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To participate in this tender process you **MUST** first download or order a full copy of the Request for Tender (RFT) documents, including the responsible components, and any addenda issued to date.

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The New South Wales Department of Lands (Lands) represents knowledge, heritage, and responsible land management. Since we documented the first State land records, we have continued as the guardians of all land information in NSW. Today, with new technologies and greater expertise in the field, we are a world leader in land information and management.

The NSW Department of Lands
Requires

Supply and Installation of Digital Image Acquisition System (DIAS)

NSW procurement Contracting Services a business unit of the Department of Commerce have been engaged to invite tenders on behalf of the Department of Lands.



Contracting Services is a Business Unit of the NSW Department of Commerce

**Contracting Services invites this tender for and on behalf of the
NSW Government State Contracts Control Board**

PART A – THE REQUIREMENT AND TENDER INFORMATION

PART B – THE TENDER PROCESS

**Supply and Installation of Digital Image
Acquisition System (DIAS) for
Department of Lands**

RFT Number: 0601954

Tender Issue Date: 20 November 2006

Closing Date: 3 January 2007

Closing Time: 9:30 am Sydney Time

Non-Refundable Hard Copy Document Fee \$110 (includes GST): Note: There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>.

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part A of this RFT.

Other matters should be directed to:

Group General Manager
Contracting Services
Office of NSW Procurement
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 7504
Fax: (02) 9372 7533

Supply and Installation of Digital Image Acquisition System (DIAS) For Department of Lands

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PART A THE REQUIREMENT AND TENDER INFORMATION

1. OUTLINE DESCRIPTION OF THE REQUIREMENT

- 1.1 The NSW Department of Lands requires a large format, Digital Image Acquisition System (DIAS) for the digital capture of aerial image data across the geographical extent of New South Wales. Installation and Commissioning of DIAS is early to mid 2007.

This request for Tender ("RFT") covers the supply of a digital aerial camera/sensor, processing hardware and software to enable production of orthorectified photogrammetric quality imagery to meet the demands of the Department of Lands and users of this imagery. The system should have the ability to:

- (a) Provide an end to end solution for the capture, processing and delivery of orthorectified softcopy/hardcopy aerial imagery to a spatial accuracy.
- (b) Provide within a single pass, the capture of Red, Green & Blue bands as well as Panchromatic and a near Near Infra Red bands.
- (c) The system will incorporate a Global Navigation Satellite System receiver and a Inertial Measuring Unit within the capture technology which will be compatible with the operation of the Department's Leica RC30 film camera.

The camera/sensor will be installed in the Department's C421c aircraft which is based in Bathurst NSW. The aircraft is a dedicated airborne camera platform capable of operation to 8,000m. The cabin is pressurised to a minimum altitude of 3000m. The aircraft is presently fitted with Leica RC30 using a PAV20 mount, which should be capable of being reinstalled after removal of the digital camera/sensor.

The primary installation of the sensor and associated modules and cabling, will be under the supervision of the Aircraft Operator (AO) and proceed where necessary under the AO's subcontractor.

The Department will make the aircraft available to the AO and the successful tenderer for an agreed amount of time, which should be nominated in the Tender response document.

- 1.2 The Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

2. SUMMARY INFORMATION FOR TENDERERS

2.1 Interpretation

- 2.1.1 Definitions of terms used in Parts A-C are listed at the start of Part B.

2.2 Structure of Request for Tender

- 2.2.1 This RFT is made up of Parts A to E. If submitting a Tender, retain Parts A, B, D and E. The completed Part C forms the Tender.

2.2.2 Submit Part C in accordance with instructions in Part B. Part C contains the following:

- Form 1 Prime Contractor Profile
- Form 2 Pricing, Configuration And Related Information
- Form 3 Statement Of Compliance With Tender Information And Process
- Form 4 Statement Of Compliance With Proposed Conditions Of Contract
- Form 5 Statement Of Compliance With Specification Requirements
- Form 6 Acknowledgement And Confirmation Of Tender

2.2.3 Part D comprises the proposed conditions of Contract. This document will form the basis of the agreement entered into by the successful tenderer(s) and the Principal.

2.2.4 Part E comprises the Specification Requirements, defining the goods and/or services to be provided under any resultant Contract.

2.3 Contact Officer

2.3.1 Refer requests for information or advice regarding this RFT to:

Name: Cameron Parle
Phone: (02) 9372 7634
Fax: (02) 9372 7633
Email: cameron.parle@commerce.nsw.gov.au

OR

Name: Ranjan Saba
Phone: (02) 9372 7616
Fax: (02) 9372 7633
Email: ranjan.saba@commerce.nsw.gov.au

2.3.2 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer.

2.4 Nature of Agreement

2.4.1 The Requirement is to be met by an agreement between the Principal and the successful tenderer on the terms of Part D based on PROCURE IT. It is a condition of this tender that the tenderer substantially accepts the terms and conditions of PROCURE IT. As PROCURE IT has been extensively redrafted with input from industry it is felt that unless there is a serious error or omission or lack of clarity in the document the Board will generally not enter into negotiations relating to any changes to the agreement.

2.4.2 The agreement will be for a term of three (3) years and may be extended by further terms, each of one (1) year, up to maximum of five (5) years.

2.4.3 If this RFT seeks Tenders to supply more than one Principal then, unless the context otherwise requires, a reference in Parts A-C to "Principal" shall be read as a reference to each "Principal" and a reference to "agreement" shall be read as a reference, as between the Contractor and each Principal, to an agreement between the Contractor and that Principal.

2.5 Eligibility to Tender

- 2.5.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Principal will only contract with the relevant legal entity or entities.
- 2.5.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from trustees are permitted this may include a copy of the relevant trust deed. Any evidence requested is to be provided within 3 working days of the request.
- 2.5.3 The Board may submit any financial information provided by the Tenderer for independent financial assessment of the Tenderer's business.
- 2.5.4 The Board reserves the right to reject any Tender if it judges the tenderer not to have appropriate financial assets.
- 2.5.5 If the Board judges the tenderer's financial position to be marginal, it reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank or parent company guarantee, or an unconditional performance bond.

2.6 Other Eligibility Requirements

- 2.6.1 The Board will not enter into an agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, Tenderers must be registered for GST and state their ABN in their Tender Response.
- 2.6.2 Tenders from Tenderers that do not have an ABN and/or are not registered for GST, such as Tenderers commencing business in Australia, may be considered at the Board's discretion if the Tenderer demonstrates that it will obtain an ABN and GST registration before entering into an agreement with the Board. Such Tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender Response.

3. WHERE TO OBTAIN THIS RFT

3.1 RFT Copies

- 3.1.1 A tenderer may obtain either a hard copy or electronic copy of this RFT.
- 3.1.2 NSW Department of Commerce has adopted an electronic tendering system using the Internet, which has the capacity for viewing, downloading, or ordering the RFT and for the lodgement of Tenders.

3.2 Hard Copy

- 3.2.1 A hard copy of this RFT may be obtained by:
 - (a) Ordering on-line through the NSW Department of Commerce eTendering website at <https://tenders.nsw.gov.au/commerce>. Hard copy orders placed through the website will be filled by standard postal delivery.

- (b) By prior arrangement on (02) 9372 8900 between 8.30am and 4.30pm, Mondays to Fridays (except public holidays) to pick up from Tenders Office, McKell Building, NSW Department of Commerce. Tenderers are met at Level 3 (Ground Floor), McKell Building, 2-24 Rawson Place, Sydney NSW 2000. Though the Tenders Office is currently located at Level 8, no public access is given to this floor and all public face-to-face tender transactions occur on Level 3.
 - (c) Ordering by telephone (02) 9372 8900. An additional fee is charged for delivery by express post or by courier, as required.
 - (d) First viewing a full exhibited copy at the Tenders Office by prior arrangement on (02) 9372 8900 between 8.30am and 4.30pm Mondays to Fridays (except public holidays).
- 3.2.2 A copy of the Price Schedule in CD-ROM form or on a floppy disk may in some cases be provided with the hard copy.

3.3 Electronic Copy

- 3.3.1 An electronic copy of the RFT and any Addenda that may be issued up to the Closing Date and Time, may be viewed and downloaded from the internet at the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>
- 3.3.2 A tenderer is encouraged, although not required, to obtain the RFT and to lodge a Tender electronically through the NSW Department of Commerce *eTendering* website.
- 3.3.3 In order to download an electronic copy of the RFT, a tenderer must first register as a site user.
- 3.3.4 A tenderer should follow the instructions on the site to view an RFT. To locate and view an RFT and its RFT Summary, follow the instructions on the NSW Department of Commerce *eTendering* website:
- (a) First locate the RFT using the RFT Search, or by looking at the Current RFT listings screen where the additional search function may also be used.
 - (b) You may see some details of the RFT by accessing them through the blue “Viewable Copy” button. This function is provided to assist in making a decision to obtain a “Responsible Copy” of the RFT.
 - (c) Download the “Responsible Copy” files from the website by selecting the blue “Responsible Copy” button (if one appears for that RFT) and then follow the steps and the instructions on the NSW Department of Commerce *eTendering* website.

3.4 RFT Purchase Price

- 3.4.1 The non-refundable purchase price for a hard copy of this RFT is \$110.00 inclusive of GST.
- 3.4.2 Payment may be made:
- (a) if purchasing from the Tenders Office, McKell Building, by cheque drawn in favour of the NSW Department of Commerce, or by credit card (MasterCard, Visa and Bankcard). Cash will not be accepted; or

- (b) if ordering a hard copy through the NSW Department of Commerce *eTendering* website, by credit card (MasterCard, Visa and Bankcard).

3.5 Addenda to RFT

- 3.5.1 The Board, during the tender period, may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to the closing date, even if a tender has already been submitted. They must obtain a copy of all Addenda as given in clause 3.5.2 or 3.5.3 as applicable.
- 3.5.2 Where a RFT has been acquired in hard copy form, tenderers must contact the Contact Officer named under clause 2.3 of Part A or the Tenders Office (Level 8, McKell Building, 2-24 Rawson Place, Sydney, contact number (02) 9372 8900, e-mail: Tenders@commerce.nsw.gov.au).
- 3.5.3 Where a RFT has been acquired in an electronic form, tenderers must check the website address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

PART B THE TENDER PROCESS

4. DEFINITIONS OF TERMS USED IN PARTS A-C

- 4.1 Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below. Note that not all defined terms will appear in all RFTs.

“ABN” means an Australian Business Number as provided in the GST Law.

“Addendum” means an addendum or addition to this RFT made by the Board before the Closing Date and Time.

“Alternative Tender” means a Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the Requirement.

“Board” means the State Contracts Control Board established under the *Public Sector Employment and Management Act 2002* whose responsibilities include:

- Inviting and accepting tenders;
- Determining the conditions under which tenders are invited or accepted;
- Entering into contracts on behalf of Departments and other public sector agencies; and
- On-going contract administration and management,

and includes the duly authorised delegates of the Board, including officers of Contracting Services.

“Closing Date and Time” means the Closing Date and Time for receipt of Tenders, specified on the cover sheet to this RFT.

“Code” means the *NSW Government Code of Practice for Procurement*, as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The code can be viewed and downloaded from:

http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

“Conforming Tender” means a Tender that:

- (a) conforms to the Requirement;
- (b) is in the prescribed form;
- (c) conforms to the terms and conditions of Part D, and
- (d) conforms to all of the other requirements of this RFT.

“Contractor” means the tenderer as a party to the proposed agreement.

“Contracting Services” means a business unit of the NSW Department of Commerce representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“Deliverables” means the goods and/or services sought under this RFT, as detailed in the Specification.

“Government Businesses” means in general, entities which: a) have some form of public sector ownership; b) are engaged in trading goods and/or services; c) have a large measure of self sufficiency; and d) are subject to Executive control. In this context, the term Government business includes Public Trading Enterprises, State Owned Corporations and General Government Businesses.

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

“GST Free Supplies” and **“Input Taxed Supplies”** have the same meaning as in the GST Law.

“GST Law” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

“Late Tender” means a Tender received after the Closing Date and Time for tenders and includes a Tender that is only partly received by the Closing Date and Time.

“Non-Conforming Tender” means a Tender that:

- (a) does not conform to the Requirement;
- (b) is not in the prescribed form;
- (c) does not conform to any one or more of the terms and conditions of Part D, including a Tender which seeks to qualify or amend these terms, or
- (d) does not conform to any of the other requirements of this RFT.

“OHS&R” means occupational health, safety and rehabilitation.

“On Request Items” means any Deliverables nominated as On Request Items.

“Price” includes a price expressed as a lump sum or a rate per unit of quantity, calculated in accordance with this Part.

“Price Schedule” means the list of Deliverables offered by the tenderer, together with the corresponding pricing information.

“Principal” means the party named as Principal in the proposed agreement.

“Requirement” means the requirement for the Deliverables to be met by the Tender and detailed in the Specification.

“RFT” means the Request for Tender.

“smartbuy®” means an electronic marketplace, consisting of an internet website and associated databases and applications, maintained on behalf of the NSW Government, located at <http://smartbuy.nsw.gov.au> and associated domains.

“Specification” means the detailed description of the required goods and/or services contained in Part E.

“Tender” means the offer to supply the Deliverables submitted in response to the RFT.

“Tender Price” means, in respect of each Deliverable offered, the Price nominated in the Price Schedule for that Deliverable.

5. PREPARATION OF TENDER - GENERAL

5.1 Conformity of Tenders

- 5.1.1 The Board seeks Conforming Tenders.
- 5.1.2 Tenders that do not include a fully completed Part C, in particular those Tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or, in the case of electronic tenders, which cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration, at the Board's discretion.
- 5.1.3 Tenderers may, if they choose, submit an Alternative Tender but only in conjunction with a Conforming Tender. Tenderers are encouraged to offer options or solutions that contribute to the Principal's ability to carry out its business in a more cost-effective manner.
- 5.1.4 The Board may assess an Alternative Tender against the selection criteria where submitted with a Conforming Tender.
- 5.1.5 An Alternative Tender must be clearly marked "Alternative Tender".
- 5.1.6 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
 - (a) Any Alternative Tender or part of an Alternative Tender, where submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender that, in the Board's opinion, is substantially a Conforming Tender.

5.2 Prescribed Form of Tender

- 5.2.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.
- 5.2.2 The Tender will be taken to be for the supply of the Requirement on the terms and conditions stated in Part D except to the extent that these are amended by the Tender.

5.3 General Instructions for Completion of Tenders

- 5.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 5.3.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 5.3.3 Tenderers must complete ALL of Part C of this RFT, as directed.
- 5.3.4 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

5.4 Addenda to RFT Before Close of Tenders

- 5.4.1 A tenderer may ask the Contact Officer for clarification of anything in the RFT before the Closing Date and Time. The Board may issue any instruction resulting from such request in writing to all tenderers in the form of an Addendum.
- 5.4.2 If, for any other reason, the Board requires the RFT to be amended, an Addendum will be issued.
- 5.4.3 In each case, an Addendum becomes part of the RFT.

5.5 Reserved

5.6 Tenderers to Inform Themselves

- 5.6.1 Before submitting its Tender, a tenderer must:
 - (a) Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
 - (b) Satisfy itself:
 - (i) that the Tender, including the Tender Price is correct; and
 - (ii) that it is financially and practically viable for it to enter into and perform the proposed agreement.

6. PREPARATION OF TENDER – POLICY REQUIREMENTS

6.1 Procurement Policy – Introduction

- 6.1.1 Tenderers should read the main policy document listed below. Other relevant policies and particular policy objectives to be implemented through this procurement are drawn to Tenderers' attention in this cl.6. Their requirements are reflected in the selection criteria listed in cl.9.2 and in the responses required from Tenderers in Part C.

NSW Government Procurement Policy
<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>

6.2 Code Of Practice For Procurement

- 6.2.1 Tenderers must comply with the NSW Government Code of Practice for Procurement, which is available at:
http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf
- 6.2.2 Lodgement of a Tender will itself be an acknowledgement and representation by the Tenderer that it is aware of the requirements of the Code, that the Tenderer will comply with the Code and that the Tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any agreement that may be awarded.
- 6.2.3 If a Tenderer has failed to comply with the Code, this failure will be taken into account by the Board when considering its Tender or any subsequent Tender and may result in this or any subsequent Tender being passed over without prejudice to any other rights or action or remedies available to the Board.

6.3 Occupational Health Safety & Rehabilitation

6.3.1 Tenderers must comply with the following OHS&R requirements in the performance of any agreement awarded:

- (a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act
- (b) Codes of Practice, approved and issued pursuant to the above Act and or regulations made under the Act

6.3.2 Tenderers must indicate compliance with OHS&R obligations in Part C.

6.4 Environmental Management

6.4.1 The NSW Government seeks to promote ecologically sustainable development through procurement. The Tenderer is required in Part C to highlight how the provision of the Deliverables would promote this object if its Tender is accepted.

6.5 Economic Development Through Government Procurement

6.5.1 Economic development is a key policy objective in all government procurement. This objective may incorporate policies regarding:

- (a) the giving of purchasing preferences to Deliverables of Australian and New Zealand origin;
- (b) local industry participation, and;
- (c) Small to Medium Enterprise (SME) involvement, employment and workforce development.

6.5.2 Policies of particular relevance to this procurement are drawn to tenderers' attention in this Part B. Further details are to be found in the NSW Government Procurement Policy and from sources identified in this clause.

6.5.3 Tenderers are encouraged to take up the services offered by the Industry Capability Network (NSW) Ltd (ICN) to assist in maximising the local content of Tenders. The ICN is a business advisory service, managed by industry and funded by the NSW Government, primarily to assist business and buying organisations to source their requirements from local producers who can provide goods, equipment and services against imports. The ICN provides a free service of identifying the supply capabilities of Australian manufacturers and import replacement. The ICN also assists in the preparation of Local Industry Participation Plans. Contact details are given below.

ICN (NSW) Ltd
Suite 3, Century Plaza
80 Berry Street, North Sydney NSW 2060

Phone: 02 9025 3150; Fax: 02 9025 3151

Email: enquiry@icnnsw.org.au

Website address: www.icnnsw.org.au

6.5.4 The Board makes no representation or promise in relation to the suitability or otherwise of any advice or assistance offered by the ICN or its compliance with the Board's requirements.

6.6 NSW Government Purchasing Preference Scheme

6.6.1 The NSW Government has directed its departments and declared agencies to give preference to goods (and related services) of Australian and New Zealand origin. The NSW Purchasing Preference Scheme supports Australian manufactured products and services in preference to imports. Certain eligible country based suppliers are given additional preference above all other suppliers. Preferences are only used for the purposes of tender evaluation and Contractors or client agencies incur no actual costs.

6.6.2 The Preference Scheme is implemented by evaluating Tender Prices in accordance with the clauses below.

Preference – Australian and New Zealand Content

6.6.3 Preference is applied in the form of a 20% loading on the declared imported/overseas content (excluding New Zealand) of the tendered goods (and related services). For example:

Tender Price:	\$10.00
Imported Content:	80%
Preference margin	$20\% \times 80\% \times \$10.00 = \$1.60$
Price used for evaluation:	$\$10.00 + \$1.60 = \$11.60$

6.6.4 No preference margin is applied when assessing Tenders for the provision of services alone.

6.6.5 Tenderers are required to provide details of the imported (non-Australian and New Zealand) content in the Price Schedule and to make available records (as and when required) to substantiate imported or local content claims. Tenderers must also include detailed statements from their sub-contractors on the imported content of the goods and related services they are offering.

6.6.6 The imported content of goods and related services is the estimated duty paid value, inclusive of the value of any services, for example overseas freight and insurance, consultancy or engineering effort, or any charges of overseas origin, together with customs clearing charges.

NSW Country Industries Preference Scheme

6.6.7 A further preference loading of up to 5% is applied if the tenderer is not based in a NSW country area in accordance with the Country Industries Preference Scheme (CIPS). The preference loading is not applied against New Zealand or other overseas Tenders or Tenders from other states or territories.

6.6.8 For preference to be applied to a Tender under the CIPS:

- (a) the tenderer must be registered with the Department of State and Regional Development as a country manufacturer under the Country Industry Preference Scheme (Tel 02 9338 6717) before the Closing Date and Time for Tenders;
- (b) the tenderer must quote its Preference Registration Number allocated by the Department of State and Regional Development and the applicable preference margin in the space provided in Part C of this RFT;
- (c) the goods being sought are those for which the tenderer is registered; and
- (d) the tenderer is tendering as the prime contractor.

6.6.9 The Country Industries Preference Scheme is intended primarily to benefit manufacturers located outside the metropolitan areas of the State, which in comparison with their city-based competitors, suffer definable economic disadvantages that can be directly attributed to their country location. The preference applies on the following basis to approved manufacturing industries located outside the county of Cumberland, the Cities of Newcastle, Wollongong, Penrith and Liverpool and the Municipality of Camden:

(a) In the Cities of Maitland, Greater Cessnock and Blue Mountains, the Municipalities of Kiama and Shellharbour and the Shires of Port Stephens, Lake Macquarie, Gosford, Wyong, Wollondilly, Wingecaribee and that part of the Shire of Hornsby which was previously part of the Shire of Colo: maximum preference of 2.5%.

(b) Elsewhere in New South Wales: maximum preference of 5%.

6.6.10 Further details of the NSW Purchasing Preference Scheme, and an application for registration under the Country Industry Preference Scheme, can be obtained from:

Department of State and Regional Development
Regional Development Division
Level 43, 225 George Street
Grosvenor Place
SYDNEY 1200
Telephone: (02) 9338 6717
Facsimile: (02) 9338 6726
Website address: <http://www.business.nsw.gov.au/index.asp>

Notice Regarding Free Trade Agreement Between Australia and USA:

6.6.11 Consequent upon the establishment of a Free Trade Agreement between Australia and the United States of America, New South Wales has a period of three years to phase in changes/removal of its offset criteria such as the price preference scheme.

6.6.12 Current policies are being reviewed and, within the three year period, support for local industry and regional development through the existing price preference scheme will cease to apply against relevant US suppliers bidding for applicable NSW Government contracts.

6.6.13 In the meantime, until the policy reviews are complete, both the NSW Government Purchasing Preference Scheme and NSW Country Industries Preference Scheme shall apply.

6.7 Small to Medium Enterprise (SME) Involvement

6.7.1 If Deliverables may be sourced from SME sub-contracting arrangements, tenderers are to provide details in Part C of the likely percentage of the value of the Deliverables that will be sourced from SMEs and of the activities that will be carried out by SMEs under the agreement.

6.8 Reserved

6.9 Competitive Neutrality

- 6.9.1 The objective of NSW Government Policy on the application of competitive neutrality is to ensure that Government Businesses, whether they are Commonwealth, State or Local, do not have any net advantage over their competitors as a result of their public sector ownership. It requires that comparisons between public and private sector bids be made on a similar basis. It means, amongst other things, that in-house bids should reflect adjustments that offset the effects of taxation exemptions, where it is feasible to do so, and be accurately costed.
- 6.9.2 A tenderer who is either a Government agency (including an organisational unit of such an agency) or a Government Trading Enterprise will be required to adhere to the NSW Government Policy Statement on the Application of Competitive Neutrality, January 2002, where applicable.
- 6.9.3 Copies of the Policy Statement are available from the Cabinet Office at Level 37, Governor Macquarie Tower 1 Farrer Place Sydney 2000.
- 6.9.4 The principal or other appropriate senior officer of a tenderer who constitutes either a Government agency or a Government Trading Enterprise is required to affirm, in Part C, that the tenderer does or does not comply with this policy.

6.10 Reserved

7. PREPARATION OF TENDER - PRICE SCHEDULE AND PROJECT PLAN

7.1 Price Schedule

- 7.1.1 Tenderers MUST complete the Price Schedule at Part C (Form 2)

7.2 Calculating the Tender Price

7.2.1 General

- 7.2.1.1 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the agreement, including packing and delivery (if applicable);
- (c) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders;
- (d) include all costs associated with the preparation and submission of the Tender.

7.3 Reserved

7.4 GST Free or Input Taxed Supplies

Tenderers must identify and state the value of any GST Free or Input Taxed Supplies to be made under the agreement.

7.5 Development, Production and Project Plan

- 7.5.1 Tenderers are to provide a project plan, to be attached to their Tender, detailing how and when the Deliverables would be supplied under the agreement. If advance or progress payments are required, tenderers are to include details of these in the project plan, together with milestones against which such payments are to be made.

7.6 Minimum Tender Validity Period

- 7.6.1 Tenders must remain open for acceptance for a period of at least six (6) months from the Closing Date and Time for Tenders. Tenderers must state in Part C if their Tenders will remain open for any longer period.

8. SUBMISSION OF TENDERS

8.1 General Instructions for Submission of Tenders

- 8.1.1 A Tender must be received by the Closing Date and Time.

- 8.1.2 A Tender may be submitted by any of the following methods:

- (a) by delivery into the Tender Box:

- (1) It must be marked:

Tender Box
NSW Department of Commerce
Level 3, McKell Building
2-24 Rawson Place
Sydney NSW 2000

- (2) If delivery personnel require a signature as evidence of delivery, the Tender must be delivered between 8:30 am and 4.30 pm, Mondays to Fridays (except public holidays).

- (b) by post, addressed to

Tender Box
Tenders Office,
Level 8, McKell Building
2-24 Rawson Place
Sydney NSW 2000

- (c) by facsimile to (02) 9372 8974

- (d) by electronic lodgement through the NSW Department of Commerce, *eTendering* website at <https://tenders.nsw.gov.au/commerce>.

- 8.1.3 If a tenderer intends to submit electronically through the NSW Department of Commerce *eTendering* website or by facsimile, the following must be considered:

- (a) The facsimile machine and NSW Department of Commerce *eTendering* website are at peak use on the morning when Tenders close.

- 1) Due to the limitations of these means of communication it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.

- 2) When lodging by facsimile or through the NSW Department of Commerce *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
 - 3) A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce *eTendering* website is appropriate.
- (b) The facsimile machine and the NSW Department of Commerce *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to the clause governing electronic Tenders to the NSW Department of Commerce *eTendering* website for instructions as to compressing electronically submitted Tenders.
- 1) In order to comply with the above paragraph, an electronic Tender may be supported by documents in hard copy or on CD-ROM.
 - 2) Supporting documents, to be submitted in hard copy or on CD-ROM, may be designated throughout the RFT. Supporting documents may include, but are not limited to, statutory declarations, certificates, and company brochures.
 - 3) If submitting an electronic tender with supporting documents:
 - (a) The complete Tender, including the supporting documents, must be submitted by Closing Date and Closing Time, and
 - (b) Supporting documents should be clearly designated as “Supporting Documents to RFT 0502457”
- 8.1.4 A tenderer is not required to provide multiple copies of a Tender.
- (a) If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is:
 - (1) A “Copy.” A copy must be identical to an earlier or simultaneous submission in every respect.
 - (2) A “Variation.” A variation of an earlier tender will be deemed as superseding a prior submission.
 - (3) An “Alternative Tender”.
 - (b) In the event that a Tenderer fails to designate whether a submission is a Copy or a Variation, the latest Tender received in the NSW Department of Commerce Tender Box will be deemed as the definitive submission.
- 8.1.5 If required, a tenderer must provide a copy of the Price Schedule on a CD-ROM or an IBM compatible 1.44MB floppy disk in a file format that can be read, formatted, displayed, manipulated and printed by Microsoft Excel 97.

8.2 Electronic Tenders to the NSW Department of Commerce *eTendering* Website

- 8.2.1 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.
- 8.2.2 A tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown in the Conditions of Tendering and on the NSW Department of Commerce *eTendering* website.
- 8.2.3 A tenderer must follow the following directions:
- (a) RFT for which electronic lodgement is available through the website can be identified by the blue “Lodge a Response” button on the web pages for the RFT.
 - (b) To lodge a Tender electronically, the files containing the Tender Response must be up-loaded through the website. Access to the up-loading process is through the blue “Lodge a Response” button, then follow the steps and instructions on the NSW Department of Commerce *eTendering* website and any instructions which may have been supplied with the RFT Summary and/or Respondable Copy.
- 8.2.4 A tenderer must observe the following format for submissions:
- (a) An electronically lodged Tender must be lodged in a file format which can be read, formatted, displayed and printed by Microsoft Word 97, or any format required by the RFT.
 - (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.
 - (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.
- 8.2.5 Signatures are not required for a Tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a Tender is authorised by the person or persons who may do so on behalf of the Tenderer and appropriately identify the person and indicate the person’s approval of the information communicated.
- 8.2.6 Electronically submitted Tenders might be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a Tender that cannot be effectively evaluated because it is incomplete or corrupt. Note that:
- (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a Tender.
 - (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- 8.2.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce *eTendering* website in submitting a Tender or otherwise, it is encouraged to advise the Contract Officer. A tenderer should note:
- (a) There are usually alternative Tender lodgement methods described in the RFT. It is always the tenderer’s responsibility to lodge the Tender by Closing Date and Closing Time.

- (a) If there is a defect or failure of the NSW Department of Commerce *eTendering* website and the Board is advised, the Tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the tender process will not be compromised by such an extension.

8.3 Custody of Tenders After Receipt

- 8.3.1 All hard copy tenders submitted (and any accompanying CD-ROMS or floppy disks) are kept in the NSW Department of Commerce Tender Box, which is a locked tender box, until after Closing Date and Closing Time.
- 8.3.2 Tenders lodged electronically to the NSW Department of Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000* (NSW) and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.
 - (a) On receipt of Tenders lodged electronically to the NSW Department of Commerce *eTendering* website, Tenders are encrypted and stored in a secure “electronic tender box.”
 - (b) For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
 - (b) The e-mail receipt that is sent to the Tenderer after successfully up-loading the Tender is the only evidence of Tender lodgement provided.

8.4 Late Tenders

- 8.4.1 In accordance with the requirements of the Code of Practice for Procurement, Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be compromised.
- 8.4.2 Normally, Late Tenders will not be considered for acceptance if they are:
 - (a) hand delivered, including hand delivered by courier; or
 - (b) received through Australia Post unless the envelope is clearly postmarked before the Closing Date and Time; or
 - (c) received through Australia Post with only the tenderer’s own franking machine on the envelope; or
 - (c) received by electronic communication (facsimile or over the internet) and the despatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving facsimile or internet facility being engaged, faulty or otherwise inoperative.

8.5 Extension of the Closing Date and Time

- 8.5.1 The Board may, in its discretion, extend the Closing Date and Time.

9. EVALUATION OF TENDERS

9.1 General

- 9.1.1 Tenders will be assessed against the selection criteria listed below, which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 9.1.2 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.
- 9.1.3 If any criterion or sub-criterion is stated to be “mandatory”, a failure by the Tender to fully comply with that criterion or sub-criterion will result in automatic exclusion of the Tender without further consideration.
- 9.1.4 The SCCB reserves the right to short-list the preferred tenderers on the basis of best Value-for-Money to the extent that it forms part of the selection criteria as described in Clause 9.2 of this part. The SCCB may also at its sole discretion and at any time during the evaluation process, request short-listed tenderers to submit a best and final offer in accordance with Clause 7 of this part.
- 9.1.5 Preference will be given to tenders with a similar unit already in use in the market.

9.2 Selection Criteria

- (a) The tenderer’s degree of compliance with the requirements of the functionality required and Specification.
 - (b) The tenderer’s demonstrated expertise and proven experience in the successful implementation of the specified or similar system on a similar scale.
 - (c) Data Management, Storage, Network, System Integration, Installation Compatibility, System Upgrade.
 - (d) Maintenance, Spare Parts, Documentation, Protective Packaging, Warranty.
 - (e) Delivery Project Plan.
 - (f) Please indicate below your compliance with the proposed conditions of contract.
 - (g) Quality Assurance System in place
 - (h) Financial Capacity and Stability of the Tenderer.
 - (i) Tendered Price.
 - (j) Value for money.
- NB. Short-listed tenderers will be required to give a presentation outlining their capabilities and plans on the above aspects as part of the selection process. Site visits may be conducted at the direction of Department of Lands tender evaluation team.

9.3 Variation of Tenders

- 9.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may vary its Tender:
 - (a) by providing the Board with further information by way of explanation or clarification (“provide an explanation”);

- (b) by correcting a mistake or anomaly (“correct a mistake”); or
- (c) by documenting agreed changes to the Tender negotiated under this Part B.

9.3.2 Such a variation may be made either:

- (a) at the request of the Board, or
 - (b) with the consent of the Board at the request of the Tenderer;
- but only if,
- (c) in the case of variation requested by the tenderer to provide an explanation or correct a mistake, it appears to the Board reasonable in the circumstances to allow the tenderer to provide the explanation or correct the mistake or anomaly, or
 - (d) in the case of variation to document agreed changes, the Board has confirmed that the draft documented changes reflect what has been agreed.

9.3.3 If a Tender is varied to provide an explanation or correct a mistake, the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.

9.3.4 A variation of a Tender will not be permitted if in the Board's view:

- (a) it would substantially alter the original Tender; or
- (b) in the case of variation to provide an explanation or correct a mistake, it would result in the revising or expanding of a Tender in a way which would give a tenderer an unfair advantage over other tenderers.

9.4 Exchange of Information Between Government Agencies

9.4.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance for any agreement that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.

9.4.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 22(1) of the *Defamation Act 1974* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.

9.4.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.

9.4.4 To avoid doubt, information which may be collected, exchanged and used in accordance with this provision includes “personal information” about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause.

9.4.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.

- 9.4.6 The successful tenderer's performance of the agreement may be monitored and assessed. Performance assessment reports, including substantiated reports of unsatisfactory performance, can be taken into account by NSW government agencies and may result in future opportunities for NSW government work being restricted or lost.

9.5 Corrupt or Unethical Conduct

- 9.5.1 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:

- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, the Client Agency, or the NSW Government in connection with this RFT or the submitted Tender;
- (b) engaged in corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*; or
- (c) a record or alleged record of unethical behaviour;

This may result in the Tender not receiving further consideration.

- 9.5.2 The Board is under no obligation to do so, but may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

10. OUTCOMES

10.1 Negotiations Before Determination of Outcome

- 10.1.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiation with preferred tenderers or a preferred tenderer, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.

The Board will generally not enter into negotiations on the standard conditions of contract contained in Part D.

10.2 Acceptance or Rejection of Tenders

- 10.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, any Alternative Tender or other Non-Conforming Tender in accordance with this Part B.

- 10.2.2 The Board is not bound to accept the lowest or any Tender.

- 10.2.3 If the Board rejects all the Tenders received it may:

- a) invite fresh Tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new Tenders), or
- b) conduct post tender negotiations in accordance with this Part B.

10.3 Discontinuance of the Tender Process

- 10.3.1 In addition to its rights in relation to acceptance and rejection of Tenders, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

- 103.2 The Board will not be liable for any losses suffered by a tenderer as a result of discontinuance of the tender process, including costs of tendering.

10.4 Notification of Outcome

- 10.4.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.

10.5 Entry into Agreement

- 10.5.1 The Board may enter into an agreement with a successful tenderer by execution of a formal deed of agreement in terms of Part D.

10.6 Post Tender Negotiations in the Event all Tenders are Rejected

- 10.6.1 If the Board rejects all Tenders on the basis that they are all Non-Conforming, but considers that conformity with the requirements of this RFT is achievable, it may enter into negotiations with any tenderer with a view to achieving a Conforming Tender and entering into an agreement. If such negotiations are unsuccessful, the Board may then enter negotiations with the next most acceptable tenderer. This process may be repeated with each of the rejected Tenders in order of potential acceptability. However, the Board is not obliged to enter into negotiations with any tenderer.
- 10.6.2 The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation. Negotiations will not seek to play off tenderers' prices against other tenderers' prices.

10.7 Complaints

- 10.7.1 It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the conditions in Part D or the Requirement, it is invited to write to:

Chairman
State Contracts Control Board
Level 22, McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

10.8 Disclosure of Information Concerning Successful and Unsuccessful Tenders

- 10.8.1 In accordance with NSW Government Policy to publicly disclose details of its contracts, the Board may publish the following information ("public information") about an agreement awarded under this RFT:
- (a) Details of the agreement (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the agreement; if applicable, the term of the agreement);
 - (b) The full identity of the successful tenderer including details of cross ownership of relevant companies;
 - (c) The price payable by the agency and the basis for future changes in this price;
 - (d) The significant selection criteria used in Tender assessment and their weightings;
 - (e) Provisions for re-negotiation (where applicable).

10.8.2 The Board will not disclose the following information about any agreement awarded under this RFT unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required:

- (a) The Contractor's financing arrangements;
- (b) The Contractor's cost structure or profit margins;
- (c) Items of the Contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
- (d) Any other matters where disclosure would, in the Board's view, place the Contractor at a substantial commercial disadvantage with its competitors both at the time of entering into the agreement and at any later date when there would be an effect on future competitive arrangements.

10.8.3 A tenderer may request that the Board not disclose particular information included in its Tender but must give the reasons for requesting this. The Board will advise a tenderer in contention for an agreement what information it agrees not to disclose (unless legally required to do so). If the Board and a tenderer cannot agree about what should be disclosed, the Board will seek the advice of the Chair of the Board. The Board's decision is however final and is at the Board's absolute discretion. Neither a decision by the Board, nor a recommendation by the Chair of the Board under this paragraph is a decision that falls within any dispute resolution procedures specified in Part D.

10.8.4 The Board may publish the identities of all tenderers, but will not disclose other information included in an unsuccessful Tender unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required.

10.8.5 For agreements valued over \$100,000, the Board will normally publish the names of tenderers when Tenders close, and the other public information about the agreement on the internet, within 90 days after award of the agreement. For other agreements the Board will disclose the public information on request.

10.9 Ownership of Tenders

10.9.1 All Tenders become the property of the Board on submission.

10.9.2 The Board may make copies of the Tenders for any purpose related to this RFT.

10.10 Monitoring of Contractor Performance

10.10.1 It is proposed that a Service Level Agreement will be negotiated with the Contractor. The Service Level Agreement will detail agreed minimum levels of service to be provided by the Contractor. Service levels will be measured against an agreed set of key performance indicators.

10.10.2 The Service Level Agreement will form an integral part of the agreement between the parties.



Contracting Services is a Business Unit of the NSW Department of Commerce

**Contracting Services invites this tender for and on behalf of the
NSW Government State Contracts Control Board**

PART C - TENDER RESPONSE

Supply and Installation of Digital Image Acquisition System (DIAS) for Department of Lands

RFT Number: 0601954

Your Company's Legal Name: <Insert Company name>

Your Company's Trading Name: <Insert Trading name>

Your Company's ABN number: <Insert ABN number>

Contact Name: <Insert name of Contact Officer>

Contact Phone: <Insert telephone no>

If submitting an electronic Tender, please answer the following and indicate Yes or No below:

- Are you providing supporting documents in hard copy or on CD-ROM?

Yes/No

- Did you clearly mark the supporting documents as "Supporting Documents to RFT Number?"

Yes/No

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FORM 1: PRIME CONTRACTOR PROFILE

REQUEST FOR TENDER

RFT 0601954

1. PRIME CONTRACTOR DETAILS

Please write or type into this Response Form identification details of the legal identity that will enter into a contract.

If Prime Contractor is a company: Registered Company Name:	ACN:	Registered Office:
OR, if Prime Contractor is a partnership: Partnership Name:		
OR, if Prime Contractor is an individual: Individuals Name:	ABN:	
Trading Name:		
Site Office (Principal Place of Business)	Postal Address (Principal Place of Business)	
Alternative Address	Contract Administration Contact Name	

Contract Administration Contact Telephone Number	Contract Administration E-Mail Address
Contract Administration Contact Fax Number	Chief Executive Officer's Name (CEO)
Switchboard Telephone Number	Company E-Mail Address
Website Address	
Respondent Background:	
Year of incorporation in Australia (if applicable):	
Number of years in providing tendered Products and Services:	
Company Financial Information:	
Annual Australian turnover (last reported Financial Year):	A\$
Annual turnover in Products and Services tendered:	A\$
Annual profit per employee (last reported Financial Year):	A\$

Lines of Business:

List all lines of business activities related to the legal entity who may be signing the Contract and express as a percentage of the gross turnover in Australia:

Activity	% of Gross Turnover

2. SUB-CONTRACTOR DETAILS

Will you be using any sub-contractors? **Yes/No** If Yes, please supply following details:

Company Name	Address	Relationship to Contractor	Proposed Role

3. EMPLOYEE DISTRIBUTION

Provide details of employee numbers servicing the Australian market in the following areas of activity:

Location	Management	Administration	Sales/Marketing	Technical	Service/Support	Total
NSW						
Australia						

4. PROPOSED PROJECT PERSONNEL

Respondents are required to provide a summary description of employees to be involved in this project (a more detailed description of certain proposed project personnel is required elsewhere in this RFT).

Name	Position in Company	Experience (Years)	Qualifications	Proposed Role	Prime or Sub

Note: This table may be expanded.

5. PROJECT EXPERIENCE

Provide a summary of the relevant project experience of your company over the last three (3) years:

Name of Project	Details of the Project including Value	Start Date	Finish Date	Name of Client	Contact Person (include name and title/position)	Telephone	Prime or Sub

Note: This table may be expanded if there is insufficient space provided above.

6. REFERENCES

Provide a summary of at least three (3) project reference sites where similar services have been undertaken by your organisation. A more detailed description of these reference sites is required elsewhere in this RFT. Reference sites should be within Australia and preferably include New South Wales clients.

In addition to these formal referees, please attach a schedule of all clients you have provided with goods/services in excess of \$500,000 in the past two years at the time of the tender. Department of Lands reserve the right to contact any of these clients. Department of Lands undertake to exercise the utmost discretion in not disclosing your clients to any third party. This list should be provided in a similar format to below as a separate attachment under confidential cover.

Important: These references should be capable of verification by the Department of Commerce. You should make any necessary arrangements with referees prior to submitting your response. Simply providing a contact officer within your organisation is not acceptable and may result in elimination of your response.

Client	Project	Contact Person	Telephone	Email

Note: You may include any reference letters or other written testimonials from Government or private organisations in the appendices.

7. PROBITY

Will the awarding of this Contract give rise to any real or potential conflicts of interest which require disclosure? **Yes/No** If Yes, please give details:

--

8. QUALITY CERTIFICATION

Please provide the following information by inserting a (✓) in the appropriate square and give details where required.

1. Please state your company quality principles.

.....

.....

.....

.....

2. Do you have a Quality system in place that meets the above principle stated in 1.

Yes: ☐

No: ☐

3. If No to 1. above, is your organisation currently in the process of obtaining quality certification?

Yes, full certification: ☐

Selected elements only: ☐

Give details:

.....

.....

.....

4. If Quality Certified or substantial progress in obtaining Quality Certification, provide contact details below for the Certifying Company:

Certifying Company Name:

Quality Certification Contact:

Telephone Number:

Fax Number:

5. If not seeking formal Quality Certification, please describe in the following box what measures are in place within your organisation to ensure a high level of quality is achieved for work undertaken:

Sub-Contractor:

For each sub-contractor, provide following:

Name	1. Do you have a Quality System that meets QA requirements for Contract? Yes / No / In Process of Obtaining	2. If No, do you have a Quality Methodology? Yes / No



FORM 2: PRICING, CONFIGURATION AND RELATED INFORMATION

REQUEST FOR TENDER

RFT 0601954

Note to Tenderers:

The following information should be read carefully before completing the pricing tables. Responses that do not contain valid pricing as per the tables in this document may be excluded from consideration.

All the pricing tables must be completed by all Tenderers to this RFT. If a specific table or portion of it does not apply to the Tenderer's proposal, the section should be marked "**Not Applicable**".

The pricing tables are provided in Word 2000 format to assist Tenderers to return their pricing in the correct form. If any table is too small, please add rows and/or change column widths as appropriate. However, columns are **not** to be added to or deleted from any table.

1. PRICING SUMMARY

Component <i>(Examples only for guidance purposes):</i>	GST-Exclusive Price	GST Component	GST-Inclusive Price	Imported Content * (%)
<i>Supply and implementation through to completion of acceptance testing, including documentation.</i>				
<i>Additional systems integration services required for implementation of the proposed solution</i>				
<i>Maintenance and SL3 support application for three years (optional)</i>				
<i>SL1 support for three years¹ (optional)</i>				
<i>Capped T&M price for creation of additional forms</i>				
<i>Supply, installation and configuration of other software² or hardware identified as necessary for the proposed solution</i>				

* Imported content is to be calculated in accordance with the provisions of clause 6.6, Part B.

Details of local manufactured content claimed by tenderer (as appropriate):

¹ Provision of pricing for this item is optional.

² The value for this item is the cost of a three-year licence and three years of maintenance and support for any other software recommended by the tenderer, plus the cost of installing, configuring and commissioning the software.

2. SUPPLY AND IMPLEMENTATION OF SYSTEM THROUGH COMPLETION OF FIT- FOR-PURPOSE ACCEPTANCE TESTING

Tenderer's Proposed Payment Milestone Dates ³	Tenderer's Proposed Payment Milestone Names ⁴	Tenderer's Proposed Milestone Payments		
		GST-Exclusive Payment	GST Component	GST-Inclusive Payment
Totals				

³ Milestone dates may be expressed in terms of a number of months from contract-signing date or by a symbolic name (for example, Acceptance of Functional Specification).

⁴ All milestones should be based on acceptance of deliverables, not on their delivery for acceptance. For a purpose-built solution or a package-based solution with modifications, payment milestones should include development-related milestones (for example, acceptance of a System Design Specification).

3. SOFTWARE MAINTENANCE AND SL3 SUPPORT**(OPTIONAL – IF AVAILABLE)****Provision of software maintenance and third-line support (SL3) for the first three years following production**

Year 1			Year 2			Year 3		
GST Exclusive	GST Inclusive	Imported Content *	GST Exclusive	GST Inclusive	Imported Content *	GST Exclusive	GST Inclusive	Imported Content *
	%		%		%
	%		%		%

Total for three years	
------------------------------	--

* Imported content is to be calculated in accordance with the provisions of clause 6.6, Part B.

4. TIME AND MATERIALS – SCHEDULE OF RATES

Time and materials schedule of rates⁵

Item	Professional Grade Description	Proposed Usage ⁶	GST-Exclusive Price/Day	GST-Inclusive Price/Day	Indicative Level of Experience ⁷	Basis of Pricing for Daily Rates ⁸
1						
2						
3						
4						
5						
6						
7						
8						
9						

Note: This table is expandable.

⁵ The prices to be quoted are for supply of labour according to various appropriate professional grades.

⁶ In this column, please describe broadly the types of tasks for which the professional grade is being proposed (for example, trainer, data modeller, business analyst).

⁷ In this column, please describe broadly the experience level associated with staff at each grade (for example, fifteen years of project management, twelve years implementing licensing systems in a complex environment, and so on).

⁸ In this column, please describe the basis on which the fixed price is quoted (for example, fixed for two years, then variable on each six-month anniversary of contract signing based on movements in the CPI). For this purpose, a day is defined as a minimum of eight hours.

5. SUPPLY, IMPLEMENTATION AND MAINTENANCE OF OTHER SOFTWARE (IF APPLICABLE)

Fixed price supply, implementation and maintenance of other software

Item	Name of the Software	Intended use for the Software	GST-Inclusive Price/Licence ⁹ and Imported Content	GST-Inclusive Price of Annual Maintenance/Licence ¹⁰ and Imported Content *	Number of Licences Required ¹¹	Installation, Configuration and Implementation Price ¹² and Imported Content *	Licence Basis ¹³
			\$ _____ Imported Content:%	\$ _____ Imported Content:%		\$ _____ Imported Content:%	
			\$ _____ Imported Content:%	\$ _____ Imported Content:%		\$ _____ Imported Content:%	
			\$ _____ Imported Content:%	\$ _____ Imported Content:%		\$ _____ Imported Content:%	

* Imported content is to be calculated in accordance with the provisions of clause 6.6, Part B.

⁹ The prices to be quoted for delivery of software titles with a licence from the date of first productive use (not from the date of first installation). The software to be included is to include any software required to create and maintain base document and training materials, and any other software that the tenderer is proposing should be used during the implementation of `solutions.

¹⁰ In this column, please specify the three-year maintenance price per licence.

¹¹ In this column, please indicate the number of licences that need to be acquired in order to make productive use of the software (for example, if the software were for operational support of the applications, then indicate if licences would be needed for the production, test, development and training systems).

¹² In this column, please indicate the fixed price to install, configure and implement the software in all environments in which it will be required to run.

¹³ In this column, please identify the basis on which a licence would be issued (for example, annual five-year licence, perpetual licence,).

6. RECOMMENDED HARDWARE AND SOFTWARE CONFIGURATIONS (IF APPLICABLE)**Recommended hardware and software configurations**

Item #	Manufacturer	Hardware or Software Component (name of product, part number and/or brief description)	Number of Units Required	If being supplied, include Total Pricing, incl GST	Imported Content * (%)
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					

* Imported content is to be calculated in accordance with the provisions of clause 6.6, Part B.

7. SELECTION CRITERIA

NOTE: Your response to Form 5: Statement of Compliance with Specification Requirements will be used to assess this criterion.

Please expand as necessary

- (a) The tenderer's degree of compliance with the requirements of the Functionality Required and Specification. (Refer to Specifications - Part E 4, E 5)

- (b) The tenderer's demonstrated expertise and proven experience in the successful implementation of the specified or similar system on a similar scale.

No response is required; information provided elsewhere in the tender will be used to assess this criterion.

- (c) Data Management, Storage, Network, System Integration, Installation Compatibility, System Upgrade. (Refer to Specifications - Part E8, E10, E11, E12, E15, E18)

- (d) Maintenance, Spare Parts, Documentation, Protective Packaging, Warranty. (Refer to Specifications - Part E7, E13, E 14, E16, E17)

- (e) Delivery Project Plan – (include Specifications - Part E 6)

No response is required; information provided elsewhere in the tender will be used to assess this criterion.

- (f) Please indicate below your compliance with the proposed conditions of contract (Part D - Procure IT).

Yes:

No:

- (g) Quality Assurance System in place

No response is required; information provided elsewhere in the tender will be used to assess this criterion.

- (h) Financial Capacity and Stability of the Tenderer

(1) Give the annual Australian turnover for the past three years in \$A.

2005-2006: \$A_____

2004-2005: \$A_____

2003-2004: \$A_____

If a company, please submit a copy of each of your annual financial reports for the last three financial years with your Tender.

(2) Give the annual Overseas turnover for the past three years in your currency

2005-2006: \$ _____

2004-2005: \$ _____

2003-2004: \$ _____

If a company, please submit a copy of each of your annual financial reports for the last three financial years with your Tender.

(i) Tendered Price

No response is required; information provided elsewhere in the tender will be used to assess this criterion.

(j) Value for money.

No response is required; information provided elsewhere in the tender will be used to assess this criterion.

8. DELIVERY PROJECT PLAN

Attach your suggested project plan for delivery, installation and implementation of the Tendered System, identifying a start and finish date, including access to site/aircraft, resources necessary, training, milestones and any required advance payments or progress payments. If the latter, progress payments should be tied to completion of milestones. Requirements of the Department of Lands to implement the project successfully.

9. OTHER COMMENTS ON CAPACITY OR ABILITY TO PERFORM THE AGREEMENT

State here any other details you may wish to add. Please also address your capacity to perform the agreement in the context of the current commitments of your organisation.

10. SETTLEMENT DISCOUNT

The Tender Prices are subject to a settlement discount of:-

- (a)% for payment within 14 days from the date of receipt of invoice.
- (b)% for payment made during the month following that in which the invoice has been rendered.
- (c)% for payment within days from the date of receipt of invoice.

11. CODE OF PRACTICE FOR PROCUREMENT

Have you read the *NSW Government Code Of Practice For Procurement* and taken it into consideration in preparing and submitting your Tender?

Yes/No

Will you maintain compliance with the Code for the purposes of the agreement, advise the Board of any breaches of the Code for the duration of the agreement and provide evidence of compliance when requested by the Board during the course of the agreement?

Yes/No

Provide any other relevant information below

12. OCCUPATIONAL HEALTH SAFETY AND REHABILITATION

Do you currently comply with your OHS&R statutory obligations and will you continue to do so for the duration of any agreement awarded?

Yes/No

If “No”, provide details below

13. ENVIRONMENTAL MANAGEMENT

Describe in what way or ways your organisation promotes the development of Ecologically Sustainable Development.

14. NSW COUNTRY INDUSTRIES PREFERENCE SCHEME

You must complete the following details if you are eligible under the Country Industries Preference Scheme and wish to make use of the CIPS margin:

(a) Have you registered with the Country Industry Preference Scheme?

Yes/No

If **“Yes”**, supply Preference Registration Number

(b) Supply details of the location(s) (town(s)) of your manufacturing or other facilities

(c) Will the Deliverables be wholly or substantially manufactured or produced at the above location(s)?

Yes/No

If **“No”** explain below

15. VALUE-ADDED ACTIVITY

Indicate the level of local value-added activity proposed to be undertaken in the event of award of any agreement.

16. SME INVOLVEMENT

Provide details of the likely percentage of the value of the Deliverables to be provided under the agreement that will be sourced from Small to Medium Enterprises (SME's) and of the activities that will be carried out by SME's under the agreement.

17. COMPETITIVE NEUTRALITY

As a public sector tenderer, do you comply with the policy that Government agencies should not have a net advantage over their competitors as a result of their public ownership?

Yes/No

If **"No"**, provide details

18. ADDENDA TO THIS RFT AFTER ISSUE

If there have been any Addenda by the Board to this RFT after the issue of this RFT, indicate below whether you have read and allowed for the Addenda in your Tender.

YES/NO/THERE HAVE BEEN NO ADDENDA BY THE BOARD

If **NO**, provide reasons below

19. FURTHER INFORMATION

Provide below any further information you believe is relevant to your Tender, and cross-reference to any clauses of this RFT if applicable.

20. TENDER VALIDITY PERIOD

The Tender will remain valid for acceptance within _____ months from the deadline for lodgement of tenders, in accordance with Part B.

N.B. The minimum validity period is as stated in Part B.



FORM 3: STATEMENT OF COMPLIANCE WITH TENDER INFORMATION AND PROCESS

REQUEST FOR TENDER

RFT 0601954

Statement Of Compliance With Tender Information And Process

Req. No.	Item	Read & Understood (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
PART A	THE REQUIREMENT AND TENDER INFORMATION					
1.	Outline Description Of The Requirement					
2.	Summary Information For Tenderers					
3.	Where To Obtain This RFT					
PART B	THE TENDER PROCESS					
4.	Definition Of Terms Used In Parts A-C					
5.	Preparation Of Tender – General					
6.	Preparation Of Tender – Policy Requirements					
7.	Preparation Of Tender – Price Schedule And Project Plan					
8.	Submission Of Tenders					
9.	Evaluation Of Tenders					
10.	Outcomes					



FORM 4: STATEMENT OF COMPLIANCE WITH PROPOSED CONDITIONS OF CONTRACT

REQUEST FOR TENDER

RFT 0601954

Statement Of Compliance With Proposed Conditions Of Contract**Do you agree to be bound by all the conditions contained in Part D (PROCURE IT Agreement) ?**☐ Yes☐ No

If “ No” provide a full statement of all amendments sought, giving reasons. (Tenderers must note that the level of compliance with Part D will be scored accordingly as part of the evaluation process)

Note: It is a condition of this tender that the tenderer substantially accepts the terms and conditions of PROCURE IT. As PROCURE IT has been extensively redrafted with input from industry it is felt that unless there is a serious error or omission or lack of clarity in the document the Board will generally not enter into negotiations relating to any changes to the agreement.

Do you agree to comply with Clause 6.5 minimum Insurance Requirements, contained in Part D?☐ Yes☐ No

Tenderers must list all the insurances currently held; the respective amount (or Limit of Liability) for each insurance policy and their expiry dates.



FORM 5: STATEMENT OF COMPLIANCE WITH SPECIFICATION REQUIREMENTS

REQUEST FOR TENDER

RFT 0601954

Statement Of Compliance With Specification Requirements

Code: M – mandatory requirement; H – Highly Desirable requirement; D – desirable requirement

The following Response Forms contain summaries of the user requirements from Part E. Tenderers must state hereunder whether the goods/services offered conform to the Specification.

The following terms are appropriate in providing a statement of compliance:

COMPLIES means:

- (a) in the case of a clause which is of an informative nature only, that the clause has been read and understood;
- (b) in the case of a clause which specifies a characteristic or performance standard to be met by the goods or services to be provided, that the offer is to provide the characteristics or standard.

Where appropriate, tenderers should state or describe how the requirement is or is to be met.

PARTIALLY COMPLIES means, in the case of a clause which specifies a characteristic or performance standard, it can only be met subject to certain conditions. Where this is the case and the tenderer is prepared to make good on the condition, characteristic or performance standard the tenderer must explain and cost the required change, modification or custom development.

DOES NOT COMPLY means that the characteristic or performance standard of the clause is not met by the offer. Full details of non-compliance must be stated.

ALTERNATIVE means that the tenderer's system or process either does not require the feature due to inherent design or capability in the operation of the system or the tenderer's system or process fully complies in a manner different to that described. In both cases a description must be provided.

SIGNIFICANTLY EXCEEDS REQUIREMENTS means, in some cases, the goods or services offered may significantly exceed the specified requirements. As this may have a bearing on the evaluation process, full details must be stated.

The Specification is indicative of the needs of the Principal, and any goods/services offered must be of at least the same standard and potential. Consideration may be given, however, to deliverables of a higher standard if they are available and better suited to the Principal's requirements.

Any failure by the tenderer to make clear the extent of compliance or non-compliance with any clause or paragraph of the Specification may be interpreted as failure to comply with the requirement concerned when assessing the relative merits of tenders.

Tenderers are required to tender in accordance with the tender requirements

Statement of Compliance With Proposed Conditions Of Contract

Part E – Specifications Clause No.	Priority	Read and Understood (Yes/No)	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
1. OVERALL REQUIREMENTS	-			
2. BACKGROUND	-			
3. OVERVIEW Specifications				
3.1 BROAD INTENT				
3.1.1	-			
3.1.2	-			
3.1.3	-			
3.1.4	-			
4. FUNCTIONALITY				
4.1 Mandatory Functionality Requirements				
4.1.1	M			
4.1.2	M			
4.1.3	M			
4.1.4	M			
4.1.5	M			
4.1.6	M			
4.1.7	M			
4.1.8	M			
4.1.9	M			
4.1.10	M			
5. SPECIFICATION				
5.1 SPECIFICATION DETAILS				
5.1.1	M			

Part E – Specifications Clause No.	Priority	Read and Understood (Yes/No)	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
5.1.2	H			
5.1.3	M			
5.1.4	H			
5.1.5	H			
5.1.6	H			
5.1.7	H			
5.1.8	H			
5.1.9	H			
5.1.10	H			
5.1.11	M			
5.1.12	H			
5.1.13	H			
5.1.14	H			
5.1.15	H			
5.1.16	H			
6. TRAINING				
6.1 Training Requirements				
6.1.1	H			
6.1.2	H			
6.1.3	H			
7. WARRANTY				
7.1 WARRANTY REQUIREMENTS				
7.1.1	D			
7.1.2	D			
8. SYSTEM UPGRADE				
8.1 SYSTEM UPGRADE REQUIREMENTS				
8.1.1	D			
8.1.2	D			

Part E – Specifications Clause No.	Priority	Read and Understood (Yes/No)	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
9. MODULES				
9.1 Airborne Modules Requirements				
9.1.1	M			
9.2 GROUND MODULES REQUIREMENTS				
9.2.1	M			
9.2.2	M			
9.2.3	M			
10. LANDS NETWORK				
10.1 Network Bandwidth Requirements				
10.1.1	H			
11. LANDS STORAGE				
11.1 DATA STORAGE REQUIREMENTS				
11.1.1	H			
12. DATA MANAGEMENT				
12.1 DATA MANAGEMENT REQUIREMENT				
12.1.1	H			
13. PROTECTIVE PACKAGING				
13.1 Packaging Requirements				
13.1.1	H			
14. DOCUMENTATION				
14.1 Documentation Requirement				
14.1.1	H			
14.1.2	H			
15. INSTALLATION COMPATIBILITY				
15.1 INSTALLATION COMPATIBILITY WITH EXISTING LEICA RC30 CAMERA				
15.1.1	M			
15.1.2	M			

Part E – Specifications Clause No.	Priority	Read and Understood (Yes/No)	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
15.1.3	M			
15.1.4	M			
15.1.5	M			
16. MAINTENANCE				
16.1 Maintenance Support				
16.1.1	M			
16.1.2	M			
16.1.3	M			
16.1.4	M			
16.1.5	M			
17. SPARE PARTS				
17.1. Spare Parts Support				
17.1.1	M			
17.1.2	M			
17.1.3	M			
17.1.4	H			
18. SYSTEM INTEGRATION				
18.1 System integration with Department's ground based orthorectification software				
18.1.1	M			
18.2 System integration with Light Detection and Ranging (LiDAR) technology				
18.2.1	H			
18.3 System integration Pricing				
18.3.1	H			
19. DELIVERY				
19.1 DELIVERY CONDITIONS				
19.1.1	M			
19.1.2	M			
20. BENCHMARK TESTING				

Part E – Specifications Clause No.	Priority	Read and Understood (Yes/No)	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
20.1 Performance Profile 1				
20.1.1	M			
20.1.2	M			
20.1.3	M			
20.2 Performance Profile 2				
20.2.1	M			
20.2.2	M			

FORM 6: ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

Note to tenderers: If submitting a hard copy Tender, execute this page at clause 3. If submitting an electronic Tender, only respond to clauses 4 and 5.

1. Lodgement of a Tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Code; that you will comply with the Code; and that you agree to report to the Board any breaches of the Code for the duration of the agreement.
2. I affirm that this is my Tender to supply the Deliverables sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT, except as expressly amended in my Tender, and that the information given in my Tender is correct.
3. I affirm that this is my Tender which will form part of my agreement if my Tender is successful:

Print Name and Title

Signature of tenderer (if an individual, as identified in Part C, Form 1 - Prime Contractor Profile)

OR

Signature of authorised officer of tenderer (as identified in Part C, Form 1 - Prime Contractor Profile)

OR

Signature of partner completing tender on behalf of partnership (as identified in Part C, Form 1 - Prime Contractor Profile)

4. If submitting an electronic Tender, do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the NSW Department of Commerce tenders website is sufficient to verify and affirm that this is your Tender to supply the Deliverables at the prices tendered on the conditions contained in Part D, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgment and acceptance, by stating "Yes", is a necessary prerequisite to consideration of your Tender.

Yes/No

5. If submitting an electronic Tender, do you confirm that this Tender is submitted by the person named in Part C, Form 1 as authorised to submit this Tender on your behalf?

Yes/No

Print Name and Title

RFT 0601954

Part D - PROCURE IT AGREEMENT

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



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PART 1 - EXECUTION OF AGREEMENT

Deed of Agreement dated the day of 20

Between the State Contracts Control Board, acting for and on behalf of

Department Of Lands

Of:

346 Panorama Avenue, BATHURST NSW 2795

in the State of New South Wales ('the Principal')

and [insert name and ACN / ABN of Contractor]

of [insert business address]

in the State of ('the Contractor')

Recitals:

- A** This Agreement sets out the mutually agreed terms and conditions under which the Contractor has entered into a contract with the Principal for the supply of information and communications technology Products and Services.
- B** The Principal and the Contractor agree that the terms and conditions of this Agreement govern the provision of Products and Services to the Principal over the Term of this Agreement.

The Parties Agree:

The terms and conditions of this Agreement are those appearing in:

- (a) the Agreement Details;
- (b) the Standard Terms and Conditions;
- (c) the Dictionary;
- (d) the Modules to this Agreement referenced in Item 5 of the Agreement Details, and
- (e) the Schedules referenced in Item 6 of the Agreement Details, and

any inconsistency between the above documents shall be determined in the order of priority from (a) to (e), to the extent of any inconsistency.

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).

3.8 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 ensure that all 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;
 - (iii) include at least one automatic reinstatement provision; and
 - (iv) 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 approved by the Principal (which approval will not be unreasonably withheld).
- 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:
- (a) may effect and maintain the insurances required under clause 4.1.1 and pay the necessary premiums; and
 - (b) may recover from the Contractor or set off in accordance with clause 12.3 against other money due by the Principal to the Contractor, the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 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;
 - (c) where that loss or liability was caused or contributed to by a breach of the Agreement by the Contractor or its Personnel; or
 - (d) 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(d) 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 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 4360:1999 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; or
 - (d) breach of a Statutory Requirement;
- 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.

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 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 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 7.2.1 shall not have the effect of invalidating any warranty provided by the Contractor under this Agreement.
- 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 carrying out this Agreement, comply with:

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

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 may 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 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 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 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 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 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 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 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 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.

“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	State Contracts Control Board acting for and on behalf of Department of Lands	
	Authorised Representative		
Item 3	Contractor's Name/Address and ABN/ACN		
	Authorised Representative		
Item 4	State and Applicable Law	New South Wales	
Item 5	Modules agreed between the Parties		
	Module 1 –	Hardware Acquisition and Installation	✓
	Module 2 –	Hardware Maintenance Services	✓
	Module 3 –	Licensed Software	✓
	Module 4 –	Development Services	✓
	Module 5 –	Software Support Services	✓
	Module 6 –	IT Personnel	<input type="checkbox"/>
	Module 7 –	Professional Services	<input type="checkbox"/>
	Module 8 –	Data Management	✓
	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	✓
Item 6	Schedules to apply <i>[Indicate by marking with an X, the Schedules that apply]</i>		
	Schedule 1 –	Agreement Details	✓
	Schedule 2 –	Agreement Documents	✓
	Schedule 3 –	Product and Service List	✓
	Schedule 4 –	Statutory Declaration by Subcontractor	✓
	Schedule 5 –	Expert Determination Procedure	✓
	Schedule 6 –	Confirmation of Insurances	✓

Item 6	Schedules to apply [Indicate by marking with an X, the Schedules that apply]	
	Schedule 7 – Financial Security	<input type="checkbox"/>
	Schedule 8 – Performance Guarantee	<input type="checkbox"/>
	Schedule 9 – Deed of Confidentiality	<input checked="" type="checkbox"/>
	Schedule 10 – Privacy	<input checked="" type="checkbox"/>
	Schedule 11 – Escrow Agreement	<input checked="" type="checkbox"/>
	Schedule 12 – Variation Procedures	<input checked="" type="checkbox"/>
	Schedule 13 – Risk Management	<input checked="" 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:	\$10 million
	(b) Product Liability Insurance Limit of Indemnity: \$AUS M:	\$ 5 million
	(c) (if requested in 4.1.1) Professional Indemnity Insurance Limit of Indemnity: \$AUS M:	\$ 2 million
	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 10	Financial Security (clause 4.2 and Schedule 7)	
	(i) Specify here if Financial Security is required: (Yes / No)	
Item 11	(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):	
	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:
Item 25	(vi) Delivery costs to be applied:
	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:
Item 27	(viii) The commencement date for Acceptance Tests:
	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:
Item 28	(iii) Specify dates for delivery of Documentation:
	Escrow (clause 10.8)
	(i) Specify if an Escrow arrangement is required:
	(ii) Specify time for Escrow arrangement to endure:
Item 29	(iii) List Escrow Materials:
	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	Payment (clause 12)
	(i) Specify whether the Contract Price is fixed:
	(ii) Specify price variation mechanism:
Item 41	Variations (clause 13) Specify whether Schedule 12 to apply:
Item 42	Termination for Convenience (clause 14.1.2) Specify whether further compensation is payable and amount:
Item 43	Warranty Period for Deliverables:
	Module 1 - Hardware Acquisition and Installation: Specify Warranty Period, if greater than 365 days:
	Module 3 - Licensed Software: Specify Warranty Period, if greater than 90 days:
	Module 4 - Development Services: Specify Warranty Period, if greater than 365 days:
	Module 12 - Systems Integration Services: Specify Warranty Period, if greater than 90 days:
Item 44	Notices (clause 1.2)
	The Principal's contact details and Service Address: (Insert details of Government party)
	Name:
	Address:
	Position:
	Telephone:
	Facsimile:
	The Contractor's contact details and Service Address:
	Name:
	Address:
Position:	
Telephone:	
Facsimile:	

Itemise all documentation (including any supplemental terms and conditions agreed to by the Principal, accepted tenders, offers or quotes from the Contractor, and any letter of acceptance or award issued by the Principal) between the Principal and the Contractor, which constitute this Agreement in this Schedule 2.
All such documentation must be itemised in this Schedule 2 and listed below.

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) The source code of the Software Solution is to be placed in escrow with a separate copy to be provided to the Principal.
- (ii) It is a requirement that the Contractor provide a licensed copy of any software tools used in the development of the Software Solution to be placed in escrow and a separate licensed copy to the Principal in order for 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

Print name

Signature of Witness

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

Print name

Signature of Director/Secretary

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.

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.



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State Procurement

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.

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 or 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 or 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 08

DATA MANAGEMENT

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 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.



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State Procurement

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:	
Parties	Principal
And	Contractor

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.



**Contracting Services – NSW Procurement is a Business Unit of the
NSW Department of Commerce**

**Contracting Services - NSW Procurement invites this tender for and on behalf
of the NSW Government State Contracts Control Board**

PART E – SPECIFICATIONS

**Contract: Supply and Installation of
Digital Image Acquisition
System (DIAS)**

RFT Number: 0601954

Tender Issue Date: 20 November 2006

Closing Date: 3 January 2007

Closing time: 9.30 am Sydney Time

RFT: Supply and Installation of Digital Image Acquisition System (DIAS)

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1. OVERALL REQUIREMENTS

The New South Wales Department of Lands requires a large format, Digital Image Acquisition System (DIAS) for the digital capture of aerial image data across the geographical extent of New South Wales.

DIAS covers the supply of a digital aerial camera/sensor, processing hardware and software to enable production of orthorectified photogrammetric quality imagery to meet the demands of the Department of Lands and users of this imagery.

The tender calls for interested companies to bid for the supply and installation of a Digital Image Acquisition System.

The awarding of this tender will comprise the selection of a preferred tenderer based on value for money in relation to the specification details and selection criteria. The preferred tenderer will then be required to successfully demonstrate the system in a series of benchmark tests: Performance Profile 1 and Performance Profile 2 before the tender is awarded.

2. BACKGROUND

The New South Wales Department of Lands is responsible for maintaining the NSW Spatial Data Infrastructure (SDI), which comprises Cadastre, Topography, Survey, Geographic Names, Imagery and Addresses. The SDI provides a single and integrated view of the administrative, natural and built landscape of NSW.

Imagery is a component of the SDI and the New South Wales Department of Lands is a primary creator, supplier, user and custodian of airborne state-wide raster datasets and also the custodian and a user of spaceborne imagery.

These image datasets exist in both hardcopy and softcopy formats and the airborne images are also available to view both in mono-scopic and stereo-scopic forms.

The data is used both internally within the Department, and also to a large extent, by Whole of Government. The private sector as well as individuals, share use in a wide variety of applications.

The Department considers that in the future, in order to meet the public's expectations of image resolution and timeliness, airborne imagery will be captured in multi-band digital format, which can be delivered effectively in orthorectified form.

3. OVERVIEW SPECIFICATIONS

3.1 Broad Intent

- 3.1.1 The Department will be primarily capturing and processing approximately 25,000 line kilometres of 50cm ground sample distance (GSD) image data annually using DIAS. The Department intends to use Global Navigation Satellite System (GNSS) data extracted from the network of Continuously Operating Reference Stations (CORS) located throughout NSW and adjoining States for post processing. Where necessary additional ground control will be established to ensure a specification suitable to capturing vector information for the State's Topographic Database. The State's 25m gridded Digital Terrain Model (DTM) will be used to complement the orthorectification procedure.

- 3.1.2 The system will be used to provide rapid response imagery between 10cm and 75cm GSD of focal areas on demand.
- 3.1.3 In addition the Department will be delivering multi-spectral image data for use in remote sensing applications.
- 3.1.4 The Department intends using this system to enhance the quality of the State's DTM.

IN ORDER TO ATTAIN A VIABLE SOLUTION, DEPARTMENT OF LANDS ARE LOOKING FOR TENDERERS TO SUBMIT A SOLUTION TO DEVELOP UPON ALREADY EXISTING AND PROVEN TECHNOLOGY.

4. FUNCTIONALITY REQUIRED

4.1 MANDATORY Functionality Requirements

- 4.1.1 DIAS will provide panchromatic and multi spectral bands (Blue/Red/Green/NIR) in TIFF format and support compressed image formats (e.g. JPEG OR JPEG 2000).
- 4.1.2 The radiometric resolution of the collected image data will be a minimum of 12 bits per band.
- 4.1.3 Collected data will have exact registration for all pixels for all bands.
- 4.1.4 DIAS will provide orthorectified & mosaiced TIFF images in RGB composite.
- 4.1.5 DIAS will provide softcopy imagery in a compatible format with ERDAS Imagine V9 & Arcmap V9.x.
- 4.1.6 Ability to carry out both of the Performance Profiles Benchmark Testing.
- 4.1.7 For both Performance Profiles 1 & 2, all bands are required to be achieved in a single pass flight line.
- 4.1.8 The system will be configured to enable the processing (to the specification of Performance Profile 1) of 25,000 flight-line kilometres of image data per annum at a ground resolution of 50cm GSD.
- 4.1.9 The system will be capable of producing stereo imagery in soft copy & files suitable for hard copy output in true colour.
- 4.1.10 The system will be capable of capturing images at a GSD between 10cm & 75cm.

5. SPECIFICATION

5.1 Specification Details

- 5.1.1 The Department requires an end-to-end solution which provides for the capture of aerial imagery and creation of orthorectified normal colour TIFF images in 8 bit per band to spatial specifications as set out in the Benchmark Testing section below. The system to be offered must be either fully end-to-end as per these requirements or

it must facilitate an end-to-end solution in the case where it is proposed to integrate the imagery acquisition system with the Department's existing ground based orthorectification software.

- 5.1.2 The vendor supplying the DIAS will be the manufacturer or the direct authorised dealer for both hardware and software.
- 5.1.3 The system will be configured appropriately in order to process the amount of data as stated in the Broad Intent.
- 5.1.4 The system should collect all bands at the required GSD to provide true multi-spectral imagery at the prescribed GSD.
- 5.1.5 The multispectral filters of camera/sensor are to be non-overlapping.
- 5.1.6 The camera/sensor image motion should be less than one pixel on the ground.
- 5.1.7 The system is to include
 - Integrated Flight Planning, and Navigation System
 - Gyro stabilised platform
 - A Global Navigation Satellite System (GNSS) receiver
 - An Inertial Measuring Unit (IMU) as the positioning system
 - The above four items should be integrated with the sensor head
 - Post processing software.
 - Software and hardware for storing captured imagery.
- 5.1.8 The IMU shall be capable of determining the absolute orientation (roll, pitch, and yaw) and meet or exceed the following performance specifications:
 - Post-processed accuracy in roll, pitch and yaw: 20"
 - Post-processed accuracy in heading: 30"
- 5.1.9 The minimum GNSS requirement is for tracking and logging carrier-phase airborne multi-channel kinematic GPS L1 and L2 channels at 1Hz (see also Note under Upgrades).
- 5.1.10 GNSS data along with IMU measurements will be used in processing trajectories. The performance specification for post-processed positioning solution accuracy shall be no worse than 1.0 metres positional uncertainty with respect to Performance Profile 1 and 0.1 metres positional uncertainty for Performance Profile 2.
- 5.1.11 The GNSS antenna shall be a Civil Aviation Safety Authority (CASA) -approved antenna suitable for geodetic quality carrier-phase multi-channel reception (channels L1 and L2 at a minimum) and installed in accordance with CASA airframe modification requirements. Antenna should be located near the camera to minimise lever arm lengths, and location to provide optimal GNSS signal quality and continuous reception.
- 5.1.12 The GNSS post processing software should be capable of utilising precise satellite orbit and clock correct data available from international on-line services.
- 5.1.13 The GNSS system should be capable of receiving and using real time correction data in internationally recognised standards such as RTCM 3.0

- 5.1.14 Tenderers are to include details of recommended ground control and other procedures for the tendered specification (with particular reference to Performance Profile 1). The details are to include (but are not limited to) airspeed, ground illumination, run direction, inertial measurement specification, GNSS range limitations & accuracy. Tenderers are to indicate the file format and compression rates used in intermediate processes and the typical file sizes encountered.
- 5.1.15 Tenderers are to provide details of any mirror sets or other backup systems used to provide disaster recovery both within the airborne and also within the ground procedures.
- 5.1.16 Tenderers are to provide details of file management strategies that must include file naming conventions and archiving properties such as the format in which metadata is retained.

6. TRAINING

6.1 Training Requirements

- 6.1.1 Tenderers are to include on site end to end training covering sensor/camera and ground processing training through to the orthorectification software for Department staff. (approximately 10). Training is to be carried out by qualified trainers who know the operation of the DIAS.
- 6.1.2 The Department may require additional follow-on training in aspects of the system. Additional training options are to be itemised separately.
- 6.1.3 Tenderers are to outline their proposed Training Program and include information on course content, expected length of course and any special training requirements. Details of the competency standards are also to be provided.

7. WARRANTY

7.1 Warranty Requirements

- 7.1.1 Tenderers are to include details of the warranty coverage supplied with the system, including software parts and labour coverage.
- 7.1.2 Tenderers are required to provide three and five year warranty options itemised separately.

8. SYSTEM UPGRADE

8.1 System Upgrade Requirements

- 8.1.1 Tenderers are to enunciate any foreseen hardware and software upgrades in addition to the likely costs involved in such upgrades. These options are to be itemised separately.
- 8.1.2 The GNSS equipment and software should be compliant with current GPS standards including capability to track and process L2C signals.

The GNSS system must be upgradeable to utilise GLONASS, GPS L5 and Galileo signals.

9. MODULES

9.1 Airborne Modules Requirements

- 9.1.1 Tenderers are to include the installation costs of the airborne components as a separate item.

9.2 Ground Modules Requirements

- 9.2.1 Tenderers will include purchase/installation costs of all ground borne systems components as a separate item.
- 9.2.2 Tenderers are to include hardware requirements necessary to support the processing of camera outputs, along with hardware procurement and installation costs as separate items.
- 9.2.3 Tenderers will include all software purchase and licensing costs, including ongoing software maintenance.

10. LANDS NETWORK

10.1 Network Bandwidth Requirements

- 10.1.1 Tenderers will include details on the network bandwidth requirements to support daily processing of camera outputs including File Transfer Protocols used and projected data transfer volumes based on the Broad Intent.

11. LANDS STORAGE

11.1 Data Storage Requirements

- 11.1.1 Tenderers will include projected data storage volumes resulting from image processing in line with the Department's current Storage Strategies available at Appendix A. Tenders will include details of supported image formats with reference to industry compression and archiving standards.

12. DATA MANAGEMENT

12.1 Data Management Requirement

- 12.1.1 Tenderers will include details of proposed Data Management Systems (DMS) which are closely aligned with the proposed camera solution. The proposed DMS must include image metadata and workflow tracking capabilities as appropriate.

13. PROTECTIVE PACKAGING

13.1 Packaging Requirements

- 13.1.1 Tenderers are to confirm the digital camera/sensor, workstations and all other associated system items are packaged in appropriate ruggedised containers to enable transfer to another location within the State of NSW or back to a place of maintenance support.

14. DOCUMENTATION

14.1 Documentation Requirements

- 14.1.1 Tenderers are to provide details of all user manuals and maintenance manuals provided with the system
- 14.1.2 Manuals should be made available both as hard copy and soft copy.

15. INSTALLATION COMPATIBILITY

15.1 Installation compatibility with existing Leica RC30 camera

- 15.1.1 The tendered digital camera/sensor will be installed in the Department's C421c (s/n 1103) aircraft which is based in Bathurst NSW. The aircraft is a dedicated airborne camera platform capable of operation to 8,000 masl. The cabin is pressurised to a minimum altitude of 3000m. The aircraft is presently fitted with a Leica RC30 using a PAV20 mount. This existing Leica RC30 camera must be capable of being refitted after the digital camera/sensor installation process is completed.
- 15.1.2 Both Leica RC30 camera and digital camera/sensor are to use the same optical flat.
- 15.1.3 Tenderers are to indicate the estimated time and also the costs involved when systems are reinstalled from the RC30 camera to sensor and visa versa.
- 15.1.4 The primary installation will be under the supervision of the Aircraft Operator (AO) and proceed where necessary under the AO's subcontractor.
- 15.1.5 The Department will make the aircraft available to the AO and the successful tenderer for an agreed amount of time, which should be nominated in the Tender response document.

16. MAINTENANCE

16.1 Maintenance Support

- 16.1.1 Tenderers are to provide details of a Maintenance Support Plan in order to enable the Department to minimise downtime. This will include any on-site maintenance for the tendered system components and camera/sensor calibration.
- 16.1.2 Tenderers are to provide details how maintenance support will be delivered.

- 16.1.3 Tenderers should indicate the type of maintenance that should be carried out by the Department, including a schedule of timeframes.
- 16.1.4 Tenderers should indicate the type of maintenance that should be carried out by the tenderer and their ability to provide on-site maintenance.
- 16.1.5 The tenderer will also offer a maintenance contract and schedule for consideration by the Department. The schedule is to include Key Performance Indicators based upon priority, response, and rectification times. Separation of business and after hours, Back-to-base and in-field and User assistance (phone, email)

17. SPARE PARTS

17.1 Spare Parts Support

- 17.1.1 Tenderers are to indicate the source of spares, including the time to supply and availability.
- 17.1.2 The decision to purchase spare parts from the successful tenderer is subject to contract negotiations. All purchases of spare parts are subject to the Department's procurement guidelines which reflects a competitive marketplace.
- 17.1.3 For the purpose of evaluation, a full list of spare parts for use by the Department - is to be provided. The list should indicate price of parts for a minimum of 12 months and incrementally aligned with commercial annual increased and/or Consumer Price Index there after.
- 17.1.4 All parts are to remain available for purchase for at least six years after the date of installation of the DIAS.

18. SYSTEM INTEGRATION

18.1 System integration with Department's ground based orthorectification software

- 18.1.1 Tenderers are to indicate whether the system will
 - a. utilise the Department's existing orthorectification software, being Imagine LPS and ISM orthorectification modules and PATB triangulation software.
 - OR
 - b. be supplied with the tenderer's preferred workstations and software.

18.2 System integration with Light Detection and Ranging (LiDAR) technology

- 18.2.1 Tenderers are to indicate whether the system tendered has

- a. integration capabilities with LiDAR technology by sharing either hardware and or firmware.

OR

- b. the capability of utilising or processing LiDAR data.

18.3 System integration Pricing

- 18.3.1 Itemised prices as applicable for either 18.1 and 18.2 are to be provided within the RFT.

19. DELIVERY

19.1 Delivery Conditions

- 19.1.1 Tenderers will be required to provide Airborne components to current Aircraft Operator (to be advised) and
- 19.1.2 Ground Components to New South Wales Department of Lands, Panorama Ave Bathurst

20. BENCHMARK TESTING

Final Acceptance shall comprise a performance test of Profile 1 and 2 –

20.1 Performance Profile 1

- 20.1.1 A single block 47km by 55km captured in 5 bands at 50cm GSD. Triangulated and processed to +/-2.5m absolute XY rmse (RGB 8 bit composite orthorectified mosaiced and colour balanced TIFF) using only the inputs of airborne GNSS/IMU and the Department's supplied 25m grid DTM and four ground control points. This block will be located within 200km of the Bathurst CORS.
- 20.1.2 Tenderers are to give an estimate of the processing & labour times involved, following the data capture phase, including a workflow diagram which will cover integration, processing and storage relevant within Department's operating environment .
- 20.1.3 The images will be collected with no cloud and with a solar altitude between 30 and 60 degrees.

20.2 Performance Profile 2

- 20.2.1 A single block measuring 2km by 2km captured in 5 bands at 10cm GSD and processed with triangulation, in RGB to orthorectification in TIFF (mosaiced) format, using only the inputs of airborne GNSS/IMU. The sky condition will be clear with solar altitude greater than 30 degrees. The block will be within 200km of the Bathurst CORS.
- 20.2.2 Tenderers are to give an estimate of the processing & labour times involved, following the data capture phase, including a workflow diagram which will cover integration, processing and storage relevant within Department's operating environment .

APPENDIX A LANDS ENTERPRISE STORAGE TOPOLOGY

OVERVIEW

The Department of Lands has implemented a centralised Enterprise Storage infrastructure based on Hitachi Data Systems modular 9585V and monolithic USP SAN storage arrays at both its data centres in Bathurst and Sydney. This technology provides Lands with a number of advantages with respect to:

- Centralized management and monitoring
- Performance and scalability
- The ability to deploy storage on demand
- The ability to replicate critical data sets for Disaster Recovery Purposes

Storage may either be on SATA disks or Fibre Channel depending on the specific requirements of the application. Similarly, disk may be deployed via a number of formats, determined by the application or user requirements:

- Fibre Channel attach via HBA (host bus adapter) primarily used to present SAN storage to a server
- NetApp GFile provides a NAS head to present SAN storage via CIFS or NFS protocols
- Dedicated Linux based frontend servers to provide NAS storage to specific projects

As such, Lands is able to deploy a range of storage types (speed Vs capacity Vs cost) in a variety of ways, determined by the specific requirements of the application or project.

Archiving and Backup

Lands use Veritas Netbackup as their backup and archiving software across all platforms. Archived data is stored on an Overland Data Tape library utilizing LTO2/LTO3 tape technology.

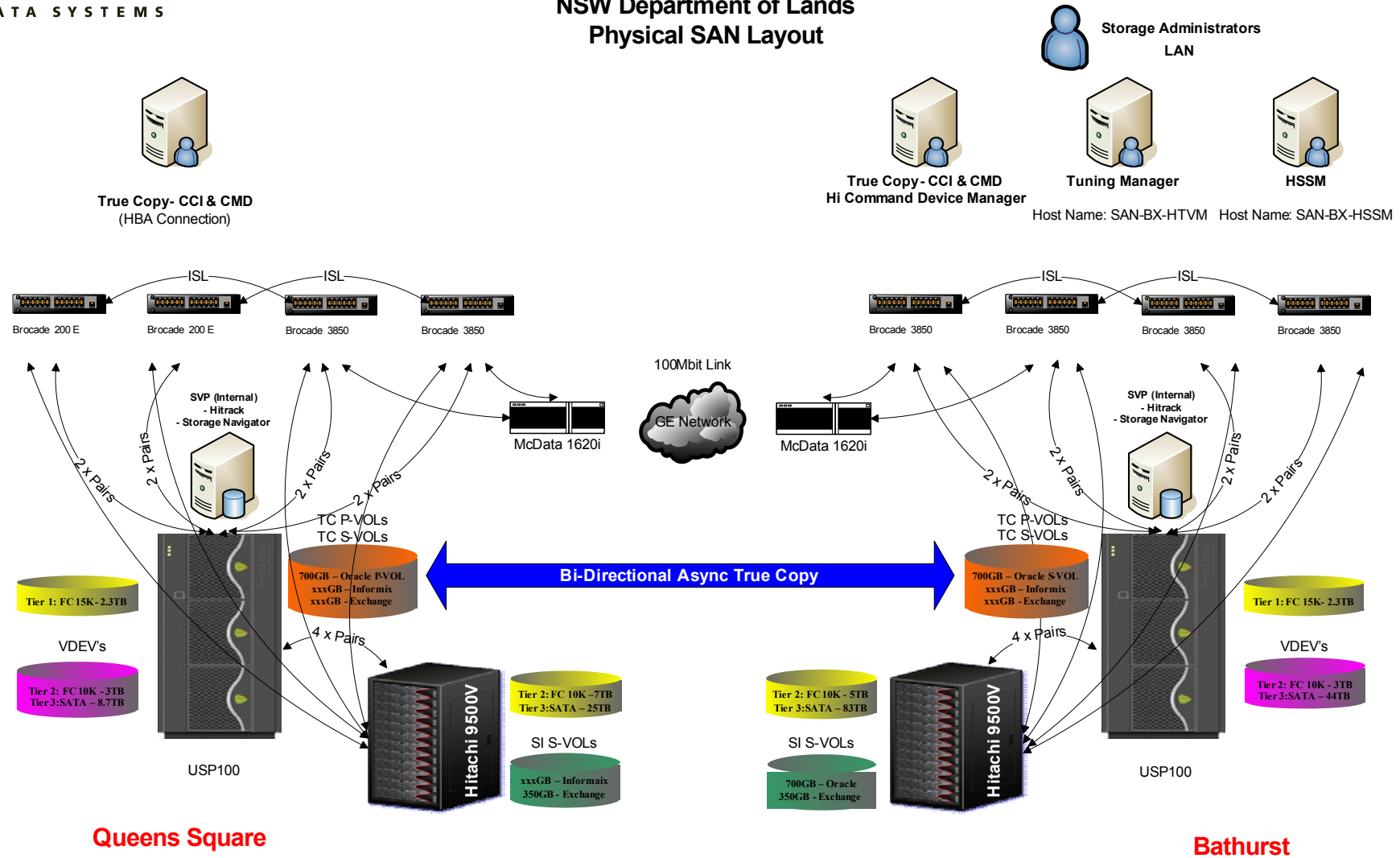
Requirements

Any systems deployed at Lands must be compatible with our existing infrastructure and Corporate Standards with respect to networking, operating systems, storage and backup. As such, any project requiring storage is expected to define their storage requirements and then appropriate storage will be purchased and installed into the existing Enterprise SAN infrastructure.

- The following diagram provides a high level overview of our storage infrastructure at our prime datacenters at Bathurst and Sydney.
- Additional information and detail may be obtained by contacting ICT directly.



NSW Department of Lands Physical SAN Layout



Queens Square

Bathurst

DRAWN BY Michael Heffernan	FILENAME VISIODOCUMENT	PAGE 1 OF 1
DESCRIPTION DOL SAN Layout	REVISED 11/14/	2006