services.

1.2 In this Module, unless the contrary intention appears:

“**Data Dictionary**” means a reference tool that describes each data item that may include field names, number of characters, data type, number of decimal places, or a description of the purpose of each field of data.

“**Designated Operating Environment**” means the particular operating environment specified in the Agreement in which the Software Solution is designed to be used.

“**Design Specification**” means the specification to be provided in accordance with clause 7.

“**Development Services**” means the Services specified in the Agreement and provided by the Contractor to develop the Software Solution.

“**Quality Assurance**” means a set of processes and procedures used to ensure that the Software Solution meets specified criteria with respect to quality.

“**Software Solution**” means the software solution or Product specified in the Agreement to be created by the Contractor for the Principal.

“**Software Support Services**” means the Services the Contractor agrees to provide for the Software Solution, where Module 5 forms part of this Agreement.

“**User**” means a person who may use the Products and/or Services for the purpose of performing their work.

“**Warranty Period**” means for the Software Solution, the first 365 days after the AAD or any greater period specified in the Agreement Details.

1.2 Other capitalised words and expressions used in this Module are contained in Part 3 of the Agreement.

2. PERIOD OF SERVICES

2.1 The Development Services must be provided for the period of the Agreement unless the Agreement is earlier terminated in accordance with the provisions thereof.

3. DEVELOPMENT SERVICES

3.1 The Contractor must provide the Development Services in accordance with the Agreement.

4. IMPLEMENTATION PLANNING STUDY

- 4.1 The Contractor shall prepare an implementation planning study in accordance with clause 11.6 of Part 2 of the Agreement.

5. PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 5.1 The Contractor must prior to performing the Development Services prepare a PIPP for the approval of the Principal, which when approved will form part of the Contract Specifications.
- 5.2 Without limiting the effect of clause 5.1, the Contractor must perform the Development Services at the times and in the manner set out in the PIPP.
- 5.3 A Party may periodically review the PIPP. A Party must not unreasonably refuse a Change Request for an adjustment to the PIPP.

6. SCOPE AND INCLUSIONS

- 6.1 The Contractor must in accordance with the PIPP implement all activities set out in the PIPP for the performance of the Development Services and perform any other Services specified in the Agreement.
- 6.2 The PIPP for the Development Services may include but is not limited to the following Stages:
- (a) assessment and definition of the:
 - (i) Principal's existing system or the Designated Operating Environment, if necessary;
 - (ii) Principal's goals, requirements and expectations in respect of the Software Solution which shall include a statement of:
 - (A) the Contractor's understanding of the Principal's and/or User's experience and requirements in relation to the Software Solution;
 - (B) the objectives to be met by the Contractor; and
 - (C) the scope of the Software Solution;
 - (iii) required Deliverables;
 - (iv) resources required (including any resources to be made available by the Principal); and
 - (v) complexity of the project;
 - (b) a feasibility study in which the Contractor makes the determination (and includes any appropriate recommendations) as to whether the Contractor's Development Services proposals are capable of meeting Principal and/or User's needs and expectations taking into account budgetary, operational, technical and time considerations;
 - (c) development of a strategy for the creation of the Software Solution that is appropriate for the Principal's needs and its User population covering all appropriate planning and timetabling issues associated with the Development Services including:
 - (i) identification of the Services to be performed;
 - (ii) identification and procurement of necessary Products;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) staging of the project;
 - (v) development of a Milestones and payment schedule; and
 - (vi) implementation of the Services;
 - (d) Development of a Design Specification for the Software Solution which shall be completed and approved in accordance with clause 7;
 - (e) Development of the Software Solution (including prototyping if applicable) in accordance with the methodology in clause 8;
 - (f) Testing and acceptance of the Software Solution in accordance with clause 10.5 of Part 2 of the Agreement.

7. DESIGN SPECIFICATION

- 7.1 The Contractor must prepare a written Design Specification for the Software Solution by the date specified in the PIPP.
- 7.2 The Contractor agrees that the Design Specification for the Software Solution must:
- (a) be based on and be consistent with the Contract Specifications; and
 - (b) enable the Software Solution to be installed in the Designated Operating Environment.
- 7.3 The Design Specification must provide a detailed technical explanation of how the Software Solution will provide the functions specified in the Contract Specifications, including, as applicable, details of processes, visual displays, screen layouts, system flowcharts, user interfaces, data flow diagrams, estimates of transaction and data volumes, prototypes and any associated Data Dictionary.
- 7.4 The Contractor must keep the Principal informed at all stages while the Design Specification is being prepared so that the Principal will have a reasonable knowledge of the content of the Design Specification by the time the Design Specification is delivered by the Contractor for approval.
- 7.5 If the Principal has any objection to the Design Specification provided by the Contractor it must notify the Contractor promptly of any alterations it reasonably requires. The Contractor must not unreasonably refuse to amend the Design Specification to take account of the Principal's reasonable requirements.
- 7.6 The Design Specification will, when approved by the Principal become part of the Contract Specifications.
- 7.7 The Contractor acknowledges that the Principal is relying on the Contractor's expertise in preparing the Design Specification.

8. METHODOLOGY

- 8.1 The Contractor's methodology for the development of the Software Solution must as a minimum:
- (a) identify and control software components of, and changes to, the Software Solution to maintain the integrity and traceability of the Software Solution at all stages of the development;
 - (b) ensure concurrent control, development and supply of Documentation relating to the Software Solution;
 - (c) control the issue of development revisions of the Software Solution and associated Documentation;
 - (d) identify the extent of the performance of the Contractor in accordance with the Contract Specifications;
 - (e) ensure that the Software Solution is developed and documented in a way which would enable future modification without further reference to the Contractor;
 - (f) reference and document procedures for corrective action in respect of the Software Solution and associated Documentation prior to acceptance including:
 - (i) adoption of a system to report problems and deficiencies;
 - (ii) examination of problem and deficiency reports to determine their causes, and to prepare corrective measures;
 - (iii) analysis of deficiency trends, to ensure the Software Solution conforms to the Contract Specifications;
 - (iv) review of corrective measures, to determine their effectiveness; and
 - (v) provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance;

- (g) include a Quality Assurance and reporting program that is carried out through each stage of the design and development of the Software Solution and involves continually monitoring and assessing the quality of the Software Solution against criteria set out in the Contract Specifications; and
- (h) adhere to any other requirements specified in the Agreement.

9. SOURCE CODE

- 9.1 Where the Agreement states that ownership of the Software Solution is to be retained by the Contractor, the Contractor agrees to enter into an escrow arrangement, at the request and expense of the Principal, substantially in the form specified in Schedule 11, unless it is expressly stated in the Agreement that the source code is not to be placed in escrow.
- 9.2 Where the Agreement states that ownership of the Software Solution is to pass to the Principal, the Contractor must deliver or ensure the delivery of:
 - (a) the Software Solution source code suitable for compilation together with Documentation to enable the Principal to amend the source code if necessary; and
 - (b) if specified in the Agreement, all source code for software tools used in the development of the Software Solution where such software tools are required for the Principal to operate and support the Software Solution.
- 9.3 The source code must be provided in a format and on a medium, which is suitable for compilation and use in the Designated Operating Environment.
- 9.4 Interim copies of the source code must be delivered by the Contractor to the Principal at the times specified in the PIPP or at any time upon request by the Principal.
- 9.5 The Contractor agrees to inform the Principal as to the purpose and use of the software tools, object libraries or other devices or methodologies owned by the Contractor or any other party, in the production of the Software Solution.
- 9.6 If the software tools, object libraries or other devices or methodologies are required to maintain or enhance the Software Solution, the Contractor must at the Principal's request grant a licence, as specified in the Agreement, to the Principal to use those devices for the purpose of maintaining and enhancing the Software Solution.

10. USE PRIOR TO ACCEPTANCE

- 10.1 The Principal may not use the Software Solution for its business purposes without prior notification to and consent of the Contractor prior to completion of Acceptance Tests.

11. WARRANTY PERIOD FOR THE SOFTWARE SOLUTION

- 11.1 The Contractor will promptly rectify any Defect in the Software Solution that occurs during the Warranty Period.

12. UPDATES AND NEW RELEASES

- 12.1 The Contractor must make as they become available Updates and New Releases for Developed Software for the costs (if any) specified in the Agreement. Where there is a cost, the charges shall be on a Time and Materials basis.
- 12.2 The Contractor if requested by the Principal shall install an Update or New Release of the Developed Software, coordinating and scheduling such installation with the Principal. The cost of such installation services (if any) will be on a Time and Materials basis.
- 12.3 If requested to do so by the Principal, the Contractor must:
 - (a) demonstrate the extent to which the Update or New Release is capable of providing the function and performance specified in the Contract Specifications; and
 - (b) provide training at the costs set out in the Agreement to enable the Principal including its Personnel, to operate the Update or New Release on the Designated Equipment.

- 12.4 The Principal is not obliged to accept an Update or New Release offered by the Contractor pursuant to this clause 12.
- 12.5 The Principal is to notify the Contractor if it rejects the offer by the Contractor of an Update or New Release. The Contractor must continue to maintain the version of the Developed Software which the Principal is using until the expiry of 18 months (or such other period agreed in writing between the Parties) from the date of the formal rejection of the Update or New Release by the Principal.
- 12.6 If the Principal accepts the Update or New Release:
- (a) the Contractor must deliver and if required by the Principal install the Update or New Release at no additional charge to the Principal;
 - (b) the Contract Specifications will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Contract Specifications.
- 12.7 The Contractor shall provide any Updates or New Releases as they become available for Developed Software during any Software Support Services that it provides to the Principal.

13. CONTRACTOR'S WARRANTIES

- 13.1 The Contractor warrants that it will comply with all licensing terms and conditions regulating the use of any software or development tools in providing the Development Services.
- 13.2 Where the ownership of the Software Solution passes to the Principal, the Contractor warrants that it will:
- (a) neither permit or tolerate the making of any copies of the Software Solution without first obtaining the Principal's consent;
 - (b) institute measures within the Contractor's organisation to prevent the making or use of unauthorised copies of the Software Solution which must include detection measures to verify compliance and appropriate disciplinary action against the Contractors' Personnel for the contravention of these measures; and
 - (c) inform its Personnel of their legal responsibilities in relation to the protection and use of the Software Solution.

MODULE 05

SOFTWARE SUPPORT SERVICES

1. INTERPRETATION

1.1 The terms and conditions included in this Module form part of the Agreement and apply for the provision of Software Support Services.

1.2 In this Module, unless the contrary intention appears:

“**Designated Equipment**” means the equipment specified in the Agreement upon which the Supported Software is to be installed and/or used.

“**Problem Log**” means a brief description of a Defect in a chronological record.

“**Service Levels**” means the performance metrics, indicators and adjustments for the Software Support Services specified in the Service Level Agreement.

“**Software Support Services**” means the Services specified in the Agreement that the Contractor agrees to provide in respect of the Supported Software.

“**Supported Software**” means the software specified in the Agreement to be supported by the Contractor including any Updates, New Releases, modifications, enhancements and any material relating to the Supported Software such as, but not limited to, Documentation, flow charts, logic diagrams and listings.

“**Support Service Fees**” means the fees payable to the Contractor for supplying the Support Services to the Principal's Site(s) specified in the Agreement, which may be on a monthly, quarterly or yearly basis or any other term that is specified in the Agreement.

“**Work-around Solution**” means the workaround solution proposed by the Contractor as an interim procedure or alternative that will enable the Principal to continue operations until a Defect has been corrected.

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

2. PERIOD OF SERVICES

2.1 The Software Support Services must be provided for the period of the Agreement unless earlier terminated in accordance with the provisions thereof. The Software Support Services shall commence at the expiry of the relevant Warranty Period for the Supported Software unless otherwise stipulated to the contrary in the Agreement. Defect correction and the implementation of Updates and New Releases will be provided free of charge during the Warranty Period unless otherwise specified in the Agreement.

3. SOFTWARE SUPPORT SERVICES

3.1 The Contractor must provide the Software Support Services in accordance with the Agreement.

- 3.2** The Contractor agrees that the Software Support Services must as a minimum ensure that the:
- (a) Supported Software conform to and perform in accordance with the Contract Specifications;
 - (b) Supported Software performs in accordance with the Service Levels; and
 - (c) Documentation is provided in accordance with the Agreement.
- 3.3** Software Support Services do not include correction of:
- (a) Defects or errors caused by the operation of the Supported Software or the Designated Equipment in a manner contrary to the Contract Specifications;
 - (b) Defects of errors caused by modifications or alterations of the Supported Software not authorised by the Contractor;
 - (c) Defects or errors caused by equipment maintenance not provided by the Contractor;
 - (d) Defects of errors caused by computer programs other than the Supported Software; and
 - (e) Data Correction.
- 3.4** Any additional services provided that are not included in Software Support Services supplied by the Contractor may be supplied on a Time and Materials basis.

4. PRINCIPAL'S OBLIGATIONS

- 4.1** The Principal must, if practicable, provide the Contractor with:
- (a) access to the Principal's premises during normal working hours or as otherwise agreed as is necessary for the Contractor to supply the Software Support Services; and
 - (b) information, in the Principal's possession or control that the Contractor reasonably requires to supply Software Support Services.

5. DEFECTS

- 5.1** If the Principal identifies and notifies the Contractor of a Defect in the Supported Software during the period of the Agreement, the Contractor will as soon as possible (and, where relevant, within the Service Levels) remedy the defect.
- 5.2** To remedy the Defect, the Contractor shall, before the response times and/or resolution times referred to in the Service Levels have expired, take such measures as are appropriate in all the circumstances (including a Work-around Solution) to enable the Principal to continue to productively use the Supported Software.
- 5.3** All Software Support Services carried out or supplied by the Contractor pursuant to clause 3.1 are warranted to the same extent as the Supported Software from the date the work was completed or the part was replaced as the case may be.

6. DEFECT LOGGING

- 6.1** On receipt of notice of a Defect by the Principal under clause 5.1, the Contractor must assign an identification number to the Defect, which will be used by the Parties to identify the Defect.
- 6.2** The Contractor must maintain an accurate Problem Log for the period of the Software Support Services of all reported Defects and provide the Principal with a call tracking number for problem identification and follow-up.

7. SERVICE LEVELS

- 7.1** If the Contractor does not achieve the required minimum Service Levels, then the Principal shall be entitled to any performance rebates specified in the Service Level Agreement or the Agreement.
- 7.2** The Principal may conduct a review of the Service Levels targets on an annual basis or as otherwise agreed by the Parties in writing during the Agreement. The Contractor must not unreasonably refuse to agree to a Change Request to the Service Levels.

8. TRANSITION

- 8.1** On termination and/or expiry of the Support Services, the Contractor must render any reasonable assistance to the Principal on the same terms as the Agreement to the extent necessary to effect an orderly assumption by a replacement contractor of the performance of the Contractor's obligations under the Agreement.



MODULE 06

IT PERSONNEL

1. INTERPRETATION

- 1.1 The terms and conditions included in this Module form part of the Agreement and apply for the provision of IT Personnel Services.
- 1.2 In this Module, unless the contrary intention appears:
“**IT Personnel**” means IT personnel supplied by the Contractor.
“**IT Personnel Services**” means the service of providing IT Personnel by the Contractor, as specified in the Agreement.
- 1.3 Other capitalised words and expressions used in this Module are contained in Part 3 of the Agreement.

2. ENGAGEMENT

- 2.1 The Contractor agrees to supply IT Personnel Services to the Principal in accordance with the Agreement.

3. IT PERSONNEL SERVICES

- 3.1 The Contractor shall supply suitably qualified IT Personnel to perform the Services required by the Principal. The Contractor is responsible for ensuring the suitability and capability of any IT Personnel.
- 3.2 The Contractor shall ensure that all IT Personnel comply with any directions of the Principal as to the nature and scope of the Services, including working during normal working hours of the Principal, unless otherwise notified by the Principal.

4. SALARIES AND WAGES

- 4.1 The Contractor undertakes to comply with all legislative, regulatory and other government requirements for itself and any IT Personnel, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and sick leave, and the Contractor acknowledges that it is solely responsible for these obligations.
- 4.2 The Contractor agrees to indemnify the Principal in relation to all expenses relating to the employment of any IT Personnel.
- 4.3 The Contractor agrees that the IT Personnel supplied by the Contractor to the Principal will not be taken to be nor will they represent that they are, the employees, officers and/or agents of the Principal.

5. VARIATION OF SERVICES

- 5.1 The Principal may request a variation within the general scope of the Services to be performed by the IT Personnel by way of a Change Request.

6. PERIOD OF SERVICES

- 6.1 The Contractor warrants that the IT Personnel shall provide the Services for the period specified in the Agreement unless terminated earlier in accordance with clause 14.

7. PRICE

- 7.1 In respect of the supply of IT Personnel Services by the Contractor, the applicable hourly rate (Rates) of the IT Personnel shall be set out in Schedule 3 or otherwise as specified in the Agreement.

8. CORRECTLY RENDERED INVOICE

- 8.1 For the performance of Services the Contractor shall provide to the Principal a Correctly Rendered Invoice that:

- (a) states the applicable Order number, identifies the Services performed, the name of any IT Personnel involved, and hours worked by the IT Personnel; and
- (b) is supported by records of time spent by the IT Personnel performing the Services.

- 8.2 Payment of the Price for the supply of the IT Personnel shall be subject to the satisfactory performance of the IT Personnel of the Services in accordance with the Agreement, the failure of which may be disputed by the Principal in accordance with clause 12.2.4, Part 2 of the Agreement.

- 8.3 The Principal shall pay the amount due to the Contractor within 30 days of receipt of a Correctly Rendered Invoice.

9. INTERESTS OF THE PRINCIPAL

- 9.1 The Contractor must ensure that the IT Personnel supplied to perform the Services shall use their best endeavours to promote the interests and welfare of the Principal.

10. PRINCIPAL'S OBLIGATIONS

- 10.1 The Principal shall, where relevant, ensure that the IT Personnel have full and safe access to the Principal's premises, a safe system of work and any necessary equipment, materials and information to provide the Services.

11. DISCLOSURE BY CONTRACTOR

- 11.1 The Contractor shall promptly disclose in writing to the Principal any matters materially affecting the IT Personnel's ability to perform any of its obligations under the Agreement, including:

- (a) the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Contractor; and
- (b) matters relating to the commercial, technical or financial capacity of the Contractor or of any IT Personnel.

12. CONFIDENTIALITY

- 12.1 The Contractor shall take all reasonable steps to ensure that the IT Personnel do not make public or disclose the Principal's Confidential Information or use such Confidential Information other than for the purposes of performing the Services.

- 12.2 The Principal may at any time notify the Contractor to require any IT Personnel to execute a Deed of Confidentiality substantially in the form of Schedule 9 of the Agreement relating to the Principal's Confidential Information.

- 12.3 The Contractor shall agree for such a Deed of Confidentiality to be executed promptly, except where:
- a) it can shown to the Principal's satisfaction that the Contractor has entered into deeds of employment with the IT Personnel which include substantially the same confidentiality arrangements as contained in Schedule 9 of the Agreement; and
 - b) the Contractor has delivered to the Principal a copy of the relevant deeds of employment binding the IT Personnel.

13. INDEMNITY

- 13.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:
- (a) any breach by the IT Personnel of the Deeds of Confidentiality required by the Principal to be entered into by the IT Personnel;
 - (b) any proceedings brought by the Contractor or any IT Personnel for the purpose of changing the Contractor's or the IT Personnel's status to that of employee of the Principal; and
 - (c) any proceedings brought by any IT Personnel against the Principal related to the termination of the Services.

14. TERMINATION

- 14.1 The Principal may instruct the Contractor to terminate the supply of IT Personnel Services by the Contractor by giving 5 business days Notice in Writing to the Contractor (Notice Period).
- 14.2 Notwithstanding any other provision in the Agreement, the Contractor acknowledges and agrees that the Principal's obligations to make any payments under the Agreement for the provision of the IT Personnel or any associated costs related to the provision of the IT Personnel Services shall cease after expiry of the above Notice Period.



MODULE 07

PROFESSIONAL SERVICES

1 INTERPRETATION

- 1.1** The terms and conditions included in this Module form part of the Agreement and apply for the provision of Professional Services.
- 1.2** In this Module, unless the contrary intention appears:
- “**Professional Services**” means the Services specified in the Agreement to be supplied by the Contractor to the Principal.
- 1.3** Other capitalised words and expressions used in this Module are defined in Part 3 of the Agreement.

2 PERIOD OF SERVICES

- 2.1** The Professional Services shall be provided for the period of the Agreement.

3 PROFESSIONAL SERVICES

- 3.1** The Contractor must provide the Professional Services in accordance with the Agreement.
- 3.2** Unless otherwise specified in the Agreement and in addition to the requirements of clause 9.2, Part 2 of the Agreement, the Contractor must ensure that the Specified Personnel must not, during the period of the Professional Services, be engaged on any work other than the Professional Services, without the consent of the Principal.

4 PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 4.1** If specified in the Agreement, the Parties must complete a Project, Implementation and Payment Plan (PIPP) for the approval of the Principal, which when approved shall form part of the Contract Specifications.
- 4.2** Without limiting the effect of clause 3.1, the Contractor must perform the Professional Services at the times and in the manner set out in the PIPP.
- 4.3** A Party may periodically review the PIPP. A Party must not unreasonably refuse a Change Request for an adjustment to the PIPP.

1. INTERPRETATION

1.1 The terms and conditions included in this Module 8 form part of the Agreement and apply for the provision of Data Management Services.

1.2 In this Module, unless the contrary intention appears:

“**Data Cleansing**” means the Data Management Services set out in clause 5.

“**Data Conversion and Migration**” means the Data Management Services set out in clause 7.

“**Data Management Services**” mean the Services specified in the Agreement to be provided by the Contractor to the Principal in respect of the Principal’s Data, which includes Data Cleansing, Data Conversion and Migration and Data Warehousing.

“**Data Migration Software**” means the software created or procured for the purposes of clause 7.2(d).

“**Data Warehouse**” means an enterprise-wide framework for managing informational data within an organisation.

“**Data Warehousing**” means the management of informational data and includes the Data Management Services specified in clause 10.

“**Principal’s Data**” means the data specified in the Agreement.

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

2. PERIOD OF SERVICES

2.1 The Data Management Services shall be provided for the period of the Agreement unless terminated earlier in accordance with the provisions of the Agreement.

3. DATA MANAGEMENT SERVICES

3.1 The Contractor must provide the Data Management Services specified in the Agreement in accordance with the Contract Specifications and any Service Level Agreement.

4. PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

4.1 The Contractor, in consultation with the Principal shall, prior to performing the Data Management Services, prepare a PIPP for the approval of the Principal, which when approved shall form part of the Contract Specifications.

4.2 Without limiting the effect of clause 3.1, the Contractor shall perform the Data Management Services at the times and in the manner set out in the PIPP.

4.3 A Party may periodically review the PIPP. A Party must not unreasonably refuse a Change Request for an adjustment to the PIPP.

5. DATA CLEANSING

5.1 If the Agreement states that Data Cleansing is to be performed by the Contractor, the Contractor must achieve an agreed level of accuracy and consistency as specified in the Contract Specifications for the Principal's Data by:

- (a) eliminating duplicate records;
- (b) correcting misspellings and errors;
- (c) ensuring that there are consistent descriptions, punctuation, and syntax; and
- (d) resolving any other accuracy, omission and consistency issues in relation to the content specified in the Agreement as the Contractor's responsibility.

5.2 If specified in the Agreement, the Contractor must conduct an analysis of the Principal's Data and provide to the Principal such other report specified in the Agreement which may include a report of the trends within the Principal's business, industry, and client base.

5.3 The Principal shall perform its responsibilities or tasks related to the Data Cleansing in accordance with the Agreement.

6. PRINCIPAL'S DATA FOR MIGRATION

6.1 If specified in the Agreement, the Principal must subject to clause 7.2(c) by the date and in the manner specified in the PIPP, extract and provide the Principal's Data to the Contractor for Data Migration and Conversion.

6.2 In addition to any other rights which the Contractor has or may accrue, the Contractor is not liable for any delays occasioned by the Principal failing to meet its obligations under clause 6.1.

7. DATA CONVERSION AND MIGRATION

7.1 Data Conversion and Migration performed by the Contractor must be performed in accordance with the PIPP, be consistent with the Contract Specifications, and includes:

- (a) implementation of all activities set out in the PIPP for the conversion and migration of the Principal's Data;
- (b) performance of any other Services specified in the Agreement;
- (c) all such other things within the parties agreed roles and responsibilities under the Agreement necessary to ensure the successful conversion and migration of the Principal's Data.

7.2 The PIPP for Data Conversion and Migration may include the following Stages:

- (a) assessment and definition of the:
 - (i) Principal's existing System;
 - (ii) Principal's Data migration goals;
 - (iii) required Deliverables; and
 - (iv) the complexity of the project, user experience and requirements.
- (b) development of a Data Conversion and Migration strategy that is appropriate for the Principal's needs and its user population covering all appropriate planning and timetabling issues associated with the Data Conversion and Migration including:
 - (i) identification of the Services to be performed;
 - (ii) identification and procurement of necessary Products;
 - (iii) allocation of responsibilities within each Party's organisation;

- (iv) staging of the project;
 - (v) development of a Milestones and payment schedule; and
 - (vi) implementation of the Services.
- (c) preparation/pre-migration which may include recovering data, designing extraction and functional specifications, and developing contingency arrangements should the migration of the Principal's Data not be successful;
- (d) procurement or design and development of relevant software and systems to effect the Data Conversion and Migration. Orders for the licences and development work for this Stage are to be placed under Module 3 (Licensed Software), or Module 4 (Development Services) as the project requires;
- (e) migration including installation of the migrated data including as applicable development of associated Documentation and training of users; and
- (f) Testing and acceptance of the migrated data in accordance with clause 10.5, Part 2 of the Agreement to ensure that the conversion and migration of the Principal's Data has been successful.

8. CONTRACTOR'S TOOLS AND METHODOLOGIES

8.1 Where the Data Migration Software has been produced using software tools, object libraries or other devices or methodologies owned by the Contractor or any other party, the Contractor shall inform the Principal as to the nature and use of those devices in the production of the Data Migration Software.

8.2 Where the tools, object libraries or other devices or methodologies are required to maintain or enhance the Data Migration Software, if required by the Principal and specified in the Agreement, the Contractor shall provide the Principal with a licence, to use those devices for the purpose of maintaining and enhancing the Data Migration Software.

9. MIGRATED DATA WARRANTY

9.1 Subject to clause 9.2, the Contractor warrants that at the AAD for the Data Management Services, the Principal's Data, when fully migrated, will accurately reflect the data that existed prior to migration. The Contractor is not responsible for any errors or omissions that are contained in the Principal's Data that it is not required to correct in the Data Management Services.

9.2 In the event that the Principal's Data is amended or otherwise edited or enhanced by the Contractor in the course of and as part of the Data Management Services, the Contractor warrants that the Principal's Data when migrated in accordance with the Agreement complies with the Contract Specifications.

9.3 Unless the Parties agree otherwise, the Contractor must perform the Data Management Services in accordance with clause 3.

10. DATA WAREHOUSING

10.1 The Contractor must perform Data Warehousing in accordance with the PIPP and implement all activities set out in the PIPP for the establishment of a Data Warehouse and subject to clause 10.3(e), manage the Data Warehouse so established.

10.2 The Contractor shall, unless otherwise specified in the Agreement, ensure that the Data Warehouse:

- (a) provides a consolidated view of the Principal's enterprise data;
- (b) promotes data integration between people, applications, and processes in a way which:
 - (i) ensures access to all of the Principal's enterprise data, including legacy and relational data sources;

- (ii) enables data and information to be extracted from various production data sources either as they are generated or in periodic stages, as specified in the Contract Specifications;
- (iii) ensures that the Principal's Data can be delivered to anyone in the Principal's organisation anytime and anywhere or as otherwise specified in the Contract Specifications;
- (c) simplifies, cleanses, and enriches the Principal's Data producing high-quality information to meet all Principal organisational reporting requirements for all levels of users;
- (d) is specifically structured for dynamic queries, facilitates analytical processing and encourages widespread ad hoc reporting;
- (e) enables the Principal to run efficient queries over data that originally came from different sources;
- (f) improves query performance and response times;
- (g) significantly reduces the expenses incurred by the Principal per query;
- (h) reduces data processing from the Principal's operational environment; and
- (i) performs any other function specified in the Contract Specifications and the Agreement.

10.3 The PIPP for Data Warehousing may include the following Stages:

- (a) assessment and definition of the:
 - (i) Principal's existing System;
 - (ii) Principal's Data Warehousing goals;
 - (iii) required Deliverables; and
 - (iv) the complexity of the project, user experience and requirements.
- (b) development of a Data Warehousing strategy that is appropriate for the Principal's needs and its user population covering all appropriate planning and timetabling issues associated with the Data Warehousing including:
 - (i) identification of the Services to be performed;
 - (ii) identification and procurement of necessary Products;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) staging of the project;
 - (v) development of a Milestones and payment schedule; and
 - (vi) implementation of the Services.
- (c) Design, and development of the Data Warehouse architecture (if applicable including prototyping) under Module 4 (Development Services) representing the overall structure of the data, communication, processing and presentation of the data that is required for end-user computing within the Principal's organisation.
- (d) Testing and acceptance of the Data Warehouse in accordance with clause 10.5, Part 2 of the Agreement; and
- (e) if specified in the Agreement, management of the Data Warehouse.

MODULE 09 TELECOMMUNICATIONS SERVICES

1. INTERPRETATION

1.1 The terms and conditions included in this Module 9 form part of the Agreement and apply for the provision of Telecommunications Services.

1.2 In this Module 9, unless the contrary intention appears:

“**Back Billing Period**” means a period of 90 days from the date that charges are incurred by the Principal except where a greater period is approved by the Principal and specified in the Agreement.

“**Contractor Software**” means all software:

- (a) in which the Intellectual Property rights are owned by the Contractor prior to their use in performing the Telecommunications Services;
- (b) which are developed by or for the Contractor independently of the Agreement;
- (c) which the Contractor can reasonably demonstrate was developed at its or their 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.

“**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 Agreement.

“**Event**” means, in the context of this Module 9 of the Agreement, a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time. An Event is limited to:

- (a) natural events such as fire, flood or earthquake; or
- (b) national emergency or war,

and does not include:

- (c) events such as cable cuts; or
- (d) acts of terrorism or cyberterrorism in circumstances where the security obligations of the Contractor are required to protect against such attacks.

“**Network Boundary**” has the meaning given to it in section 22(4) of the *Telecommunications Act 1997* (Cth), excluding equipment dedicated to providing the Telecommunications Services to the Principal and situated on the premises of the Principal (such as dedicated switches and routers) provided that nothing in the Agreement causes the definition of network boundary to be altered by agreement between the Parties in accordance with section 22(6) of the *Telecommunications Act 1997* (Cth).

“**Service Levels**” means the performance metrics, indicators and adjustments for the Telecommunications Services specified in the Service Level Agreement.

“**Standard Form of Agreement**” means the Contractor’s standard form of agreement formulated for the purposes of section 479 of the *Telecommunications Act* (Cth).

“**Telecommunication Services**” means those telecommunication services identified in the Agreement, and more fully described in the catalogue of Services set out in Schedule 3.

“**Transition-In Plan**” has the meaning given to it by clause 15.1 of this Module 9.

“**Transition-In Services**” has the meaning given to it by clause 15.1 of this Module 9.

“**Transition-Out Plan**” has the meaning given to it by clause 16.5 of this Module 9.

“**Transition-Out Services**” has the meaning given to it by clause 16.2 of this Module 9.

“**User**” means a user authorised by the Principal to use the Telecommunication Services.

- 1.3 Definitions of other capitalised words and expressions used in this Module and not defined in clause 1.2 are contained in Part 3 of the Agreement.

2. PERIOD OF SERVICES

- 2.1 The Telecommunication Services shall be provided for the period specified in the Agreement Details unless terminated earlier in accordance with the Agreement.

3. TELECOMMUNICATION SERVICES

- 3.1 The Telecommunications Services shall be provided at the Sites or via the links specified in the Agreement.

- 3.2 The Contractor shall provide the Telecommunication Services with sufficient capacity, availability and quality during the period specified in the Agreement Details in accordance with the requirements of the Service Level Agreement and the Contract Specifications.

- 3.3 The Contractor must monitor Telecommunication Services at all times to ensure availability to the Principal in accordance with the Service Levels.

- 3.4 If requested by the Principal, the Contractor shall provide the Principal with relevant information in relation to Product compatibility with the Telecommunication Services.

- 3.5 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 Telecommunication Services, obtainable by making reasonable enquiries; and
- (b) satisfied itself as to the availability of labour, resources and services required to supply the Telecommunication Services.

- 3.6 The Principal will not and shall use reasonable endeavours to ensure that its Users do not use the Telecommunication Services:

- (a) for any illegal, fraudulent or defamatory purposes;
- (b) to engage in the bulk transmission of unsolicited electronic mail;

- (c) to send or cause to be sent any computer worms, Viruses, or other similar programs;
- (d) to make unauthorised access to any other computer accessible via the Internet Services;
- (e) to send any harassing, obscene, indecent, offensive or threatening electronic mail; or
- (f) to reproduce, distribute, transmit, publish, copy or exploit any material that constitutes an infringement of any Intellectual Property right of a third party in Australia.

4. SCALABILITY

- 4.1** The Contractor agrees to provide any reasonable adjustments to the capacity, availability and quality of the Telecommunication Services described in the Agreement during the period specified in the Agreement Details.

5. TELEPHONE NUMBERS AND ADDRESSES

- 5.1** Subject to any contrary direction of the Australian Communications Authority the Contractor must not unless it is reasonably necessary to do so:

- (a) deprive the Principal of the numbers or data addresses allocated to the Principal; or
- (b) retain the numbers and data addresses allocated to the Principal on any change of address by the Principal or any transfer to another service provider.

6. STANDARD FORMS OF AGREEMENT

- 6.1** The Parties agree that the provisions of the Contractor's Standard Form of Agreement will not apply to the supply of the Telecommunications Services by the Contractor to the Principal.

7. CONTRACT PRICE

- 7.1** The Contractor warrants that the Contract Price for the Telecommunication Services identifies all charges for the Telecommunication Services including any charges for training, installation, license fees, set up and ongoing access and usage costs.

8. BILLING

- 8.1** Unless otherwise specified in the Agreement, a Correctly Rendered Invoice for a Telecommunication Service must be:

- (a) rendered within the first 10 days of each month and relate to the charges incurred during the previous month;
- (b) delivered in the format specified in the Agreement; and
- (c) itemise the Telecommunication Services to which the invoice relates; including
 - (i) the respective charges for the Telecommunication Services; and
 - (ii) the date and time at which the charges were incurred.

- 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 the:

- (a) charges are listed separately from the current charges; and
- (b) date and time that the charges were incurred is clearly identified; and
- (c) invoice is issued within the Back Billing Period.

- 8.3** If the charges are not invoiced within the Back Billing Period, the Principal does not have to pay those charges unless by mutual agreement, the charges have been withheld for subsequent invoicing; or

- (a) the charges are disputed and, with the Principal's knowledge, the Contractor has refrained from invoicing them because of the dispute;
- (b) the delay is attributable to an Event; or
- (c) the Principal caused or contributed to the delay.

8.4 The Contractor shall comply with requirements of the Principal for aggregated or consolidated invoicing as set out in the Agreement.

9. AUDITS

9.1 The Contractor must maintain records and supporting Documentation sufficient to permit a complete audit of the provision of the Telecommunications Services by the Contractor in accordance with this clause 9.

9.2 The Principal may request an audit of any invoices rendered to it within the previous six months. 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 Principal audit. The audit is to be carried out during normal business hours (unless the Contractor agrees otherwise) and the Principal (and its auditors) are to comply with the Contractor's standard security procedures whilst on the Contractor's premises.

9.3 The Principal may at its own cost engage an independent consultant to undertake the billing services audit in accordance with the following terms:

- (a) The Principal must ensure that the independent consultant provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.
- (b) The Contractor must, at no additional cost to the Principal:
 - (i) provide all co-operation reasonably required by the independent consultant; and
 - (ii) provide the independent consultant with access (at reasonable times and on reasonable notice) to all Documentation, materials and other information (including information in electronic form) relating to the provision of billing services to the Principal or relating to the Agreement 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 independent consultant is not entitled to have access to:
 - (i) the Contractor's network;
 - (ii) any information that would enable the independent consultant to determine the costs of the Contractor; or
 - (iii) the Contractor's core billing systems.
- (d) The Principal 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 independent consultant to be in error by more than 5 per cent, in which the Principal may recover:
 - (i) the overcharged amount; and
 - (ii) the costs of the audit conducted,

in accordance with clause 12.3 of Part 2 of the Agreement.

9.4 The Principal 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. 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 Principal audit. The audit is to be carried out during normal business hours (unless the Contractor agrees otherwise) and the Principal (and its auditors) are to comply with the Contractor's standard security procedures whilst on the Contractor's premises.

- 9.5** The Principal may at its own cost engage an independent consultant to undertake the audit of the Telecommunications Services in accordance with the following terms:
- (a) The Principal must ensure that the independent consultant provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.
 - (b) The Contractor must, at no additional cost to the Principal:
 - (i) provide all co-operation reasonably required by the independent consultant; and
 - (ii) provide the independent consultant with access (at reasonable times and on reasonable notice) to Sites only to the extent reasonably necessary to enable the independent expert to audit the provision of the Telecommunications Services (other than billing services) at those Sites under the Agreement.
 - (c) The audit rights under this clause 9.5 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.

10. ISSUE RESOLUTION

- 10.1** For the avoidance of doubt, an Issue Notice in relation to a Telecommunication 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 Telecommunication Service and amount in dispute; and
 - (d) the reasons for the dispute.

11. NETWORK MANAGEMENT AND SERVICE LEVELS

- 11.1** The Contractor must use all reasonable endeavours to undertake all maintenance of the Contractor's network at such times and in such manner as to avoid any impact on the provision of Telecommunications Services to the Principal in accordance with the Agreement. The Contractor must ensure, wherever possible, that it continues to meet or exceed the Service Levels while undertaking such maintenance. The Contractor must ensure that the Contractor's network has sufficient redundancy to enable the Contractor to comply with its obligation under this clause 11.1.
- 11.2** Without prejudice to its obligation under clause 11.1 of this Module 9, where the Contractor reasonably anticipates that:
- (a) any scheduled maintenance of the Network will or might have an impact on the provision of Telecommunications Services to the Principal; and
 - (b) the Contractor may not be able to meet or exceed the Service Levels while undertaking such maintenance;
- the Contractor must obtain the Principal's express written approval at least 5 business days prior to undertaking such maintenance, and the Principal must act reasonably in giving or withholding such approval.
- 11.3** Notwithstanding clause 11.2 of this Module 9, the Contractor may conduct non-scheduled maintenance on the Contractor's network in the event of an emergency.
- 11.4** The Contractor must monitor the Telecommunications Services at all times to ensure availability to the Principal in accordance with the Service Levels.
- 11.5** The Contractor will immediately notify the Principal of the occurrence of, or the pending or threatened occurrence of any event that may adversely affect the Contractor's ability to perform the Telecommunication Services in accordance with the Agreement, including the Service Levels.
- 11.6** The Contractor warrants that Principal will have access to the Telecommunication Services in accordance with the Service Levels. Where a fault occurs in a Telecommunication Service, then the Contractor is to proceed with reasonable skill and care to remedy or assist in remedying the fault.

- 11.7** Unless the fault or delay of the Contractor is caused by an Event, the Price of the affected Telecommunication Service shall be adjusted in accordance with the Service Level Agreement where the provision of the Telecommunication Services by the Contractor has not complied with the Service Levels.
- 11.8** During the Term, the Contractor will maintain a telephone help desk on a 24 hours per day, 7 days per week basis to provide consultations, assistance, advice and problem determination to the Principal on:
- (a) the operation and function of the Telecommunications Services; and
 - (b) faults in the Telecommunications Services.
- 11.9** Help desk services will be provided by the Contractor in accordance with the specific requirements set out in the Agreement.

12. REPORTING REQUIREMENTS

- 12.1** The Contractor must comply with the reporting requirements set out in the Reporting Requirements Table contained in the catalogue of Services set out in Schedule 3.

13. BENCHMARKING OF SERVICES

- 13.1** The Principal may undertake at least annual benchmarking of Telecommunication Services for the purposes and scope specified below:
- (a) to compare:
 - (i) the Prices the Principal is paying to the Contractor for the Telecommunications Services;
 - (ii) to compare 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 Principal's peer organisations for the same or similar services at similar volumes and functionality; and
 - (b) to implement the results of the benchmarking report in accordance with clause 13.7 of this Module 9.
- 13.2** The Principal may at its own cost engage an independent consultant to undertake the benchmarking. The Parties agree that the Principal may disclose to the independent consultant any provisions of this Module 9 and the Agreement relevant to the Telecommunications Services, and that the independent consultant will be required to comply with each of the Parties' reasonable confidentiality and security requirements.
- 13.3** The Parties must give the independent consultant:
- (a) access to any premises, equipment, personnel, records or documents; and
 - (b) any assistance,

reasonably required by the independent consultant to conduct the benchmarking exercise. Without limiting the foregoing, the Contractor must provide the independent consultant with access to its price, 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 the customer, but must provide the required information to the independent consultant in a way that does not identify the customer.
- 13.4** Each Party will bear its own internal costs of complying with its obligations under this clause 13.

13.5 A benchmarking exercise will be based on average data for broadly equivalent networks in Australia for the immediately preceding 12 month period. The Principal must instruct the independent consultant to benchmark the Telecommunications Services on the basis of any one or more of the following measures:

- (a) the Prices paid by the Principal for the Telecommunications Services; and/or
- (b) the quality of performance of the Telecommunications Services, including Service Levels;

taking into account the volume, geographic service coverage, service levels and quality of comparable services.

13.6 The Principal will use its reasonable endeavours to ensure that the Contractor has an opportunity to provide input into the benchmarking exercise and to comment on a draft of the independent consultant's benchmarking report before it is issued in final form.

13.7 Where the independent consultant finds that:

- (a) the Prices charged by the Contractor to the Principal for any Telecommunications Services are higher than those identified in the benchmarking report; and/or
- (b) the Service Levels or other measures reviewed in the benchmarking exercise are inferior to those identified in the benchmarking report,

the Contractor must adjust the Telecommunication Services or Service Levels to match the benchmark with effect from the date of commencement of the benchmarking exercise.

13.8 If the Contractor fails to implement the results of any benchmarking exercise as required and identified in clause 13.7 of this Module 9, the Contractor will be in material breach of the Agreement and the Principal may:

- (a) terminate the Agreement on at least 30 days' notice, without having to pay any compensation to the Contractor (subject to the Parties' obligations in relation to the Transition-Out Services under clause 16 of this Module 9); or
- (b) cease to acquire the whole or any specified part of the Telecommunications Services affected by the benchmarking exercise, and in such case.

14. TECHNOLOGY IMPROVEMENT

14.1 During the Agreement the Contractor must, at its own cost, offer to the Principal, the benefits or improvements resulting from new technologies as soon as such benefits or improvements are generally commercially available in Australia. These benefits or improvements shall be at no additional cost to the Principal unless they provide a new function or purpose unrelated to the Telecommunication Services.

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

15. TRANSITION IN ARRANGEMENTS

15.1 On request by the Principal, the Contractor must prepare a plan (**Transition-In Plan**) for the transition of Telecommunications Services to the Contractor (**Transition-In Services**) within 30 days, which must describe:

- (a) details of the specific Transition In Services to be provided by the Contractor in implementing the required Telecommunications Services;
- (b) the timing and transition methodology that will be used by the Contractor to implement the required Telecommunications Services, including measures to effect any transition from previous telecommunications services used by the Principal;
- (c) the time schedule, dates and milestones that will apply to completion of the Transition In Services; and
- (d) be approved by the Principal prior to the Contractor implementing any of the required Telecommunications Services.

- 15.2** The Transition-In Plan shall be binding on the relevant Parties following approval by the Principal pursuant to clause 15.1(d) of this Module 9, and the Contractor must perform all of the Transition In Services identified in the Transition-In Plan. Subject to clause 15.3 of this Module 9, the Contractor must perform the Transition In Services without any disruption to the Principal's business.
- 15.3** For the avoidance of doubt, the Contractor will be liable for any disruption in the performance of the Transition In Services except where such disruption:
- (a) has been identified by the Contractor as a planned disruption in the Transition-In Plan; or
 - (b) is beyond the effective control of the Contractor.

16. TRANSITION OUT ARRANGEMENTS

- 16.1** On termination or expiry of the Contract or part of the Contract by the Principal, the Contractor will, if requested by the Principal, provide such assistance as is reasonably necessary for the Telecommunication Services to continue without interruption for a period of up to six months (**Transition Out Period**) on the same terms as the Contract to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Principal.
- 16.2** Telecommunications Services disengaged in accordance with this clause 16 (whether encompassing all or part of the Telecommunications Services), and any additional services which the Contractor is required to provide under this clause 16, are referred to in this clause 16 as the Transition Out Services.
- 16.3** The Contractor must, in relation to the Telecommunications Services disengaged under this clause 16:
- (a) continue to provide such Telecommunications Services (including any associated monitoring, reporting and other related services required under the Agreement), during the Transition-Out Period in accordance with the terms of the Agreement;
 - (b) do everything within its control to ensure that there is no disruption to such Telecommunications Services during the Transition-Out Period; and
 - (c) provide for the orderly hand over of such Telecommunications Services to a third party supplier nominated by the Principal.
- 16.4** The Principal may terminate the Transition-Out Services, in whole or in part, at any time by giving the Contractor 5 business days written notice of such termination.
- 16.5** On request by the Principal, the Contractor must prepare a plan for the disengagement of Telecommunications Services (**Transition-Out Plan**) within 30 days, which must incorporate:
- (a) all of the requirements set out in the Transition-Out Plan Annexure; and
 - (a) its proposed Prices for the Transition-Out Services.
- 16.6** The Principal must pay the Contractor for any Telecommunications Services provided during the Transition-Out Period in accordance with the Prices specified in the Agreement in effect immediately prior to the commencement of the Transition-Out Period.
- 16.7** The Principal must also pay the Contractor a reasonable amount for any additional services (other than Telecommunications Services referred to in clause 16.6 of this Module 9), 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.
- ## 17. COOPERATION WITH THIRD PARTY SUPPLIERS
- 17.1** Without limiting clause 18 of this Module 9, the Contractor agrees to comply with the Principal's reasonable requests for cooperation and assistance for the Principal and its third party suppliers (if any) in connection with the Telecommunications Services but which cooperation must at a minimum include providing all reasonable co-operation and assistance in relation to the following matters:
- (a) ensuring that the Telecommunications Services are able to be delivered in conjunction with other relevant projects and services in a coordinated, effective and timely manner;

- (b) providing:
 - (i) connection to any infrastructure, facilities or equipment, or access to the Documentation or materials used in providing the Telecommunications Services; or
 - (ii) any information regarding the network or system constraints, protocols, interfaces, architecture and other operating parameters

which provision is necessary to enable the Principal to properly receive the Telecommunications Services or for the third party supplier to perform any related services;

- (c) connection or interfacing between the Principal's or third party supplier's equipment or software and the Contractor's facilities or systems used to provide the Telecommunications Services, and making the Principal's or third party supplier's equipment or the output of any services compatible with the Contractor's facilities or systems used to provide the Telecommunications Services; and
- (d) agreeing on procedures with the Principal 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.

17.2 If the Contractor provides a connection to any infrastructure, facilities, equipment or access to any Documentation under this clause 17, 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, 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.

18. COOPERATIVE PROBLEM RESOLUTION PROCEDURES

18.1 Where the Contractor in good faith believes that a problem relating to the Telecommunications Services is not the responsibility of the Contractor under the Agreement but is the responsibility of a third party provider, the Contractor must work diligently to determine the cause of the problem until the Contractor:

- (a) determines that it is responsible for resolving the problem, in which case the Contractor must notify the Principal accordingly and proceed to remedy the problem in a timely manner and in accordance with its obligations under the Agreement; or
- (b) has handed over responsibility for the resolution of the problem to the third party provider in accordance with this clause 18.

18.2 The Contractor may only hand over responsibility for the resolution of a problem referred to in this clause 18 to a third party provider where the Contractor:

- (a) has investigated the problem in accordance with this clause 18;
- (b) has reasonable grounds to believe that the cause of the problem is a factor for which the third party provider is responsible; and
- (c) has given the Principal 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 for which the third party provider is responsible.

18.3 If, after handing over responsibility for the resolution of a problem to the third party provider in accordance with this clause 18, 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 issue resolution procedures set out in the Agreement.

19. SECURITY

19.1 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 the Contractor's network; and
 - (ii) by any party to the data or Confidential Information of another party;
- (b) ensure that all software deployed in the delivery of the Telecommunications Services incorporates industry best practice in relation to the implementation of encryption systems, 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 the Contractor's 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 following standards:
 - (i) "Information Security Guidelines for NSW Government – Part 3: Information Security Baseline Controls" (January, 2001), as updated from time to time (available from <http://www.oict.nsw.gov.au/pages/4.3.18-Security-Pt3.htm>);
 - (ii) AS/NZS 7799.2:2000 (Previously known as 4444.2) Information security management - Specification for information security management systems, as updated from time to time; and
 - (iii) relevant information privacy statutes and codes of practice; and
- (f) address any specific security needs of the Principal 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 19, the Principal must bear the cost of such additional requirements.

19.2 The Contractor must provide to the Principal:

- (a) as soon as reasonably practicable following a request by the Principal:
 - (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 the Principal; and
- (b) following any security incident affecting the Contractor:
 - (i) notification of the security incident within one business day; and
 - (ii) a detailed security incident report within 3 business days.

20. INTELLECTUAL PROPERTY AND OWNERSHIP OF DATA

20.1 For the purposes of this Module 9, clause 5.2 in Part 2 of the Agreement is replaced with this clause 20.

20.2 For the purposes of this clause 20:

"Contractor Works" means all Works other than Principal Works, including Contractor Software and Contractor Tools and Methodologies and any other Works which relate to the Contractor's Network or any development, improvement, modification to or extension of the Contractor's Network;

"Generic Third Party Documentation" means Documentation provided to the Contractor's customers generally, to the extent that such generic Documentation incorporates Contractor Works in which Intellectual Property Rights are owned by a third party; and

“Principal Works” means

- (a) all information provided to the Contractor by the Principal under this Module;
 - (b) any Confidential Information of the Principal or other information proprietary to it;
 - (c) all reports, diagrams (including network diagrams), Documentation, cable records and all other material (including, for the avoidance of doubt, any business processes, tools or methodologies) created by the Contractor for the exclusive purpose of providing the Telecommunications Services to the Principal; and
 - (d) all information and records (including all monitoring information and records) relating to the supply of the Telecommunications Services by Contractor to the Principal, including without limitation all details relating to utilisation levels and traffic data.
- 20.3** The Principal will own all Intellectual Property Rights in the Principal Works immediately from creation (including part creation) regardless of whether the Intellectual Property Right arises during or after termination of the Agreement.
- 20.4** The Contractor assigns to the Principal all Intellectual Property Rights in all Principal 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 Principal grants to the Contractor, for the effective period of the Contract, to the extent necessary and for the sole purpose of providing the Services, a royalty-free, non-exclusive, non-transferable licence to use the Principal 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 Right arises during or after termination of the Agreement.
- 20.7** The Contractor grants to the Principal a royalty free, irrevocable, non-transferable and non-exclusive right and licence to use:
- (a) **during the Term and any Transition-Out 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; and
 - (b) **in perpetuity:** the Documentation (other than Generic Third Party Documentation).
- 20.8** The Contractor must, in addition to its obligations under clause 7.4, Part 2 of this Agreement and without limiting its obligations under the Agreement in relation to compliance with the Statutory Obligations:
- (a) comply with all applicable telecommunications standards and codes; and
 - (b) obtain and maintain any licences, authorisations, consents, approvals and permits required under any applicable Statutory Obligations to provide the Telecommunications Services.

MODULE 09A TELECOMMUNICATIONS SERVICES - SPECIAL TERMS FOR GTA
CATEGORY 1B SERVICES (BROADBAND LOCAL ACCESS)

These special terms (“**Special Terms**”):

- (a) apply to the supply of broadband local access services by the Contractor to the Principal between the Principal’s nominated site(s) and the Core Network at designated network access points (NAPs) for the purpose of enabling the Principal to receive Core Network Services (with such broadband local access services to be referred to as “**GTA Category 1B Services (Broadband Local Access)**”); and
- (b) are incorporated into and form part of this Module 9A (including for the purposes of construing the Order of Priority recited in Part 1 of the Agreement).

1. INTRODUCTION TO SPECIAL TERMS

- (a) The Contractor agrees to provide to the Principal those Telecommunications Services identified in Schedule 3 as GTA Category 1B Services (Broadband Local Access) in accordance with this Module 9A (including these Special Terms).
- (b) For the purposes of these Special Terms:
 - (i) **Agreement** means, in connection with the supply of GTA Category 1B Services only, the agreement entered into between the Principal and the Contractor in respect of GTA Category 1B Services in the form attached to this Module (and this definition shall apply to the exclusion of any definition of “Agreement” contained elsewhere in the Contract for the purposes of GTA Category 1B Services);
 - (ii) **Core Network** means the broadband telecommunications network established and operated by the Core Network Provider in accordance with the Core Network Services Agreement.
 - (iii) **Core Network Provider** means the carrier appointed as “Core Network Provider” pursuant to the Core Network Services Agreement;
 - (iv) **Core Network Services Agreement** means the agreement by which the Core Network Provider is appointed as “Core Network Provider” for the purpose of providing bandwidth capacity services to NSW Government via the Core Network;
 - (v) **Principal** means the entity described in the Agreement Details and includes its Personnel; and
 - (vi) **Reference Interconnection Offer (RIO) Agreement** means an agreement between the Contractor and the Core Network Provider in the form prescribed by the Department of Services, Technology & Administration.

and a capitalised term not defined above has the meaning given to it in the Dictionary.

2. RIO AGREEMENT

The Contractor must:

- (a) enter into a Reference Interconnection Offer (RIO) Agreement with the Core Network Provider as soon as practicable following execution of this Contract for the purpose of facilitating interconnection with the Core Network at designated network access points (NAPs); and
- (b) comply with the terms of the RIO Agreement for the duration of the term.

3. AGREEMENT PROCESS

The Principal or its nominated Managed Service Provider may:

- (a) specify the location of the Principal sites which the Principal requires to be connected to selected NAPs of the Core Network; and
- (b) complete all other details relating to the GTA Category 1B Services as required in the Agreement.

4. MANAGED SERVICE PROVIDER

The Principal may elect to appoint a Managed Service Provider to act as its authorised representative in relation to the ordering and management of the GTA Category 1B Services (including payment arrangements). This should be implemented via Module 11A (Special Terms relating to Management of GTA Category 1B Services).

5. AMENDMENTS TO THE TERMS OF THE CONTRACT

The terms of the Contract are amended such that, to the extent that they relate to GTA Category 1B Services, in addition to the termination provisions contained in this Contract (refer to clause 14, Part 2 of the Agreement), the Contract is automatically terminated in relation to GTA Category 1B Services immediately upon:

- (a) the termination or expiry of the RIO Agreement; or
- (b) the termination or expiry of the Core Network Services Agreement.

MODULE 09B TELECOMMUNICATIONS SERVICES - SPECIAL TERMS FOR GTA
CATEGORY 2 SERVICES (BROADBAND INTERNET ACCESS)

These special terms ("**Special Terms**"):

- (a) apply to the supply of broadband internet access services to be delivered via the Core Network (with such broadband internet access services to be referred to as "GTA Category 2 Services" (**Broadband Internet Access**)); and
- (b) are incorporated into and form part of this Module 9B (including for the purposes of construing the Order of Priority recited in Part 1 of the Agreement).

1. INTRODUCTION TO SPECIAL TERMS

- (a) The Contractor agrees to provide to the Principal those Telecommunications Services identified in Schedule 3 as GTA Category 2 Services (Broadband Internet Access) in accordance with this Module 9B (including these Special Terms).
- (b) For the purposes of these Special Terms:
 - (i) **Agreement** means, in connection with the supply of GTA Category 2 Services only, the agreement entered into between the Principal and the Contractor in respect of GTA Category 2 Services in the form attached to this Module (and this definition shall apply to the exclusion of any definition of "Order" contained elsewhere in the Contract for the purposes of GTA Category 2 Services);
 - (ii) **Core Network** means the broadband telecommunications network established and operated by the Core Network Provider in accordance with the Core Network Services Agreement;
 - (iii) **Core Network Provider** means the carrier appointed as "Core Network Provider" pursuant to the Core Network Services Agreement;
 - (iv) **Core Network Services Agreement** means the agreement by which the Core Network Provider is appointed as "Core Network Provider" for the purpose of providing bandwidth capacity services to NSW Government via the Core Network;
 - (v) **Internet Access Provider (IAP) Agreement** means an agreement between the Contractor and the Core Network Provider in the form prescribed by the Department of Services, Technology & Administration; and
 - (vi) **Principal** means the entity described in the Agreement Details and includes its Personnel,

and a capitalised term not defined above has the meaning given to it in the Dictionary.

2. IAP AGREEMENT

The Contractor must:

- (a) enter into a Internet Access Provider (IAP) Agreement with the Core Network Provider as soon as practicable following execution of this Contract for the purpose of facilitating interconnection with the Core Network at designated network access points (NAPs); and
- (b) comply with the terms of the IAP Agreement for the duration of the term.

3. AGREEMENT PROCESS

The Principal or its nominated Managed Service Provider may:

- (a) specify the Internet access requirement; and
- (b) complete all other details relating to the GTA Category 2 Services as required in the Agreement.

4. MANAGED SERVICE PROVIDER

The Principal may elect to appoint a Managed Service Provider to act as its authorised representative in relation to the ordering and management of the GTA Category 2 Services (including payment arrangements).

5. AMENDMENTS TO THE TERMS OF THE CONTRACT

The terms of the Contract are amended such that, to the extent that they relate to GTA Category 2 Services, in addition to the termination provisions contained in this Contract (refer to clause 14 of the Agreement), the Contract is automatically terminated in relation to GTA Category 2 Services immediately upon:

- (a) the termination or expiry of the IAP Agreement; or
- (b) the termination or expiry of the Core Network Services Agreement.

1. INTERPRETATION

1.1 The terms and conditions included in this Module 10 form part of the Agreement and apply for the provision of Web Services.

1.2 In this Module, unless the contrary intention appears:

“**Back Billing Period**” means a period of 3 months from the date that charges are incurred by the Principal unless otherwise specified in the Agreement.

“**Directory Data**” means a database of User accounts and information specifying the structure of the levels of User access to the Internet Services required by the Principal in the Agreement.

“**Domain Name**” means the address or identifier of the location of the Website on the Internet.

“**Filtering Services**” mean the provision of services restricting or denying access by a User to content as more particularly described in the Agreement.

“**Hosting Services**” means Hosting Services and Filtering Services as more particularly described in the Agreement.

“**Internet**” means an interconnected system of networks that connects computers around the world to facilitate the electronic exchange of data and information.

“**Internet Services**” means access to the Contractor’s connection to the Internet and any associated Filtering Services as more particularly described in the Agreement.

“**Principal Data**” means all information, data, text, logos and images provided by the Principal or by a third party on behalf of the Principal which forms part of the Website.

“**Remote Access Services**” mean the provision of Internet Services to a User not directly connected to the Principal’s network.

“**Scheduled Maintenance**” means maintenance that needs to be performed on the Contractor’s equipment to ensure that the equipment performs within the Contract Specifications.

“**Service Levels**” means the performance metrics, indicators and adjustments for the Web Services specified in the Service Level Agreement and/or the Agreement.

“**Storage Capacity**” means the space to be provided by the Contractor to the Principal on the Contractor’s servers in accordance with the Agreement.

“**User**” means a user of the Web Services authorised to log on to the Principal’s network or the Website by the Principal.

“**Visitor**” means a person other than the Principal’s Users who seeks access to the Web Services.

“**Website**” means a computer that acts as a server for Web Pages created or hosted by the Contractor.

“**Web Pages**” means documents that can contain text, graphics and sound available to Principal’s Users and Visitors on the World Wide Web.

“**Web Services**” means any Internet Services, Filtering Services and Hosting Services specified in the Agreement.

“**World Wide Web**” means an Internet information service using hypertext documents.

- 1.3 Definitions of other capitalised words and expressions used in this Module and not defined in clause 1.2 are contained in Part 3 of the Agreement.

2. PERIOD OF THE WEB SERVICES

- 2.1 The Contractor shall provide the Principal with the Web Services specified in the Agreement for the period of the Agreement unless terminated earlier in accordance with the provisions thereof.

3. WEB SERVICES

- 3.1 The Contractor must ensure that the Web Services have sufficient capacity, availability and quality during the period of the Agreement in accordance with the requirements of the Service Level Agreement and the Contract Specifications.

- 3.2 The Contractor acknowledges that it has:

- (a) examined all information which is relevant to risks, contingencies and other circumstances which could affect the supply of the Web Services which is obtainable by making reasonable enquiries; and
- (b) satisfied itself as to the availability of labour, resources and services required.

4. INTERNET SERVICES

- 4.1 Unless otherwise specified in the Agreement, the Principal shall provide telephone lines, modems, computer hardware and software and all other equipment within the Principal's network necessary to enable Users to access the Internet Services.

- 4.2 The Contractor shall supply such connection as specified in the Agreement to provide the Remote Access Services.

- 4.3 The Contractor shall set up and maintain User accounts and provide for User access to the Internet Services in accordance with the Directory Data specified in the Agreement.

- 4.4 The Contractor shall provide all necessary User's identification or log-in information to enable the Principal and Users to access the Internet.

- 4.5 The Principal is responsible for the protection of any User identification or log-in information. The Principal shall promptly inform the Contractor of any unauthorised disclosure or loss of User identification or log-in information.

5. USE OF INTERNET SERVICES

- 5.1 Except for the Filtering Services, the Principal acknowledges the Contractor does not in any way supervise, aid or control the content and form of any information or data accessed through the Internet Services.

- 5.2 The Principal will not and shall use reasonable endeavours to ensure that its Users do not use the Internet Services:

- (a) for any illegal, fraudulent or defamatory purposes;
- (b) to engage in the bulk transmission of unsolicited electronic mail;
- (c) to send or cause to be sent any computer worms, Viruses, or other similar programs;
- (d) to make unauthorised access to any other computer accessible via the Internet Services;
- (e) to send any harassing, obscene, indecent, offensive or threatening electronic mail; or
- (f) to reproduce, distribute, transmit, publish, copy or exploit any material that constitutes an infringement of any Intellectual Property right of a third party in Australia.

6. DATA

- 6.1** The Contractor shall provide the Principal with such information as reasonably required by the Principal in relation to the setting up of individual User accounts and User access to the Internet Services.
- 6.2** The Contractor acknowledges and agrees that all proprietary rights including Intellectual Property rights subsisting in the Directory Data vest in the Principal and that the Contractor has no rights in the Directory Data except as expressly provided in the Agreement.

7. SCALABILITY

- 7.1** The Contractor agrees to provide any adjustments to the capacity, availability and quality of the Web Services specified in the Agreement or the Service Level Agreement during the period of the Agreement.

8. HOSTING SERVICES

- 8.1** The Contractor shall ensure that any computer downtime attributable to upgrades, or Scheduled Maintenance shall not prevent access to the Website by the Users or Visitors in accordance with the Service Levels.
- 8.2** The Hosting Services do not include content maintenance and the Contractor shall not be liable for any deficiency or inaccuracy of any information contained on the Website caused by the Principal's failure to carry out content maintenance unless otherwise specified in the Agreement.

9. DOMAIN NAMES

- 9.1** Unless specified in the Agreement, the Principal will secure a Domain Name for the Website and supply the Contractor with details of the Domain Name together with a range of available internet protocol ("IP") addresses. The Contractor shall inform the Principal of the IP address that corresponds to the Domain Name.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1** Unless otherwise specified in the Agreement:
- (a) the Intellectual Property rights in the textual, graphical, audio and other material, including Principal's Data to be displayed on the Website; and
 - (b) the look and feel of the Website, shall immediately vest upon their creation in the Principal without further need for assurance.

11. PRINCIPAL'S OBLIGATIONS

- 11.1** The Principal shall use reasonable efforts to ensure the Principal's Users and Visitors do not place on the Website material which is in any way, defamatory, illegal, pornographic, violates any applicable privacy legislation or infringes Intellectual Property rights of any third party.

12. CONTRACTOR'S OBLIGATIONS

- 12.1** Except for the Filtering Services the Principal acknowledges that the Contractor does not in any way supervise aid or control the content and form of any information or data accessed through the Internet.
- 12.2** The Contractor shall ensure that any material it incorporates into the Website other than material provided by the Principal does not infringe the Intellectual Property rights of any person and is not obscene, offensive, defamatory, illegal, in violation of any applicable privacy legislation or in any way unsuitable for persons under the age of 18 years.

13. CONTRACT PRICE

- 13.1** The Contractor promises that the Contract Price for the Web Services identifies all charges for the Web Services including any charges for training, installation, set up and ongoing access and usage costs.

14. BILLING

- 14.1** In addition to clause 12.2, Part 2 of this Agreement, unless otherwise specified herein, a Correctly Rendered Invoice for the Web Services must be:
- (a) rendered within the first three weeks of each month and relate to the charges incurred during the previous month;
 - (b) delivered in the format specified herein; and
 - (c) itemise the Web Services to which the invoice relates; including
 - (i) the respective charges for the Web Services; and
 - (ii) the date and time at which the charges were incurred.
- 14.2** Subject to clause 14.3, if charges are not invoiced in accordance with clause 14.1, then the charges may be included in a subsequent Correctly Rendered Invoice if the:
- (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.
- 14.3** If the charges are not invoiced within the Back Billing Period, the Principal does not have to pay those charges unless by mutual agreement, the charges have been withheld for subsequent invoicing; or
- (a) the charges are disputed and, with the Principal's knowledge, the Contractor has refrained from invoicing them because of the dispute;
 - (b) the delay is attributable to an Event; or
 - (c) the Principal caused or contributed to the delay.
- 14.4** The Contractor shall comply with requirements of the Principal for aggregated or consolidated invoicing as set out in the Agreement.
- 14.5** The Principal may request an audit of any invoices rendered to it within the previous six months. 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 Principal audit. The audit is to be carried out during normal business hours (unless the Contractor agrees otherwise) and the Principal (and its auditors) are to comply with the Contractor's standard security procedures whilst on the Contractor's premises.
- 14.6** The Principal may at its own cost engage an independent consultant to undertake the audit. The Principal shall pay for the audit unless the audit discloses:
- (a) a discrepancy between the charges invoiced during the period audited and the auditor's assessment of the applicable charges for that period; and
 - (b) that any amount invoiced during the period audited is found by the independent consultant to be in error by more than 10 per cent, in which case the Contractor shall share equally with the Principal the costs of the independent consultant to conduct the audit.
- 14.7** Where it is disclosed by the audit that the Principal has been overcharged for a Service, the Principal may recover the overcharged amount in accordance with clause 12.3, Part 2 of the Agreement.

15. ISSUE RESOLUTION

- 15.1** For the avoidance of doubt, an Issue Notice in relation to a Web 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 service and amount in dispute; and
- (d) the reasons for the dispute.

16. SERVICE LEVELS

- 16.1** The Contractor will immediately notify the Principal of the occurrence of, or the pending or threatened occurrence of any event that may adversely affect the Contractor's ability to perform the Web Services in accordance with the Service Levels.
- 16.2** The Contractor does not warrant that the Principal will have continuous access to the Web Services but does warrant that Principal will have access to the Web Services in accordance with the requirements of the Service Levels. Where a fault occurs in a Web Service not controlled by the Contractor, then the Contractor is to proceed with reasonable skill and care to remedy or assist in remedying the fault.
- 16.3** Unless the fault or delay of the Contractor is caused by an Event, the Price for the affected Web Service shall be adjusted in accordance with the Service Levels.

17. BENCHMARKING

- 17.1** The Principal may undertake at least annual benchmarking of Web Services and Service Levels for the purposes and scope specified in the Agreement.
- 17.2** The Principal may at its own cost engage an independent consultant to undertake the benchmarking. Where the independent consultant finds that the Web Services or Service Levels are less than the benchmark determined by the Consultant, the Contractor shall in consultation and in the time and manner agreed with the Principal adjust the Web Services or Service Levels to match the benchmark.

18. TECHNOLOGY IMPROVEMENT

- 18.1** During the Agreement the Contractor must, (at its own cost), offer to the Principal, the benefits or improvements resulting from new technologies as soon as such benefits or improvements are generally commercially available in Australia. These benefits or improvements shall be at no additional cost to the Principal unless they provide a new function or purpose unrelated to the Web Services.
- 18.2** The Parties agree to cooperate in good faith to identify opportunities for the Contractor to propose new services for the purpose of creating technology enabled business value for the benefit of the Principal.

19. TRANSITION

Transition In

- 19.1** The Contractor must, in addition to any other requirement specified in the Agreement, as necessary ensure:
- (a) it is able to deliver the Web Services stated in the transition plan; and
 - (b) (to the extent practical) that all third party agreements, licenses or other contractual arrangements entered into by the Contractor for the purposes of the Agreement ('agreements') from the date the transition in process commences incorporate a term requiring the third party to consent to novation or assignment of those agreements to an alternative service provider or to the Principal upon termination of the Web Services for any reason. The Contractor will bear any costs resulting from the inclusion of the above term in those agreements.

Transition Out Plan

- 19.2** The Contractor shall, within six (6) months of the commencement of the Agreement, if required by the Principal, develop to the Principal's satisfaction a comprehensive transition out plan on a Time and Materials basis. The parties shall annually (or other period deemed appropriate by the Principal) review the transition out plan and the Contractor shall implement any agreed changes.

20. TRANSITION OUT

- 20.1** On termination or expiry of the Agreement or part of the Agreement by the Principal, the Contractor will if requested by the Principal provide such assistance as is reasonably necessary for the Web Services to continue without interruption for a period of up to six months on the same terms as the Agreement to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Principal. Unless otherwise specified in the transition out plan, the Contractor must implement arrangements for:

- (a) the novation or assignment (to the extent practical) of any third party agreements, licences and other contractual arrangements entered into by the Contractor for the purposes of the Agreement ('agreements') or the transfer of management responsibility in respect of such agreements, from the Contractor to an alternative service provider or to the Principal. The Contractor must use its reasonable commercial endeavours to ensure that the transfer is effected without incurring to the Principal, any increases in or transfer charges for the products and services to which those agreements relate;
- (b) the selling to the alternative service provider or to the Principal at fair market value any equipment used by the Contractor for the purposes of the delivery of the Web Services;
- (c) the transfer of the Principal's data to an alternative service provider and/or to the Principal; and
- (d) the granting by the Contractor to an alternative service provider and/or to the Principal of access to all material held by the Contractor and produced in connection with and for the purposes of delivering the Web Services, regardless of the manner of storage, except that:
 - (i) there is no requirement pursuant to this sub-clause 20.1(d) for the Contractor to assign any Intellectual Property rights in such material; and
 - (ii) the Principal must agree to comply with any reasonable security and confidentiality requirements stipulated by the Contractor in respect of access to such material.

- 20.2** This clause 20 survives termination or expiry of the Agreement for a period of six years.

21. AFTER TERMINATION OF THE WEB SERVICES

- 21.1** The Contractor shall erase a User's identification or log-in information within three days of termination of the Web Services or upon a written request to do so from the Principal or a User.

MODULE 11

MANAGED SERVICES

1. INTERPRETATION

1.1 The terms and conditions included in this Module 11 form part of the Agreement and apply for the provision of Managed Services.

1.2 In this Module, unless the contrary intention appears:

“Managed Services” means Services whereby the Contractor agrees to either manage all or part of the Principal’s information technology requirements or otherwise to manage the external delivery of services to the Principal, as more particularly described in the Agreement.

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

2. PERIOD OF SERVICES

2.1 The Managed Services must be provided for the period of the Agreement unless the Agreement is earlier terminated in accordance with the provisions thereof.

3. MANAGED SERVICES

3.1 The Contractor must provide the Managed Services in accordance with the Agreement.

3.2 The Contractor agrees that the Managed Services must as a minimum:

- (a) meet the Contract Specifications;
- (b) be performed in accordance with the Service Level Agreement and any other performance measures specified in the Service Level Agreement; and
- (c) include a transition in plan and transition out plan which each sets out a methodology and program for meeting the obligations in clauses 4 and 6 respectively.

3.3 Unless otherwise specified in the Agreement, the Contractor must ensure that the resources and methodologies used in providing the Managed Services remain consistent with, and reflect, those used by the Contractor in delivering similar services to other customers at the same time and in similar circumstances.

3.4 If as part of the Managed Services a Deliverable is required to which the terms or conditions of another Module relate, those Deliverables may be procured by the Contractor either:

- (a) as a Nominee Purchaser, by placing an order under the relevant agreements; or
- (b) as specified in the Agreement.

4. TRANSITION IN

The Contractor must, in addition to any other requirement specified in the Agreement, as necessary:

- (a) acquire from the Principal any assets specified in the transition plan;
- (b) comply with obligations specified in the Agreement regarding the transfer or management of third party agreements;
- (c) comply with the requirements of the transition plan concerning the future role of the Principal's existing Personnel, including the transfer of such Personnel to the Contractor;
- (d) ensure it is able to deliver the Managed Services from the date stated in the transition plan;
- (e) ensure (to the extent practical) that all third party agreements, licenses or other contractual arrangements entered into by the Contractor for the purposes of the Contract ('agreements') from the date the transition in process commences incorporate a term requiring the third party to consent to novation or assignment of those agreements to an alternative service provider or to the Principal upon termination of the Managed Services for any reason. The Contractor will bear any costs resulting from the inclusion of the above term in those agreements; and
- (f) prepare a procedures manual which, once agreed by the Principal, will form part of the Contract and which, in addition to any other requirements specified in the Agreement, must describe how the Contractor will manage the delivery of the Managed Services, including:
 - (i) how compliance with the Service Levels and other performance factors will be measured and met;
 - (ii) procedures to identify and rectify failures in the quality of the Managed Services;
 - (iii) the acceptance procedure for Deliverables supplied pursuant to the Managed Services;
 - (iv) how changes to the Managed Services or method of delivery will be identified and met;
 - (v) proposed audit requirements; and
 - (vi) staffing, reporting, planning, and supervisory activities normally undertaken in respect of similar services in similar circumstances.

5. SERVICE DELIVERY

- 5.1** Unless the Principal agrees otherwise in writing, the Managed Services will be performed in Australia.

6. TRANSITION OUT PLAN

- 6.1** The Contractor shall, within six (6) months of the commencement of the Agreement if required by the Principal develop to the Principal's satisfaction a comprehensive transition out plan on a Time and Materials basis. The parties shall annually (or other period deemed appropriate by the Principal) review the transition out plan and the Contractor shall implement any agreed changes.

7 TRANSITION OUT

7.1 On termination or expiry of the Agreement or part of the Agreement by the Principal, the Contractor will if requested by the Principal provide such assistance as is reasonably necessary for the Services to continue without interruption for a period of up to six months on the same terms of the Agreement to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Principal. Unless otherwise specified in the transition out plan, the Contractor must implement arrangements for:

- (a) the novation or assignment (to the extent practical) of any third party agreements, licences and other contractual arrangements entered into by the Contractor for the purposes of the Contract ('agreements') or the transfer of management responsibility in respect of such agreements, from the Contractor to an alternative service provider or to the Principal. The Contractor must use its reasonable commercial endeavours to ensure that the transfer is effected without incurring to the Principal, any increases in or transfer charges for the products and services to which those agreements relate;
- (b) the selling to the alternative service provider or to the Principal at fair market value any equipment used by the Contractor for the purposes of the delivery of the Managed Services;
- (c) the transfer of the Principal's data to an alternative service provider and/or to the Principal; and
- (d) the granting by the Contractor to an alternative service provider and/or to the Principal of access to all material held by the Contractor and produced in connection with and for the purposes of delivering the Managed Services, regardless of the manner of storage, except that:
 - (i) there is no requirement pursuant to this sub-clause 7.1(d) for the Contractor to assign any Intellectual Property rights in such material; and
 - (ii) the Principal must agree to comply with any reasonable security and confidentiality requirements stipulated by the Contractor in respect of access to such material.

7.2 This clause 7 survives termination or expiry of the Agreement for a period of six years.

MODULE 11A SPECIAL TERMS RELATING TO MANAGEMENT OF GTA CATEGORY 1B SERVICES AND CORE NETWORK SERVICES**SPECIAL TERMS**

- A. These special terms (“**Special Terms**”):
- (a) apply where the Principal appoints the Contractor as a Managed Service Provider for the purpose of providing Managed Services to it in relation to (and to act as its authorised representative in relation to the ordering, provisioning and management of) GTA Category 1B Services and/or Core Network Services (“**GTA and Core Network Managed Services**”); and
 - (b) together with the annexed Service Description, are incorporated into and form part of this Module 11A (including for the purposes of construing the Order of Priority recited in Part 1 of the Agreement).
- B. In the event of any inconsistency between these Special Terms and the annexed Service Description in relation to the Contractor’s provision of the GTA and Core Network Managed Services, these Special Terms shall prevail.

1. DEFINED TERMS

- (a) In these Special Terms:
- “**Agreement**” means, in connection with the supply of GTA and Core Network Managed Services only, an agreement entered into between the Principal and the Contractor in respect of GTA and Core Network Managed Services in the form attached to this Module 11A;
- “**Principal**” means, in connection with the supply of GTA and Core Network Managed Services, the entity described in the Agreement Details and includes its Personnel;
- and a capitalised term not defined above has the meaning given to it in the Dictionary.
- (b) The definitions above shall apply to the exclusion of any equivalent defined term contained elsewhere in the Agreement for the purposes of GTA and Core Network Managed Services.

2. AGREEMENT PROCESS

The Principal or its nominated Managed Service Provider may specify the nature of GTA and Core Network Managed Services sought and provide all relevant details relating to those services as required to be completed in the Agreement.

3. AMENDMENTS TO THE TERMS OF THE AGREEMENT

To the extent the Agreement relates to GTA and Core Network Managed Services, the Agreement is automatically terminated in relation to those Services immediately upon the termination or expiry of contracts for the supply of the GTA Category 1B Services and/or Core Network Services to which they relate.



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State Procurement

MODULE 12 SYSTEMS INTEGRATION SERVICES

1. INTERPRETATION

1.1 The terms and conditions included in this Module 12 form part of the Agreement and apply for the provision of Systems Integration Services.

1.2 In this Module, unless the contrary intention appears:

“**System**” means the system specified in the Agreement that the Contractor must provide after it has performed the Systems Integration Services.

“**Systems Integration**” means, in relation to a System, the process of assembling complete systems out of many components and integrating them so that all the components work together.

“**Systems Integration Services**” means the Services for Systems Integration specified in the Agreement to be provided by the Contractor to the Principal.

“**Test Data**” means data or input that is used to ensure that an algorithm or program functions correctly.

“**Warranty Period**” means for Systems Integration Services, the first 90 days after the AAD for the Services or any greater period specified in the Agreement Details.

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

2. PERIOD OF SERVICES

2.1 The Systems Integration Services must be provided for the period of the Agreement unless the Agreement is earlier terminated in accordance with the provisions thereof.

3. COMPONENTS OF THE SYSTEM

3.1 If, as part of the Systems Integration Services, a Deliverable is required to which the terms or conditions of another Module relate, those Deliverables may be procured by the Contractor either:

- (a) as a Nominee Purchaser, by placing an order under the relevant agreements; or
- (b) as specified in the Agreement.

- 3.2** For the avoidance of doubt:
- (a) Hardware must be procured in accordance with the terms and conditions of Module 1 (Hardware Acquisition and Installation);
 - (b) Hardware must be maintained in accordance with the terms and conditions of Module 2 (Hardware Maintenance Services);
 - (c) Software Products must be licensed to the Principal in accordance with the terms and conditions of Module 3 (Licensed Software);
 - (d) Development Services for a Systems Integration must be procured in accordance with the terms and conditions of Module 4 (Development Services);
 - (e) Software Support must be procured in accordance with the terms and conditions of Module 5 (Software Support Services);
 - (f) IT Personnel must be engaged in accordance with the terms and conditions of Module 6 (IT Personnel);
 - (g) Professional Services must be procured in accordance with the terms and conditions of Module 7 (Professional Services);
 - (h) Data Services must be procured in accordance with the terms and conditions of Module 8 (Data Management);
 - (i) Telecommunications Services must be procured in accordance with the terms and conditions of Module 9 (Telecommunications Services);
 - (j) Web hosting Services and Internet Services must be procured in accordance with the terms and conditions of Module 10 (Web Services); or
 - (k) Managed Services must be procured in accordance with the terms and conditions of Module 11 (Managed Services).

4. SYSTEMS INTEGRATION SERVICES

- 4.1** The Contractor must provide the Systems Integration Services specified in the Agreement. The Contractor shall assume project management and control including management of the project risks which are identified as the Contractor's responsibility under the Agreement.
- 4.2** The Contractor shall supply the Deliverables specified in the Agreement.
- 4.3** The Systems Integration and Systems Integration Services must as a minimum meet the Contract Specifications.
- 4.4** The Contractor agrees to provide a transition out plan that meets the obligations set out in clause 10 within 30 days of the Commencement Date.
- 4.5** The Principal must include in or annex to the Agreement its Statement of Requirements. The Principal, in accordance with clause 8, Part 2 of the Agreement, must as soon as practicable:
- (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings and other materials; and
 - (b) answer queries made by the Contractor relating to the Principal's requirements in connection with the provision of the System.
- 4.6** The Principal shall supply the Principal's Materials specified in the Agreement and comply with its obligation under clause 8, Part 2 of the Agreement to repair or replace the Principal's Materials.
- 4.7** The Principal will allow the Contractor reasonable access to the Site for the purpose of meeting its obligations to supply the System Integration Services.

5. IMPLEMENTATION PLANNING STUDY

- 5.1** The Contractor shall prepare an implementation planning study in accordance with clause 11.6, Part 2 of the Agreement.

6. PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 6.1** The Contractor must prior to performing the Systems Integration Services prepare a PIPP for the approval of the Principal, which when approved forms part of the Contract Specifications.
- 6.2** Without limiting the effect of clause 4.1, the Contractor must perform the Systems Integration Services at the times and in the manner set out in the PIPP.
- 6.3** A Party may periodically review the PIPP. A Party must not unreasonably refuse a Change Request to adjust the Services or to improve the Services under the PIPP.
- 6.4** The Contractor must in accordance with the PIPP implement all activities set out in the PIPP for the performance of the Systems Integration Services and perform any other Services specified in the Agreement.
- 6.5** The PIPP for the Systems Integration Services must, unless otherwise specified in the Agreement, include the following Stages:
- (a) assessment and definition of the:
 - (i) Principal's existing system, if necessary;
 - (ii) System;
 - (iii) Principal's goals, requirements and expectations in respect of the Systems Integration which must include a statement of:
 - (A) the Contractor's understanding of the Principal's and/or User's experience and requirements in relation to the Systems Integration;
 - (B) the objectives to be met by the Contractor; and
 - (C) the scope of the Systems Integration;
 - (iv) required Deliverables;
 - (v) resources required (including any resources to be made available by the Principal); and
 - (vi) complexity of the project;
 - (b) a feasibility study in which the Contractor makes the determination (and includes any appropriate recommendations) as to whether the Contractor's Systems Integration Services proposals are capable of meeting Principal and/or User's needs and expectations taking into account budgetary, operational, technical and time considerations;
 - (c) Development of a strategy for the Systems Integration that is appropriate for the Principal's needs and its User population covering all appropriate planning and timetabling issues associated with the Systems Integration Services including:
 - (i) identification of the Services to be performed;
 - (ii) identification and procurement of necessary Products;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) staging of the project;
 - (v) development of a Milestones and payment schedule; and
 - (vi) implementation of the Services;
 - (d) Implementation of the Systems Integration Services in accordance with clause 4;
 - (e) Testing and acceptance of the Systems Integration in accordance with clause 10.5, Part 2 of the Agreement.

7. MAINTENANCE OF PRINCIPAL'S MATERIALS

- 7.1 If specified in the Agreement, the Contractor is hereby appointed as agent to manage any existing maintenance obligations in respect of Principal's Materials specified in the Agreement during the period of the Agreement.

8. SYSTEM ACCEPTANCE

Certificate of Acceptance

- 8.1 Acceptance of all or any part of the System Integration Services, will only occur
- (a) after completion of Acceptance Tests on the System in accordance with clause 10.5, Part 2 of the Agreement; and
 - (b) on the date specified in the certificate of acceptance issued to the Contractor by the Principal.
- 8.2 For the purposes of clause 10.5.10, Part 2 of the Agreement, a certificate of acceptance under 10.5.10(a) will be the only sufficient form of notification of acceptance that the Systems Integration Services have been performed in accordance with the Agreement.
- 8.3 The Principal must issue the certificate of acceptance within the Acceptance Notification Period after the successful completion of the Acceptance Tests in relation to the System, or notify the Contractor that the Contractor that the Principal is not satisfied on reasonable grounds that the Acceptance Tests have been passed.

Final System Acceptance

- 8.4 Once all of the Systems Integration Services have been performed and each Deliverable comprised in the System, tested and certified as accepted by the Principal, final System Acceptance Tests in accordance with clause 10.5, Part 2 of the Agreement may be conducted by the Principal.
- 8.5 Unless the Principal has notified the Contractor that it is not satisfied that the final System Acceptance tests have been passed, the Principal must issue a final System certificate of acceptance within the Acceptance Notification Period after it has conducted final System Acceptance Tests.

9. SYSTEM WARRANTY

- 9.1 The Contractor warrants that all components of the System will combine and interact with each other in accordance with the Contract Specifications.
- 9.2 Without limiting any other rights of the Principal, the Contractor will promptly rectify any Defect in the System that occurs as a result of the Systems Integration Services during the first 90 days after the AAD for the Services or any greater Warranty Period specified in the Agreement Details.

10. TRANSITION OUT PLAN

- 10.1 The Contractor shall, within 6 months of the commencement of the Agreement if required by the Principal develop to the Principal's satisfaction a comprehensive transition out plan on a Time and Materials basis. The parties shall annually (or other period deemed appropriate by the Principal) review the transition out plan and the Contractor shall implement any agreed changes.

11. TRANSITION OUT

11.1 On termination of the Systems Integration Services for any reason, and subject to any other requirements in the Agreement, the Contractor will, if requested by the Principal for the period of up to 6 months on the same terms of the Agreement, assist the Principal in transferring responsibility for providing the Systems Integration Services either to an alternative service provider or to the Principal itself. Unless otherwise specified in the transition out plan, the Contractor must implement arrangements for:

- (a) the novation or assignment (to the extent practical) of any third party agreements, licences and other contractual arrangements entered into by the Contractor for the purposes of the Agreement ('agreements') or the transfer of management responsibility in respect of such agreements, from the Contractor to an alternative service provider or to the Principal. The Contractor must use its reasonable commercial endeavours to ensure that the transfer is effected without incurring to the Principal, any increases in or transfer charges for the products and services to which those agreements relate;
- (b) an offer to sell to the alternative service provider or to the Principal itself at fair market value any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Systems Integration Services;
- (c) the transfer of the Principal's data to an alternative service provider and/or to the Principal itself; and
- (d) the granting by the Contractor to an alternative service provider and/or to the Principal itself of access to all material held by the Contractor and produced in connection with and for the purposes of delivering the Systems Integration Services, regardless of the manner of storage, save that:
 - (i) there is no requirement pursuant to this sub-clause 11.1(d) for the Contractor to assign any Intellectual Property Rights in such material; and
 - (ii) the Principal must agree to comply with any reasonable security and confidentiality requirements stipulated by the Contractor in respect of access to such material.

11.2 This clause 11 survives termination or expiry of the Agreement for a period of 6 years.

PART 6 - SERVICE LEVEL AGREEMENT (SLA)

SLA SERVICE LEVEL AGREEMENT

Document Control

VERSION HISTORY

Version	Date	Comments
Draft 01		

DOCUMENT DISTRIBUTION

Copy NO	Location	Holder
01		
02		
03		
04		
05		
06		
07		
08		

REVIEW AND APPROVAL

Company	Name	Date	Signature

*** There are a number of guidance notes in grey italicised print included in the SLA for consideration in completing the SLA. These are included simply as suggestions. Users should obtain legal or other professional advice in developing an SLA to achieve their objectives and derive maximum benefit from the Service relationship.*

Contract No:		<input type="text"/>
Parties	Principal	<input type="text"/>
And	Contractor	<input type="text"/>

1. GENERAL

Terms and Conditions

1.1 The terms and conditions included in this Service Level Agreement form part of the Agreement and apply for *(select as appropriate)*:

- Hardware Maintenance Services
- Software Support Services
- IT Personnel
- Professional Services
- Data Management
- Telecommunications
- Web Services
- Managed Services
- Systems Integration

In the event of any inconsistency between the Agreement and the provisions of this SLA, the Agreement will prevail to the extent of the inconsistency. The Parties agree that the SLA will provide a further level of detail consistent with higher-level contract expectations that will not constitute an inconsistency for the purposes of this clause.

Purpose of SLA

1.2 This SLA provides a mutual understanding of the Service Level expectations of the Parties and defines a benchmark for measuring the performance of the Service. Insert details of any guiding principles such as continuous improvement, continuous satisfaction, proactive solutions and so on that the Parties wish to apply to the relationship.

Duration of SLA

1.3 This SLA will commence on *insert commencement date* and expire on *insert expiration date*.

Review

1.4 This SLA will be reviewed every *3/6/12 months* from the date the SLA commences.

1.5 Where the Contractor is required to provide scoping Services after the commencement of this SLA, the Parties agree to review the SLA at the completion of those Services and update the SLA accordingly.

Nominated Contracts/Management Committee

1.6 *Each Party should nominate a contact officer for the management of Service Level issues or establish a Management Committee in accordance with clause 11.2 of the Agreement.*

Management Meetings

1.7 *Identify when and how often these should occur (clause 11.2 of the Agreement)*

Notification Procedure

1.8 *How are problems in relation to performance of the Services to be notified by the Principal to the Contractor?*

Escalation Procedure

1.9 *The responsible officers in each Party's organisation should be identified and the circumstances in which matters may be escalated to those officers for review and resolution.*

Escalation Level	Officer
Level 1	<p>Principal: Service Level Agreement Manager Name and Contact Details</p> <p>Contractor: Service Level Agreement Manager Name and Contact Details</p>
Level 2	<p>Principal:</p> <p>Contractor:</p>
Level 3	<p>Principal:</p> <p>Contractor:</p>
* Table 1 Escalation levels	

Site Information

1.10 *Location, specific requirements or unique features about the Site should be set out here, as applicable (clauses 8.4 and 11.5 of the Agreement).*

Hours of Operation

1.11 *What are the Principal's normal hours of operation? When can Services be performed with minimal disruption to the Principal's operations?*

Contract Variations

1.12 Where the Principal requires services that are not included in the SLA or in the Agreement, or there is a significant change to the Services to the scope of the Principal's requirements under the Agreement which impacts on the contractual terms, then a Contract Variation must be effected in accordance with clause 13.2 of the Agreement.

Referenced Documents

1.13 *Include details of any Documents that are relevant to the performance of the Services (see clause 10.6 of the Agreement).*

2. SERVICES**Principal Responsibilities**

2.1 *Identify any resources that are to be supplied by the Principal and any responsibilities that are to be retained by the Principal (see clause 8 of the Agreement).*

Contractor Provided Services

2.2 The Contractor agrees to provide the following Services:
Include a brief description of the Services to be provided by the Contractor.

2.2.1 Transition In:

Specify the nature of transition in assistance required by the Principal from the Contractor in relation to transfer of equipment, contracts and disengagement from former contractors or in-house service providers.

2.2.2 Management and Consulting

In addition to ensuring that the Contractor has adequate resources to provide the Services, are there other management services required of the Contractor? Are there external contractual relationships or procurement issues that the Contractor is expected to manage?

(a) Service review and planning for the future

See clause 11.4 of the Agreement. The items for review could include:

- Service provided during the review period*
- Major incidents during the review period*
- Problems that remain outstanding*
- Review of Contract Variation requests and progress for enhancements*
- Review of any Contract Variation plan*
- Future events or business developments that will affect the Service*
- Review any potential changes required to the SLA*
- Agree items for submission to the executive decision making*
- Review schedules for Services provided*

(b) Reporting and Analysis

See clauses 7.10 and 11.3 of the Agreement. Identify the reports and analysis the Principal requires the Contractor to generate as to Service Level performance.

(c) Risk Management and Problem Prevention

(d) Quality Management

(e) Asset Management

The Principal may require the Contractor to produce a plan for review and approval in relation to the above three issues. The plan would be the basis for benchmarking and assessing Service Level performance.

2.2.3 Disaster Recovery and Business Continuity Planning

See Clause 11.12 of the Agreement. The Principal may require the Contractor to prepare a plan for review and approval. The plan would be the basis for benchmarking and assessing Service Level performance.

2.2.4 Security

(a) Information Security

Is the Contractor able to access or use Personal or Confidential Information, or Principal Data in the course of providing the Services? Are there practical requirements, in addition to the contractual requirements in clauses 5 and 6 of the Agreement that should be specified?

(b) Security Audit and Internal Audit

The Principal may require the Contractor to provide a plan demonstrating how it will protect such information or data and take action against employees, against or subcontractors if they do not abide by that plan. The plan would be the basis for benchmarking and assessing Service Level performance.

2.2.5 Transition Out

Refer to relevant Modules to determine whether transition out assistance is required. Specify the transition out or disengagement services required from the Contractor.

2.2.6 Technical

- Hardware Maintenance Services
- Software Support Services
- IT Personnel
- Professional Services
- Data Management
- Telecommunications
- Web Services
- Managed Services
- System Integration Services

Define technical expectations of the Principal, as appropriate.

3. ASSUMPTIONS

3.1 *This clause is intended to provide a contextual reference for the assessment of the Contractor's performance against the Service Level. There are a number of issues that may be outside of the Contractor's control that could adversely impact on the Contractor's capacity to deliver against set performance criteria such as the continuous availability of telecommunications links, bandwidth capacity or third party service interruption issues.*

3.2 *Also it may be an expectation of the Principal that the Contractor, in performing the Service, adheres to specific policy or procedural requirements that should be included in this clause.*

3.3 *In some instances the Service Levels may have been agreed prior to a scoping phase being completed under the Agreement. In that instance the Service Levels may be agreed against representations made by the Principal or a notional assessment of the scope of the task expressed as sizing metrics in terms of number of users, outputs, data volumes and so on.*

4. RESPONSIBILITIES

4.1 Principal Responsibilities

Responsibility *Indicate the Responsibility e.g. maintenance of Principal retained equipment that impact on Contractor Service Levels if for instance the Service is provided off site.*

- (a) Benchmarking
- (b) Service Level

4.2 Contractor Responsibilities

Service *Indicate the Service e.g. Server maintenance*

- (a) Benchmarking
- (b) Service Level

5. PERFORMANCE MEASUREMENT

Depending on the type of Service provided by the Contractor, the performance may be measured on the basis of User satisfaction through review, virtual client assessment or survey process, or measurable on the basis of functionality, timed responses, frequency, speed, quality, or resolution of issues.

Service/Responsibility	Frequency	Benchmark	Service Level	Measurement	When measured
Identify Service/Responsibility (Breakdown into components as necessary)	How often is the Service to be provided?	Outline high level expectations	Detailed performance criteria	Identify method/formula for measurement	Timing
* Table 2 Outcomes and Performance Measurement					

6. PAYMENT ISSUES

6.1 Payment Schedule

Include a Schedule of Payments or rates for various services. A Rebate and Service Credit regime may then be applied against amounts due to the Contractor.

6.2 Rebates and Service Credits

Insert appropriate Rebate and Service Credit regime

Guide Notes:

The Parties may wish to apply categories of criticality to each Service Level for the purposes of assessing when rebates or service credits should apply. As an example:

Category 1 – High level of criticality

Category 2 – Moderate level of criticality

Category 3 – Low level of criticality

Rebates for failure to meet a Service Level could be expressed to apply in different percentages depending on the Service Level category outline above. By way of example if a 5% rebate were to apply to monthly charges payable to the Contractor for failure to meet a Service Level, the rate could be expressed as follows:

For **Service Level Category 1** failures: 100% of the 5% rebate

For **Service Level Category 2** failures: 50% of the 5% rebate

For **Service Level Category 3** failures: 10% of the 5% rebate

Service credits may be awarded for service delivery that exceeds the agreed targets. Service credits can be offset against any rebate due in an agreed accounting period so that the net Rebate can be calculated.

By way of example Service Credits can be accumulated on a monthly basis. The cumulative tally of Service Credits can be reset to zero at the end of an agreed period (perhaps quarterly) after offsetting against the Rebate applicable for that same period.

For exceeding all **SL Category 1** targets the Service Credit is 50% (of 5%)

For exceeding all **SL Category 2** targets the Service Credit is 30% (of 5%)

For exceeding all **SL Category 3** targets the Service Credit is 10% (of 5%)

7. CONTRACTUAL REMEDIES

Where the Contractor does not meet the same Service Level under the Service Level Agreement for each month in a consecutive six (6) month period, the Principal shall be entitled to treat such failure as a substantial breach for the purposes of clause 14.2 of the Agreement.

The Parties would otherwise rely on the contractual remedies available in the Agreement:

- clauses 3.5 Issue Resolution*
- clause 10.7 Extension of Time*
- clause 11.11 Retention of Moneys*
- clause 12.4 Suspension of Payments*
- clause 13 Variations*
- clause 14.1 Termination for Convenience*
- clause 14.2 Termination of this Agreement for Breach by the Contractor*
- clause 14.4 Termination for Breach by the Principal*

8. INCENTIVES AND INNOVATION

Where the Contractor:

- (a) exceeds targets for performance consistently over an agreed time period;*
- (b) is innovative in developing new processes or systems; or*
- (c) sources and implements new technologies; and*

these accrue benefits and costs savings to the Principal, the Parties may agree to share those costs on terms agreed in the SLA.

9. DEFINITIONS AND INTERPRETATION

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

“**Rebate**” means the rebate specified in the Service Level Agreement.

“**Service Credit**” means the service credit specified in the Service Level Agreement.

9.2 Other capitalised words and expressions used in this SLA are defined in Part 3 of the Agreement.