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FOR YOUR INFORMATION - TO HELP YOU DECIDE WHETHER TO
PARTICIPATE IN THIS RFT AND THEN BECOME A PROSPECTIVE
TENDERER**

Please read and Note:

This file is provided on the Commerce tenders web site when the Request For Tender (RFT) document is issued in Dmax Lite format.

This file contains (below) a brief scope statement and extracts from the RFT documents, but is not a complete RFT document and does not contain the responsible questions.

To participate in this tendering process you MUST first return to the Commerce tenders web site:

<https://tenders.nsw.gov.au/commerce>

Then from the RFT web page (see RFT number below) download a full copy of the RFT documents, including the responsible components, and also any addenda issued to date; and also during the tender period.

Copy/Save the RFT documents to your own computer drive or network location – the blue “DOWNLOAD A SOFT COPY” link at the bottom provides access to the page from which you can do this.

DmAX Lite Software

You will need to have a current licensed copy of the Dmax Lite 5.1 software to read, complete, and respond to the RFT with your tender. If you do not currently have such a licensed copy it can be optionally purchased and downloaded when downloading the full RFT documents from the tenders web site.



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

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

Request for Tender

RFT Number 0800182

Government Telecommunications Agreement

**Category 5 – Telecommunications Systems
and Services**

PART A - The Requirement and Tender information

PART B - The Tender Process

Tender Issue Date: 22 May 2008

Closing Date: 19 June 2008

Closing Time: 6:00 am Sydney Time

Note: In order to respond to this RFT tenderers must have a current licence for i-Tenders Supplier software. Licences can be purchased through NSW eTendering website: www.tenders.nsw.gov.au at a cost of \$110 (inclusive of GST) for a 12 month annual licence. This provides access to respond to tenders developed in the i-Tenders application. It is anticipated that most RFTs released by the Board and the NSW Government will be in this format.

For help on purchasing your software, or use of application, please contact NSW Procurement Client Support Centre on 1800 NSW BUY (679 289) or NSWP_Support@Commerce.nsw.gov.au.

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

Government Telecommunications Agreement – 2360

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PART A The Requirement and Tender information

1. Outline Description of the Requirement

- 1.1** This Request For Tender (“RFT”) is made by the State Contracts Control Board (“the Board”) for the supply to Eligible Customers of the Deliverables defined in this RFT and detailed in the Specification in Part E.
- 1.2** The Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

The RFT seeks tenders for the supply of a range of systems and services relating to telecommunications.

One panel of Contractors (OEM, TSP, DR) will be established under the NSW Government Telecommunications Agreement (GTA) Category 5, for the supply of Telecommunications Systems and Services comprising of eighteen (18) Product Groups.

1.3 Overview

1.3.1 Context

The NSW Government currently procures more than \$250 million in Telecommunications Systems and Services each year.

This Request for Tender (RFT) forms part of the strategy through which the NSW Government seeks, through the establishment of panel contracts, to amalgamate NSW Government telecommunications procurement with a view to providing benefits to both NSW Government and telecommunications suppliers.

Through the GTA, the NSW Government is introducing a new procurement and contracting model for telecommunication services. All purchases under this agreement will be supplied under a uniform set of contractual conditions contained within an umbrella contract titled “Procure IT”.

The specifications are issued in Part E of this RFT. The specifications define the technical and commercial requirements of Telecommunication Systems and Services (including service levels and performance metrics).

By streamlining the procurement of Telecommunications Systems and Services and committing Government agencies to using selected contractors, it is expected that the GTA will generate considerable savings to Government whilst also rewarding successful Tenderers.

1.3.2 NSW Government Procurement of Telecommunications Services

The Premier released an Economic and Financial Statement in February 2006. This statement highlights the Government's savings objectives for telecommunications and gives a commitment that NSW Government agencies will participate in a State-wide ICT plan. The GTAs form part of the ICT Strategic Plan framework.

The Minister for Commerce launched the Government ICT Strategic Plan, *People First – a new direction for ICT in NSW*, in July 2006. The Plan sets the framework for a coordinated government-wide approach to planning, expenditure and allocation of ICT resources. It represents a major change in ICT policy direction and will pave the way for a new and more effective way of service delivery for the NSW Government.

The Plan provides a strategic framework to make better use of technology to improve the efficiency and effectiveness of systems and services, both within NSW Government and the wider community.

It will allow NSW Government agencies to work together within a coordinated strategic framework to aggregate ICT initiatives to minimise costs and maximise the use of common applications, infrastructure and processes.

This commitment intends to benefit suppliers by better allowing successful Tenderers to assess the business likely to be generated under the GTA, and it is expected that this benefit to Contractors will translate into competitive pricing generating substantial savings to Government.

1.3.3 Procurement Process

The Government has elected to proceed with a procurement process that involves two (2) steps:

1. This Request for Tender (RFT) to establish one (1) panel of Contractors
2. Customers using the panel to seek competitive quotes from Contractors.

The RFT is an open process inviting Tenderers to provide proposals demonstrating their ability and commitment to meet the Government's telecommunications objectives as stated in the RFT document. The RFT process will establish a panel of Contractors which will be comprised of:

1. Original Equipment Manufacturer (OEM)
2. Telecommunication Solution Provider (TSP)
3. Distributor/Reseller (DR)

Customers will seek competitive quotations from selected Contractors via a detailed requirements specification covering such areas as system requirements, implementation timetable, service level requirements and maintenance requirements,

Tenderers are welcome to submit innovative approaches for the provision of the tendered services. These alternate approaches might include, for example, volume-based discount structures. However it is important to note that these alternative approaches must be provided under the Procure IT contract and will only be considered if the Tenderer submits a conforming tender.

Throughout this procurement process Government will be assisted by a Probity Auditor.

1.3.4 Government Purchasing Arrangements

Purchasing is to be a simple process, essentially entailing the selection of the desired Deliverable based on the results of competitive quotes. In some cases Customers will need to issue a detailed requirement specification and undertake a comprehensive evaluation of Contractors responses.

1.3.5 Pricing and Price Refresh

The Contract Authority reserves the right to establish a Price Book for certain product groups covered by this Tender over the Contract Term. This Price Book may be established using Smartbuy®.

If a Price Book is established, Contractors will periodically be invited by the Contract Authority and / or Customer to review their pricing. Any downward adjustment offered will become the new Price for all Customers for that Contractor until the next review is requested. Reviews may be invited at intervals to be determined by the Contract Authority. Prices will also be subject to benchmarking, independent of the above arrangements.

Tenderers should note that pricing information submitted under this contract will be made available to all Customers.

1.3.6 Contracting Framework

The supply of the Deliverables will be based on the contractual terms and conditions located at Part D of this RFT which are based on the NSW Government's standardised IT procurement contract 'Procure IT'. **By submitting a Tender the Tenderer acknowledges and agrees that the final documentation will be substantially in the form of Part D.**

Tenderers should be aware that the Management Fee rate referred to in Procure IT will be set at 2.5%. Tenderers should be aware that the Management Fee will be calculated and payable on a monthly basis, not on a quarterly basis as previously required in Procure IT. Please refer to Part E Clause 1.10 for other details of Management Fee's obligation specific to GTA Category 5.

Tenderers should note that the application of each Procure IT Module will depend on which Supply Category a Contractor is ultimately authorised to supply. The following categories will be subject to the corresponding Modules:

Table 1 Agreement Framework

GTA No.	Supply Category	Procure IT							
		Module 1 Hardware Acquisition	Module 2 Hardware Maintenance	Module 3 Licensed Software	Module 5 Software Support Services	Module 7 Professional Services	Module 9 Telecommu- nications Services	Module 11 Managed Services	Module 12 Systems Integration Services
1A	Data Services								
3	Fixed Voice								
4	Mobile Services								
5	Telecommunications Systems & Services								
Grey means the applications of Modules 1 & 2 to supply Categories 3 & 4 will be dependent on the inclusion of hardware/maintenance services in the procurement of telecommunications services, as permitted by this Procurement Process.									
Black means that the part of Procure IT applies to the relevant Supply Category.									

Procure IT has been developed after substantial consultation with industry and with suppliers for contracts which have already adopted Procure IT.

In Part C, Tenderers are provided a limited opportunity within Part C4 - Risk Schedule to comment on Procure IT and to identify the risks associated with any required amendments.

By way of context, the Board does not envisage that substantial (if any) changes will be made to Procure IT, and accordingly, Tenderers should only use the Risk Schedule to comment on any significant issue(s) that create significant risk burdens for the Tenderer which the Tenderer considers may reasonably be borne by the Government.

Following the submission of Tenders under this RFT, The Board will examine issues raised in the Risk Schedule by all Tenderers. The Board will amend Procure IT, only when the Board agrees with any issues raised. This process will produce the final version of Procure IT for GTA Category 5, to which all Tenderers must agree, with no opportunities for further negotiation on the terms and conditions. Where in the Board's view, a Tenderer is unable to agree on the terms and conditions of the final version, that tender may be excluded from further consideration.

If selected to enter the Standing Offer, Contractors will be expected to enter Modules 1, 2, 3, 5, 7, 9, 11 and 12 for services provided under GTA Category 5.

2 Summary information for tenderers

2.1 Interpretation

2.1.1 Definitions of terms used in Parts A-C are contained in cl.4 of Part B.

2.2 Structure of Request for Tender

2.2.1 This RFT is made up of five Parts as follows:

Part A: Overview of the Requirement and Tender information;
 Part B: The Tender Process;
 Part C: Tender Response, to be completed by the Tenderer using Dmax Lite software, and comprising;

Part C1 Information supplied in response to Parts A and B
 Part C2 Statement of compliance with Specification
 Part C3 Electronic Commerce
 Part C4 Risk Schedule
 Part C5 Acknowledgement and confirmation of Tender.

Part D: Deed of Agreement (Procure IT)
 Part E: Specifications

2.3 Contact Officer

2.3.1 **There will not be an Industry Briefing for this RFT.**

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

NSW Procurement Client Support Centre
 1800 NSW BUY (679 289)
NSWP_Support@commerce.nsw.gov.au
 Contact: Dan Umali

2.3.3 All questions from Tenderers relating to this RFT should be made in writing to the Contact Officer on the above e-mail address.

2.3.4 Any information given to a Tenderer to clarify any aspect of this RFT will also be given to all other Tenderers, in the form of an Addendum, if in the Board's

opinion the information would unfairly favour the inquiring Tenderer over other Tenderers.

2.4 Nature and duration of contract

- 2.4.1 The Requirement is to be met by means of a Standing Offer agreement to be embodied in a deed of agreement between the Board and the successful Tenderer(s) on the conditions contained in Part D, Procure IT, or as amended in accordance with this RFT.
- 2.4.2 The Standing Offer agreement will be for a term of two (2) years and may be extended for three (3) further terms, each of one (1) year at the option of the Board.

2.5 Non-exclusive Standing Offer agreement

- 2.5.1 The Board reserves the right to appoint more than one Contractor to supply the Requirement or a part of the Requirement, at any time and from time to time.
- 2.5.2 The Board reserves the right to issue a further RFT during the term of the Standing Offer agreement for the additional intake of Contractors.

Tenderers will have to meet substantially the same terms and conditions and will be subject to substantially the same evaluation criteria as for this RFT except for the tender issue and closing dates and the agreement period.

2.6 Eligibility to tender

- 2.6.1 All suppliers categorised as OEM, TSD or DR for Telecommunication Systems and Services are eligible to tender.

3. Where to obtain this RFT

3.1 RFT copies

- 3.1.1 A Tenderer may only obtain an electronic copy of this RFT.
- 3.1.2 The NSW Department of Commerce (Commerce) has adopted an electronic tendering system using the internet, which has the capacity for viewing, downloading, or ordering of the RFT and for the lodgement of Tenders.

3.2 Electronic copy

- 3.2.1 An electronic copy of the RFT and any Addenda that may be issued up to the Closing Date and Closing Time, will be displayed on the NSW Department of Commerce e-Tendering Website. All Tenderers must view, and where appropriate, download the contents of the website at <https://tenders.nsw.gov.au/commerce> before lodging their Tender.
- 3.2.2 To download a copy of the RFT, a Tenderer must first register as a site user and obtain a site access password.
- 3.2.3 A Tenderer should follow the instructions on the site to view and download the RFT.

3.3 Addenda to RFT

- 3.3.1 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 closing date, even if a tender has already been submitted. They must obtain a copy of all addenda as given in clause 3.3.2.
- 3.3.2 Where a RFT has been acquired in an electronic form, Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download any 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 the defined terms below will not all necessarily appear in this RFT.

“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 under cl. 5.4.

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

“Approved Parties” has the same meaning as in Procure IT.

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

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) On-going contract administration and management,

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

“Catalogue Information” means details and information about the Deliverables and Pricing contained in a Catalogue place on smartbuy® by the Contractor or provided by the Contractor to the Board for such placement.

“Catalogue number” means the Contractor’s unique catalogue number in smartbuy® required for the purposes of an Order.

“Closing Date and Time” means the Closing Date and Time for receipt of tenders, specified on the cover sheet to this RFT or as varied by an Addendum 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 aforementioned code can be viewed and downloaded from:

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

“Commerce” means the NSW Department of Commerce

“Conforming Tender” means a Tender that:

- (a) is in the prescribed form;
- (b) substantially conforms to all of the requirements of this RFT.

“Contractor” means a Tenderer who has entered into a deed of agreement with the Board.

“Customer” means an Eligible Customer that places an Order with the Contractor under the Standing Offer agreement.

“Customer Contract” means the contract that is made between the Contractor and a Customer, on the terms and conditions agreed between the Board and the Contractor based on Procure IT, by means of the placing of an Order by the Customer with the Contractor.

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

“Distributor/Reseller (DR)” means a supplier who sells, implements and supports systems and services.

“Eligible Customer” means a Department, an Agency or, where approved in writing by the Contract Authority, an Eligible non-Government Body, which requires a Product or Services.

“Eligible non-Government Body” means a body (including a private school) which is:

- (a) Directly or indirectly, partially or entirely, funded by the Commonwealth, a State or a Territory; and/or
- (b) Non-profit making.

“Externally Hosted Catalogue” means Catalogue Information Hosted in a system other than smartbuy®’s physical infrastructure which is accessible by smartbuy®.

“GCIO” means Government Chief Information Office.

“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* (C’t’h) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

“GTA” is the NSW Government’s procurement and contracting model for telecommunication services, The Government Telecommunications Agreements.

“Implementation” has the same meaning as installation, commissioning or deployment; a system placed in position for use.

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

“Non-Conforming Tender” means a Tender that does not fall within the definition of a “Conforming Tender”.

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

“Original Equipment Manufacturer (OEM)” means a supplier who manufactures and sells own brand of equipment plus implementation and support of that equipment, directly or indirectly, for the whole of NSW.

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

“Order” means a request by a Customer to the Contractor for the provision or supply of any or all of the Deliverables.

“Order Unit(s)” means the unit(s) used when ordering Deliverables from a Contractor. An Order Unit may be “each”, “per box”, “per carton” or some other unit.

“Procure IT” means the agreement contained in Part D of this RFT.

“Principal” means the State Contracts Control board established under the *Public Sector Employment and Management Act 2002* and includes the duly authorised delegates of the Principal, including officers of NSW Procurement – Contracting Services.

“Product Code” means the Contractor’s unique product code number that identifies each Deliverable and is required for the purposes of an Order.

“Product Group” means a collection of like Systems and / or Services.

“Requirement” means the requirement for the Deliverables to be met by the Tender, outlined in cl.1 of the RFT and detailed in the Specification.

“RFT” means the Request for Tender.

“SCCB” means State Contracts Control Board. See definition for **Board**.

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

“SME” means small to medium enterprise.

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

“Standing Offer” means an agreement made by a Tenderer with the Board pursuant to the RFT under which there is a standing offer for the provision of the Deliverables on the Order of any Customer for whom the Board has arranged the standing offer. The Standing Offer will be embodied in a deed of agreement between the Board and the Contractor in the form of Part D to this RFT.

“State Contracts Control Board”. Refer to the definition for Board.

“Telecommunications Solution Provider (TSP)” means a supplier who sells equipment and provides design, systems integration, maintenance services and a range of professional services.

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

5 Preparation of Tender – General

5.1 Conformity of Tenders

- 5.1.1 The Board seeks Conforming Tenders.
- 5.1.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

5.2 Alternative Tenders

- 5.2.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender

5.3 Prescribed form of Tender

- 5.3.1 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.

5.4 Addenda to this 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, including the question 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 Tenderers to inform themselves

- 5.5.1 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, is correct; and
 - (ii) that it is financially and practically viable for it to enter into and perform the proposed Deed of Agreement.

5.6 Risk Schedule

- 5.6.1 Tenderers may complete the Risk Schedule in Part C4 of the Tender.

5.7 Minimum Tender validity period

- 5.7.1 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 C1 if their Tenders will remain open for any longer period.

6. Preparation of Tender – Policy

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 clause 1 and 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.

- (a) 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/cpfp_ig

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 Electronic Procurement (smartbuy®)

6.3.1 It is intended that all Deliverables supplied by Contractors will be capable of purchase through smartbuy®. At the time when the Standing Offer is established, certain Customers will be able to purchase Deliverables through smartbuy® but not all Customers will have completed their migration to smartbuy®.

6.3.2 All SCCB suppliers are required registration with smartbuy® to enable NSW Government agencies to view and purchase goods and services on line. The specific requirements imposed on each Contractor in relation to smartbuy® will vary, depending which Product Group/s the Contractor is appointed to. The Client Services division in smartbuy® provides support services for all suppliers in completing the supplier enrolment process thereby offering maximum exposure of suppliers' items to the government market. The steps required for getting established in the smartbuy® system are outlined below.

6.3.3 The NSW Government has placed a substantial emphasis on the use of electronic procurement to move significant volumes of NSW Government purchasing through smartbuy®.

6.3.4 smartbuy® is an electronic procurement system, maintained on behalf of the NSW Government. smartbuy® can be accessed via
<http://www.smartbuy.nsw.gov.au>.

- 6.3.5 smartbuy® enables eligible clients to electronically procure goods and services, generally on terms established in Government Contracts. It is intended that all goods and services provided under the Board's Standing Offer Agreements will be browsed, searched and where appropriate, purchased online via smartbuy®.
- 6.3.6 All successful Tenderers that are required to accept Orders and other business documents and communications by electronic communication must do so in accordance with the *Electronic Transactions Act 2000 (NSW)*. More information on the NSW Government's policy about electronic procurement and smartbuy® can be seen at
- a) <http://www.smartbuy.nsw.gov.au> and
- b) <http://www.dpws.nsw.gov.au/About+Us/Publications/Government+Procurement+Publications.htm>
- 6.3.7 For any purchases covered by the contract, successful Tenderers are also required to send an electronic copy of each invoice to smartbuy® or use a web-based facility nominated by NSW Procurement to provide an electronic invoice to smartbuy®.
- 6.3.8 Successful Tenderers are required to dedicate resources in the areas of account management and marketing to promote this contract to NSW Government Agencies. This must be done in partnership with NSW Procurement.

Participating in smartbuy® and smartbuy® enrolment process:

- 6.3.9 Successful Tenderers must enrol with smartbuy®, which is a three step exercise supported by NSW Procurement – eBusiness Solutions. The first step for a successful Tenderer is to register the organisation online, through the smartbuy® website. The Tenderer is required to review and sign the smartbuy® Supplier Agreement and participation Rules. A copy of these documents can be requested by contacting the Client Support Centre on 1800 679 289 or NSWP_Support@commerce.nsw.gov.au
- 6.3.10 The second step is for the nominated smartbuy® Supplier Administrator to attend smartbuy® training. This training can be conducted online via the smartbuy® website, or at one of the regularly scheduled training sessions.
- 6.3.11 The final step is to have catalogue content prepared, submitted, reviewed, confirmed and loaded into smartbuy®. Catalogue content must be provided to smartbuy® in the electronic format specified by the Board.
- 6.3.12 On completion of the enrolment process, the Supplier Administrator will be issued with a log on: user ID and Password. This will provide access to their catalogue information as held in smartbuy®, as well as their supplier profile. Buyers will be able to view and purchase these catalogued items held in smartbuy®.

Additional supplier establishment Requirements

- 6.3.13 In addition to enrolling in smartbuy®, as explained above, successful Tenderer organisations will be required to:
- a) submit specified information about themselves and the Deliverables to which the Standing Offer Agreement applies, to smartbuy®, and keep this information up to date;

- b) provide pricing/product information in the specified electronic format. The format and process will be provided to successful Tenderers at the time of notification of acceptance of their tender response;
- c) if applicable, provide access to tendered products through an Externally Hosted Catalogue. Tenderers are advised that where OCI protocol is used, the outbound and any inbound requests should fully comply with OCI version 2.0B and version 3.0, as specified by the Board.

- 6.3.14 The Contractor may only make available information or data to NSW Government Agencies, including any Catalogue Information, in an Externally Hosted Catalogue, with the Board's prior written consent.
- 6.3.15 The Board reserves the right to audit the Contractor's Catalogue Information from time to time for compliance with this agreement.
- 6.3.16 All costs, fees and charges for uploading and maintaining content and integrating with smartbuy® are to be borne by the Contractor.

smartbuy® Operational Requirements

- 6.3.17 The smartbuy® solution is comprised of a number of procurement-related applications and services including smartbuy® CONNECT. smartbuy® CONNECT, based on an IBM MQ Series platform, is a full service B2B hub offering a wide range of integration, document transformation and trading partner management capabilities.
- 6.3.18 smartbuy® CONNECT is tightly integrated to smartbuy® TRADE, and may be connected to Agencies and Suppliers via a number of integration mechanisms. The transmission types and document formats for the different integration options are explained in more detail below.
- 6.3.19 All electronic documents transmitted through smartbuy® TRADE are routed via smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Agencies and Contractors, without passing through smartbuy® TRADE.
- 6.3.20 The successful Tenderer will be required to transmit documents in accordance with the transmission types and document formats detailed below:

smartbuy® CONNECT supports the following business documents:

- a) Purchase Order
- b) Purchase Order Change
- c) Purchase Order Acknowledgement
- d) Receipt
- e) Receipt Change
- f) Advanced Shipping Notice
- g) Invoice
- h) Technical Message Acknowledgement

Smartbuy® CONNECT Trading Channels

- 6.3.21 The following Transmission Types and Document Types can be received by the smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel:

Transmission Type	Document Type	Trading Channel
HTTPS	xCBL3.0 (XML)	HTTPS/xCBL3.0
HTTPS	CSV	HTTPS/CSV
FTP	CSV	FTP/CSV
Email (SMTP)	PDF	Email/PDF
Fax	PDF	Fax/PDF

7. Submission of Tenders

7.1 Submission of Tenders

- 7.1.1 Prices, responses and other information provided in the tender are to be in writing and in English.
- 7.1.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.
- 7.1.3 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.
- 7.1.4 All tenders must be provided in the TenderMax Pro format, using the DMax Lite software. The tender responses in Part C must be included in one or more files with an extension of *.dtr. The DMax Lite software is only supported on a Microsoft Windows 9X and above operating system; other operating systems are not compatible. Tenderers must ensure a Microsoft Windows compatible computer is used to prepare the tender.
- 7.1.5 When submitting an electronic tender with Supporting Items:
- (a) The complete tender, including the Supporting Items must be submitted by Closing Date and Closing Time, and
 - (b) Supporting Items should be clearly designated as Supporting Items to the RFT to which they relate and be forwarded to the Contact Officer indicated in clause 2.3 of this RFT in a sealed envelope.
- 7.1.6 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to lodgment of the tender.

7.2 Electronic Tenders to the NSW Department of Commerce *eTendering* website

- 7.2.1 A tenderer is 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.

- 7.2.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the Conditions and rules on the NSW Department of Commerce *eTendering* website.
- 7.2.3 A tenderer must follow the following directions:
- (a) A RFT for which electronic lodgement is available through the website can be identified by the blue "Lodge a Response" link on the web pages for the RFT.
 - (b) To lodge a tender electronically, the files containing the tenderer's response must be up-loaded through the website. Access to the up-loading process is through the blue "Lodge a Response" link, then following the steps and instructions on the NSW Department of Commerce *eTendering* website and any instructions which may have been supplied with the RFT.
- 7.2.4 A tenderer must observe the following format for lodgements:
- (a) An electronically lodged tender must be lodged in a file 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.
 - (d) The file/s name/s must have an extension and not have invalid characters or file names/loading pathnames too long for the system, as detailed on the NSW Department of Commerce *eTendering* website.
- 7.2.5 Signatures are not required for a tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a tender response 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.
- 7.2.6 Electronically submitted tenders may 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. Tenderers must 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 response.
 - (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.
- 7.2.7 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 Contact Officer promptly in writing.
- (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 RFT process will not be compromised by such an extension.

- (b) Tenders must be fully received by the Closing Date and Closing Time.
- 7.2.8 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. In this case tenderers may break down the lodgement into smaller packages if clearly identified eg. package 1 of 3; 2 of 3; 3 of 3.
- 7.2.9 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated.
- 7.2.10 Where a Tender is submitted electronically through the Commerce eTendering website the following must be considered:
 - (a) The Commerce *eTendering* website is at peak use close to the Tender Closing Time.
 - (b) Due to the anticipated volume of responses and limitations of this means of communications it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.
 - (c) Tenderers should commence electronic lodgement as early as possible and at least **three (3) hours** prior to the Closing Time.

7.3 Custody of Tenders after receipt

- 7.3.1 Tenders lodged electronically to the Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
 - (a) On receipt of Tenders lodged electronically to the Commerce *eTendering* website, Tenders are encrypted and stored in a secure "electronic tender box."
 - (b) For reasons of probity and security, 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.
 - (c) The e-mail receipt that is sent to the Tenderer after successfully uploading the Tender is the only evidence of Tender lodgement provided.

7.4 Late Tenders

- 8.4.1 Late Tenders should not be considered, except where the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Board.

7.5 Extension of the Closing Date and Time

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

8. Evaluation of Tenders

8.1 General

- 8.1.1 Tenders will be assessed against the selection criteria listed in clause 8.2.
- 8.1.2 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.
- 8.1.3 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 may result in automatic exclusion of the Tender without further consideration. Mandatory criteria include those in which mandatory language such as “must” or “shall” is used.
- 8.1.4 Following the Tender Closing Date Tenderers may be asked to make a presentation on their Tender and specific questions.
- 8.1.5 The Contract Authority may also request Tenderers to facilitate a site visit.
- 8.1.6 The Board reserves the right to short-list Tenderers on the basis of professionalism, capability, and reliability as determined using the evaluation criteria as described in clause 8.2. Whilst it is not expected, the Board may, at its discretion and at any time during the evaluation process, request short-listed Tenderers to submit additional information.

8.2 Evaluation Criteria

- 8.2.1 Tenders will be assessed against the following evaluation criteria, which are not necessarily exhaustive, in order of significance, or to be given equal weight:

Stage 1 Evaluation (Part A & B)

Compliance with this RFT including compliance with NSW Government procurement policy and other applicable NSW Government policies.

Stage 2 Evaluation (Part E)

- (a) Company Profile
 - (i) organisational structure
 - (ii) manufacturing facilities (OEM only)
 - (iii) contractual and support relationship between OEM and TSP/DR
 - (iv) NSW geographic coverage (TSP/DR only)
- (b) Solution Design, Delivery and Implementation
 - (i) solution design capability
 - (ii) delivery and implement capability
- (c) Customer Support/Maintenance Capability:
 - (i) customer support infrastructure
 - (ii) maintenance resources and locations
 - (iii) dispute resolution
- (d) Ability to comply with Contract Authority reporting requirements

- (e) Incentives and discounts offered

Stage 3 Risk Assessment

- (a) Customer References
- (b) Financial performance
- (c) Procure IT (Part D)
- (d) Quality Assurance

Please note that for the Customer References exercise, Tenderers must supply two (2) reference contacts per Product Group. The contact details must include an e-mail address.

8.3 Variation of Tenders

8.3.1 At any time before the Board accepts any Tender received in response to this RFT, a Tenderer may, subject to cl.8.3.2, vary its Tender:

- (a) by providing the Board with further information by way of explanation or clarification;
- (b) by correcting a mistake or anomaly; or
- (c) by documenting agreed changes to the Tender negotiated under cl.9.1 of this Part.

8.3.2 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 under cl.8.3.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the Tenderer to provide the information or correct the mistake or anomaly; or
 - (d) in the case of variation under cl.8.3.1(c), the Board has confirmed that the draft documented changes reflect what has been agreed.

8.3.3 If a Tender is varied in accordance with cl. 8.3.1(a) or (b), the Board will provide all other Tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.

8.3.4 A variation of a Tender under cl. 8.3.1 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 under cl.8.3.1(a) or (b), it would result in the revising or expanding of a Tender in a way that would give a Tenderer an unfair advantage over other Tenderers.

8.4 Exchange of information between Eligible Customers

- 8.4.1 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 on any Standing Offer 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.
- 8.4.2 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.
- 8.4.3 In the evaluation of Tenders, the Board may take into account any information about the Tenderer that the Board receives from any source.
- 8.4.4 To avoid doubt, information that 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 cl. 8.4.
- 8.4.5 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.
- 8.4.6 During the course of the Standing Offer agreement, the successful Tenderer's performance will 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.

8.5 Corrupt or unethical conduct

- 8.5.1 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, Customer or the NSW Government in connection with this RFT or the submitted Tender;
 - (b) committed corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act 1988*, or
 - (c) a record or alleged record of unethical behaviour,
 - (d) not complied with the requirements of Commerce Business Ethics Statement.

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.

9. Outcomes

9.1a Best and Final Offer

- 9.1.1a Selected Respondents may be invited to submit best and final offers (BAFOs), at any time during the RFT process to enable evaluation/selection of the successful Respondents.

9.1b Negotiations before determination of outcome

- 9.1.1b Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiation with Tenderers, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.

9.1c Final determination of Standing Offer Agreement

- 9.1.1c The Standing Offer Agreement will be substantially based on the terms and conditions contained in Part D of this RFT.
- 9.1.2c Part C provides an opportunity in the Risk Schedule for Tenderers to suggest minor amendments to the terms and conditions contained in Part D that the Tenderer considers to be of significant importance. Further details on this process are contained in Part C4.
- 9.1.3c Subsequent to the Closing Date and Time, the Board may consider the suggested amendments.
- 9.1.4c The Board, at its complete discretion, may meet with some or all of the Tenderers to discuss the suggested amendments. Such discussions may occur concurrently with the evaluation of Tenders and will be confined to matters raised in the Risk Schedule. Tenderers will not be permitted to raise in this process any issue not raised in the Risk Schedule.
- 9.1.5c If requested by the Board, Tenderers must participate in such discussions at their own cost. Any cost incurred by the Tenderer in participating in the negotiations will not be compensated.
- 9.1.6c Under no circumstances will the commencement or continuation of discussions pursuant to this cl. 9.1c be construed, interpreted or relied upon as an indication or representation as to the acceptance (or otherwise) of a Tender.
- 9.1.7c In pricing, developing and submitting its Tender, a Tenderer must not assume or account for any change to the terms and conditions contained in Part D. In pricing, developing and submitting a Tender, Tenderers should assume that no change will be made to the terms and conditions contained in Part D.
- 9.1.8c Under no circumstances will a Tenderer be entitled to vary its Tender in response to an amendment (or lack thereof) to the terms and conditions contained in Part D.
- 9.1.9c Nothing in this clause binds the Board to amend the terms and conditions contained in Part D. The Board, at its complete discretion, is entitled to accept some, all or none of the suggested amendments.
- 9.1.10c The Board, at its complete discretion, may deem any discussions under this clause 9.1c 'unsatisfactory' and discontinue those discussions.

- 9.1.11c Where, in the Board's view, the Tenderer and the Board are unable to reach agreement on the terms and conditions contained in Part D, that Tender will not be given further consideration.
- 9.1.12c Nominating a Tenderer as a Successful Tenderer is subject to the Board being satisfied with the Terms and Conditions of the Standing Offer Agreement as agreed between the parties.

9.2 Acceptance or Rejection of Tenders

- 9.2.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.
- 9.2.2 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
 - (a) Any Alternative Tender of part of an Alternative Tender, when submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.
- 9.2.3 The Board is not bound to accept the lowest tender.
- 9.2.4 If the Board rejects all the tenders received it may 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).

9.3 Discontinuance of the Tender process

- 9.3.1 In addition to its rights under cl. 9.2, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.
- 9.3.2 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.

9.4 Notification of outcome

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

9.5 Entry into Standing Offer agreement

- 9.5.1 Acceptance of a Tender or part Tender will be subject to the execution of a formal deed of agreement in the terms of Part D (Procure IT). Until the Board and the successful Tenderer(s) execute a formal deed or deeds there will be no legally enforceable agreement concluded between them.

9.6 Post Tender Negotiations

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

- 9.6.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part D.
- 9.6.3 If the Board considers that none of the tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation.
- 9.6.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 9.6.3 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

9.7 Complaints

- 9.7.1 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 (Procure IT) 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
- 9.7.2 Notwithstanding clause 9.7.1 any action or claim in relation to this Procurement Process must be commenced within 28 days following the Closing Date or the date on which the event giving rise to the action or claim:
- (a) becomes known to the complainant, or
(b) ought reasonably to be known to the complainant,
- whichever occurs earlier. A Tenderer is not permitted to commence any claim or action after this period. This limitation on claims applies to the nomination of Successful Tenderers, the finalisation of the RFT process and commencement of the Standing Offer.

9.8 Disclosure information

- 9.8.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.
- 9.8.2 Details of tenderers and the outcome of the tender process will be disclosed in accordance with the *Freedom of Information Act 1989* and the NSW Government Tendering Guidelines, available at:
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>
- 9.8.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

9.9 Ownership of Tenders

- 9.9.1 All Tenders become the property of the Board on submission.

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

9.10 Monitoring of Contractor Performance

- 9.10.1 During the course of the Standing Offer agreement the Contractor's performance will be monitored and assessed. For details refer to the NSW Government Procurement Guidelines on Service provider performance management which is available on request from the Contact Officer, Commerce or can be viewed and downloaded from:

<http://www.ogp.commerce.nsw.gov.au/NR/rdonlyres/eucuz2722gdb54776cyhk w7ntoj4cpiw5iga5ztwvtvjethi2xjujwd4zrgsfte4cye7lgoqtlf4wxywdioutedaph/Service+Provider+Performance+Management.pdf>

- 9.10.2 The terms and conditions of the proposed deed of agreement, set out in Part D (Procure IT), detail the performance criteria to be applied in the monitoring of Contractor performance.

9.11 Probity Auditor

- 9.11 During the RFT process a Probity Auditor, independent of the evaluation process, is to be engaged. The Probity Auditor will be responsible for reviewing the application of the following probity principles to the evaluation process:

- accountability
- transparency
- conflict of interest management
- confidentiality management

The Probity Auditor will be invited to attend each Evaluation Panel meeting and all meetings with Tenderers. The Probity Auditor will provide a final probity report and other reports as required during the evaluation process.

Customers may also elect to use a Probity Auditor during their selection of a Contractor to satisfy their requirements specification.

ANNEXURE 1 TO PART B (Disclosure of Information)

Disclosure of information concerning tenderers and outcome of the tender process

1. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	<p>As a minimum:</p> <ul style="list-style-type: none"> a concise description of the proposed works, goods or services the subject of the tender call; the date responses to the tender call close and where responses are lodged; and location of the tender call documents. <p>The names and addresses of all entities which submit responses.</p>	<p>Routine public disclosure at the time tender calls are advertised.</p> <p>Routine public disclosure within 7 days of the date tender calls closed.</p>
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
<p>Class 1 contracts All government contracts with estimated value \$150,000 or above.</p>	<ul style="list-style-type: none"> a) The name and business address of the contractor; b) Particulars of any related body corporate (within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract; c) The date on which the contract became effective and the duration of the contract; d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract; e) The estimated amount payable to the contractor under the contract; f) A description of any provisions under which 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

	<p>the amount payable to the contractor may be varied;</p> <p>g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and</p> <p>i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.</p>	
<p>Class 2 contracts Class 1 contracts (i.e government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> - result from a direct negotiation where there has not been a tender process; or - have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or - involve operation or maintenance obligations for 10 years or longer; or - involve a privately financed project as defined by relevant Treasury guidelines; or - involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency. 	<p>The information required for class 1 contracts and:</p> <p>a) Particulars of future transfers of significant assets to the State at zero, or nominal cost to the State, including the date of their proposed transfer;</p> <p>b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</p> <p>c) The results of any cost-benefit analysis of the contract conducted by the agency;</p> <p>d) The components and quantum of the public sector comparator if used;</p> <p>e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);</p> <p>f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</p> <p>g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and</p> <p>h) Particulars of any other key elements of the contract.</p>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
<p>Class 3 contracts Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p>	<p>The information for class 1 and 2 contracts and the complete contract, less confidential information.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose:</p> <ul style="list-style-type: none"> • the reasons for not publishing the contract or provisions; • a statement as to whether the contract or 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

	provisions will be published and, if so, when; and <ul style="list-style-type: none"> • where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published. 	
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3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information contained in schedules 1 or 2, or for a copy of a contract, which is not required to be routinely disclosed under section 15A of the *Freedom of Information Act 1989* ("FOI Act"). The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

Where a copy of a contract has been requested and some or all of the contract is not provided for reasons of confidentiality, the State Contracts Control Board will disclose:

- the reasons for not providing;
- a statement as to whether the contract or provisions will be provided and, if so, when; and
- where some but not all of the provisions of the contract have been provided, a general description of the types of provisions that have not been provided.

4. Disclosure of amendments or variations to contract information under the FOI Act

The FOI Act requires that, if there is an amendment to the contract terms or a material variation made under the contract that changes information already routinely disclosed under the FOI Act, the State Contracts Control Board must ensure that the information concerning the change is routinely disclosed within 60 days after such amendment or variation becomes effective, less any confidential information. In the case of class 3 contracts, the full amendment or material variation, less any confidential information, must be disclosed within the 60 day timeframe.

5. Confidential information

None of the disclosure obligations contained in the FOI Act, or the requirements for disclosing tender information or a copy of a contract or information in relation to a contract under these guidelines, require the disclosure of:

- the commercial-in-confidence provisions of a contract (as defined in section 15A(14) of the FOI Act) (the contractor's financing arrangements; the contractor's cost structure or profit margins; the contractor's full base case financial model; any intellectual property in which the contractor has an interest; or any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.);
- details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the Freedom of Information Act.

Where such confidential information is withheld, the State Contracts Control Board must inform the requesting person that access to that information may be sought in accordance with the Freedom of Information Act. This will enable a person seeking the information to have the appeal rights available under the FOI Act...

6. Tenderers are invited to nominate items they consider are confidential and why.



Government Chief
Information Office

RFT Number 0800182

GOVERNMENT TELECOMMUNICATIONS AGREEMENT

PART E

Telecommunications Systems and Services

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1 Introduction

The Government Telecommunications Agreement (GTA) is to replace the existing Telecommunications Services Agreements (TSAs) and consolidate a number of existing panel contracts.

This is an open RFT seeking Contractors to establish a Standing Offer Agreement for GTA Category 5 and replace the following existing panel contracts:

- 2023 – Video Conferencing Equipment and Services
- 2024 - Telephone handsets, Answering Machines, Diverters & Associated Services
- 2025 – Mobile, Cellular and Satellite Telephone Equipment
- 2025B – Mobile Phone Usage, Monitoring, reporting and Plan Advisory Service
- 2069 – Network Products, Integration and Consultancy
- 2302 – Paging Equipment and Systems
- 2306 – PABX and Key Telephone Systems

Note:

1. The Consultancy Category of Contract 2069 will be included in the RFT 0800542 – Expression of Interest for ICT Services, for providing independent advisory services on relevant telecommunications matters.
2. For Contract 2302, Publicly Operated Paging Services are covered under GTA Category 4. This RFT for GTA Category 5 includes Privately Operated Paging Systems and Services.

Many Systems and Services covered by Category 5 are once-off high value tailored systems to meet the particular needs of a Customer. The Government has elected to proceed with a procurement process that involves two (2) steps:

1. This RFT to establish a panel of Contractors, so that Eligible Customers are only permitted to acquire their Telecommunications Systems and Services from the panel Contractors.
2. Customers issue a detailed requirements specification to Contractors to procure their required Deliverables by competitive quotes

Contractors on the panel may be categorised as:

1. Original Equipment Manufacturer (OEM)
2. Telecommunication Solution Provider (TSP)
3. Distributor/Reseller (DR)

1.1 Product Groups

The Systems and Services offered under GTA Category 5 are defined in eighteen (18) Product Groups. The Products Groups are:

1. Telephony Systems and Associated Systems & Services (including IP Systems)
2. Voice and/or Video Mail and Unified Messaging Systems
3. Network Systems and Services (including Voice, LAN/WAN, etc.)
4. Call Accounting (TIMS)
5. Contact Centre Systems and Associated Systems and Services
6. Interactive Voice Response Systems (IVR's)

7. After Market Products (including handsets, audio conference phones, headsets, circuit cards etc.)
8. Music and Messaging on Hold Systems and Services
9. Voice Recording Systems
10. Audio Conference Systems and Services
11. Video Conferencing and Webcam Systems and Services
12. Consolidated Telecommunications Inventory and Cost Management (including carrier billing analysis tools)
13. Managed Telecommunications Services
14. Private Paging and Public Address Systems
15. Broadcast Messaging Systems
16. System Commissioning, Decommissioning and Professional Services
17. System Maintenance (single and multi-vendor)
18. New Telecommunications Technologies

1.2 Procurement Process

The Government has elected to proceed with a procurement process that involves two (2) stages:

Stage 1. This Request for Tender (RFT) to establish a panel of Contractors under GTA Category 5.

Stage 2. Customers using the panels to seek competitive quotes from Contractors.

The RFT is an open process inviting suppliers to provide proposals demonstrating their ability and commitment to meet the Government's telecommunications objectives as stated in the RFT document.

In stage 2, Eligible Customers will seek competitive quotations from selected Contractors via a detailed requirements specification covering such areas as system requirements, implementation timetable, service level requirements and maintenance requirements.

Tenderers are welcome to submit innovative approaches for the provision of the tendered services. These alternate approaches might include, for example, volume-based discount structures. However it is important to note that these alternative approaches must be provided under the Procure IT contract and will only be considered if the Tenderer submits a conforming tender.

Throughout the procurement process Government will be assisted by a Probity Auditor.

1.3 Supply Panel

It is the NSW Government's intention to create an environment in which the development of telecommunication enterprises within NSW can be encouraged. Therefore, it is proposed to establish a panel of Contractors with a range of company profiles, supplying Systems and Services in the telecommunication industry. In general, Contractors may be categorised as:

1. Original Equipment Manufacturer (OEM) – Manufactures and sells own brand equipment plus implementation and support of that equipment, directly or indirectly, for the whole of NSW.
2. Telecommunication Solution Provider (TSP) – Sells equipment and provides design, systems integration, maintenance services and a range of professional services.
3. Distributor/Reseller (DR) – Sells, implements and supports Systems and Services.

Tenderers are required to nominate which one of the three categories matches their company profile. Following the evaluation process, the Contract Authority will assign successful Tenderers into one or more of the three categories.

There are general questions for all Tenderers to demonstrate their capacity to supply the Systems and Services offered, such as:

- Company profile (staff numbers, function/skill-set, locations etc.)
- Qualification and experience of key personnel
- Business profile related to the Product Groups offered
- Ability to design, deliver and implement the systems/services offered
- Framework for ongoing support and service of its products
- Framework with examples for delivering solutions that meet Customer specific requirements
- Help Desk, as outlined in Clause 6
- Warranty and maintenance
- Reporting requirements

In addition, Tenderers are required to respond to questions specific to their nominated category, being:

For OEM

- Manufacture, storage and distribution facilities to ensure timely delivery of products
- Ability to supply anywhere in NSW
- Support arrangements with their TSP or DR

For TSP and DR

- Nominate which regional or geographic area/s in NSW they propose to offer their Systems and Services
- Capability to deliver and support Systems or Services offered within the whole of the nominated regional or geographic service area/s
- Demonstrated their level of product knowledge
- Support arrangements with their OEM suppliers

The final list of Contractors will be determined subsequent to the evaluation of responses to the RFT in accordance with Clause 9 of Part A & B.

The Contract Authority has the right to:

- Limit the number of Contractors on the panel.
- Admit additional Contractors to the panel throughout the period of the Agreement based on an evaluation process similar to that used in this RFT.
- Remove a Contractor from the panel for reasons such as, but not limited to, poor performance, not meeting contract obligations, in accordance with Part D, Clause 18.

Government will not be providing a level of committed use to Contractors.

1.4 Purpose of the Tender

The purpose of the Tender is to establish a panel of Contractors to enable eligible Customers to seek competitive quotes for the acquisition of telecommunications Systems and Services.

Tenderers are required to agree to provide Systems and Services under a standardised contract titled Procure IT located at Part D of this RFT. By submitting a Tender the Tenderer acknowledges and agrees that the final contract will be substantially in the form of Part D.

Contractors will be restricted to providing Systems and Services that fall within the Product Group/s to which they are admitted. When Contractors have new Systems and Services for additional Product Groups, they can apply to the Contract Authority to have them included within the scope of their offering within Category 5.

Tenderers are required to notify the Customer and or Contract Authority of any and all system limitations (including but not limited to hardware, software, licensing, and a products supported life-cycle) for all systems being offered and or sold. This information will form part of the Contractor profile and knowledge-base. It is imperative that the Contract Authority and Customers have a clear understanding of the constraints of solutions being considered.

The term of this Agreement will be 2 years and maybe extended for three (3) further terms, each of one (1) year at the option of the Board.

1.5 Contractor Status No Guarantee of Work

The receipt of Contractor status under GTA Category 5 does not guarantee:

- continuity of the Contractor status during the term of the contract;
- receipt of opportunities to submit competitive quotes; or
- that orders of any kind or quantity will be offered.

1.6 Review and Development of the GTA Category 5

The contract will be monitored by the Contract Authority to assess whether the objectives and intent of the Category are being met. Modifications to Category 5 may be made at the Contract Authority's discretion during the term of the contract.

The Contract Authority reserves the right to implement a Price book on particular Product Groups or systems during the term of the contract. This includes cataloguing in Smartbuy®.

1.7 Standards of Workmanship and Materials

Contractors shall supply all required services and parts/consumables in accordance with corresponding manufacturer's prescribed standards to attain and maintain at all times the availability, integrity and reliability of the Systems and Services offered.

Any Contractor's employee or approved sub-contractor carrying out any part of the Deliverables described in this Specification shall be currently qualified/licensed to perform that type of work.

The workmanship shall be in strict conformity with the requirements of any and all authorities having jurisdiction over the telecommunications industry, including but not limited to the following relevant Acts, Regulations, Ordinances, and By-laws:

- Cabling methods shall comply with AS3000 and relevant AUSTEL regulations and Australian/New Zealand Standards
- WorkCover Authority Guidelines, Procedures, Practices and Requirement.
- OH&S Act & Regulations
- Home Building Act 1989 and Regulation 2004
- Building Code of Australia

Materials, products and standards of workmanship shall fully comply with the relevant:

- Australian/New Zealand Standards
- Supply Authority Regulations, Uniform Building Code, AUSTEL Regulations
- Occupational health and safety standards
- Requirements of the Australian Communications and Media Authority and its successors

1.7.1 Certificate of compliance with relevant Standards

In all cases where Australian/New Zealand Standards exist, tendered products must conform to such Standards. Tenderers are at liberty to offer items that comply with other recognised international Standards. However, where any inconsistencies exist between other Standards offered and the Australian/New Zealand Standards specified, full details of the inconsistencies are to be stated in the tender response.

Tenderers are required to confirm in Part C that tendered items meet the relevant Australian or nominated overseas or International Standard, supported by certification from an approved testing authority.

1.8 Maintenance and Support Service Levels

Contractor must implement and maintain appropriate training programs to ensure that all personnel deployed under this agreement always meet prescribed standards. Training includes but is not limited to; competency and certification of technical skills, OH&S, first aid courses, site induction and other site-specific health and safety requirements. Please note costs of any training including salaries/wages of their staff whilst attending shall be borne by the Contractor. Tenderers will confirm their compliance, if awarded this contract.

The Contractor must obtain at its own cost, all qualifications and licences, approvals and consents necessary to provide Systems and Services under this Agreement.

1.9 Spares

The Contractor shall ensure they maintain adequate spares of equipment to cover all Warranty Periods, Life-Cycle and any Agreed Maintenance Periods.

The tenderers shall detail their strategy, including expected turnaround times, to provide the above services in order to meet any agreed Service Level Agreements (SLAs) specified in the Customer's Request for Quotation (RFQ).

1.10 Management Fee

All Systems and Services supplied by a Contractor under GTA Category 5 are subject to the Management Fee in accordance with Clause 3.1 of Part D – Procure IT.

Sales of Systems and Services must be reported only by the Contractor who has received the customer order.

For example, where a TSP or DR sells an OEM's product to a Customer, the sale must be reported under the TSP's or DR's Contract and not the OEM's Contract.

As stated above therefore, it is important that Tenderers note:

- The Contractor responsible for reporting and paying the Management Fees on the entire sale, is the Contractor who receives the Official Order.
- The Management Fee applies to the gross value of **All Systems and Services** included in a Customer Official Order.

1.11 Quality Assurance Accreditations

Preference will be given to Tenderers that can demonstrate Quality Assurance Accreditations as related to Systems and Services offered.

1.12 Customer Reference

As part of the tender evaluation process, Tenderers will provide details of two (2) reference contacts per Product Group offered. The contacts are to be current or previous customers in either the Government sector or a large corporation. The contact details must include phone number and e-mail address, as referees may be asked to comment on a list of issues either by phone or in writing. Tenderers will need to ensure their nominated referees are aware they have been nominated.

2 Scope

2.1 General

The Tenderers are invited to apply for all or part of the Systems and Services within the scope of this Agreement. The intention is to provide Eligible Customers with a list of Contractors across all company profiles for the Telecommunication Systems and Services listed in Clause 1.1.

2.2 Exclusions

- (a) *Centrex* type services and associated voice calls are excluded as these are included in GTA Category 3 Fixed Voice Services.
- (b) *Consultancy Services* are excluded from this category as an accreditation panel will be established under RFT 0800542 for ICT Services.

3 Scope of Works Framework

All items (including Systems and Services) purchased under this Agreement that require any form of implementation, commissioning, programming or the use of professional services are required to have a Scope of Works. The Scope of Works is to be developed and agreed between the Contractor and Customer prior to order placement. It will define the scope of the project, what is to be delivered by the parties involved (in some cases this may also include work to be conducted by the Customer), it must also provide Practical Completion criteria, which will be directly linked to the Payment Terms. Both parties must agree on any variation. The Contractor must ensure that the project is delivered as per the Scope of Works.

4 Software Licence Ownership

The Contractor must ensure that all software used under this Agreement is appropriately licensed.

If as part of the contract the Customer has purchased software licences outright, the licence ownership may be transferred to another Eligible Customer if required.

5 Relationship Management and Key Responsibilities

It is expected that the relationship between the parties will be collaborative and all parties will be in contact on a regular basis. For very large purchases it is expected that both the Customer and the Contractor will include in the Scope of Works, documented details on the relationship model to be implemented.

5.1 Contract Authority

The Contract Authority consists of representatives from Contracting Services - NSW Procurement, a division of the NSW Department of Commerce. It is assisted by representatives from the Government Chief Information Office (GCIO) and NSW Government Agencies.

The key responsibilities of the Contract Authority will be, but not limited to:

- Management of this tender process including evaluation and panel selection
- Providing NSW Government Customers with the relevant contract information (i.e. list of panel members, the Systems and Services they are permitted to provide under the terms and conditions of the Agreement)
- Monitoring the performance of the Contractors
- Tracking the spend with each of the Contractors
- Assisting Eligible Customers with problem resolution and disputes
- Assisting Eligible Customers with RFQ processes
- Providing guidance with regards to strategic direction
- Streamlining procurement processes
- Development of the knowledge-base for use by Eligible Customers, including the User's Guide
- Relationship management, where appropriate

5.2 Customer

The Customer owns the primary relationship with the Contractor supplying the Telecommunications System or Service. The key responsibilities of the Customer will be, but not limited to:

- Development of business requirements and Scope of Works (Contract Authority may be called upon for assistance)
- Preparation and issuing of Request for Quotation documents
- Evaluation and selection of technology and Contractor/s
- Providing the necessary resources to fulfil contractual requirements
- Providing input for the knowledge-base for use by Eligible Customers
- Payments to Contractors
- Providing feedback on contractor performance to the Contract Authority
- Providing information on orders placed with Contractors

5.3 Contractors

Contractors are responsible for ensuring that the Systems and Services delivered to Eligible Customers are as per the Scope of Work and Procure IT.

The key responsibilities of the Contractor will be, but not limited to:

- Payment of management fee to NSW Department of Commerce
- Meeting reporting requirements
- Ensuring professional and sound technical delivery of the Systems and Services within each Product Group
- Informing the Customer and Contract Authority of similar projects and or purchases (recent, current and forecasted)
- Relationship management and provision of an Account Manager and support team where required
- Project management
- Assistance with Scope of Work development
- Development of practical completion criteria
- Declaring any limitations in the proposed solution provided in the response to the Customer's RFQ

5.3.1 Security Arrangement for Contractor Personnel

Contractors must provide the Customers or their nominated representative/s with the following information relating to any staff prior to entry on the premises before the commencement of their duties:

- Date and place of birth of the person.
- Full name of person.
- Current address and telephone number of the person.

Contractors must also recognise and abide by any security arrangements (e.g. child protection provisions in schools, and police check if required) in force within the Customer's premises and ensure that their supervisors and staff comply with these arrangements at all times.

6 Help Desk

All Tenderers must provide a Customer Help Desk appropriate for the Systems and Services offered. The OEM Help Desk must be available to both the TSP/DR and Eligible Customers. The Help Desk must have the following:

- Staff proficient in the technology they are supporting (level 1 through to level 4)
- Tenders must be capable of meeting all agreed Service Level Agreements
- Customer support infrastructure and adequate staffing levels to cater for the volume of business and the various business needs
- Established methodology for handling calls
- Escalation procedures
- Fault management tools that provide reporting for customers
- Calls answered by trained technical staff (except where expressly stated in writing)
- Where required, 24 hour x 365 day coverage

The Help Desk must be capable of receiving and processing enquiry/request/fault calls during the contracted hours. Customers must be able to contact the Help Desk via the telephone and ideally via email or web portal for less urgent matters or general enquiries. Online fault and request tracking will be highly regarded.

The following table provides an indication of the level of detail that will be required and recorded when placing a fault or request, as per agreed SLA.

Detail	Assigned by
Unique fault or request number	Contractor
Business impact	Customer
Priority level assigned to the fault or request	Customer
Contact details for the Customer reporting the fault or request	Customer
Location details for the fault or request including nominated site contact details	Customer
Details of the fault or request	Customer
Periodic updates on progress with the fault or request	Contractor
Best estimate of time to restore/ complete fault or request	Contractor
Completion Details and remedial action taken / required	Contractor
Customer acknowledgement of fault restoration and closure	Customer

Table 3 - Fault and Request Details

7 Reporting Requirements

7.1 Customer Reporting

Customers will specify the reports they require in their detailed requirements specification of their RFQ.

Irrespective of the above, records of faults and requests are to be retained for a period of no less than 13 months and must be made available to the Customer in the form of a report at agreed intervals.

7.2 Contract Authority Reporting

Reports required include but are not limited to Whole of Government details for all acquired Systems and Services and associated costs that the Contractor must provide to the Contract Authority for Category 5:

- Outright Purchases
- Partially or Fully Managed Option
- Ongoing Maintenance – term and annual cost
- Breakdown of costs – System components, i.e. hardware, software, licence fees
- List price of Systems and Services and how discounts were applied (where applicable)

- Aftermarket sales
- Summary of orders from eligible customers
 - Soft copies of orders from eligible customers, may be required and can be audited by the Contract Authority
- Monthly revenue by eligible customers

All reports are to be made available to the Contract Authority (or any contractor of the Contract Authority to enable them to provide services to the Contract Authority), in Microsoft Excel or compatible format.

The Contract Authority will determine the final layout and information contained in the reports to which successful tenderers must provide.

Examples of reports are as follows but not limited to:

Excel Reports

- Product Group monthly spend by
 - Whole of Government
 - Customer
- Product Group monthly recurrent spend by
 - Whole of Government
 - Customer
- List price of Systems and Services and how discounts were applied (where applicable)

PDF Reports

- Copies of all signed orders from Customers

Where a report submitted by a Contractor is not in the specified format or doesn't include the required information, the Contract Authority may reject the report and require its re-submission.

From time to time the Contract Authority may seek specific reports regarding support/maintenance issues or other contractual issues. Format for these reports will be notified to the Contractor at the time of the Contract Authority's request.

Whole of government reports are mandatory and must be provided to the Contract Authority.

8 Systems and Services

This section details the Systems and Services covered by this Agreement. The Systems and Services have been broken up into Product Groups and are listed below. Contractors will only be able to sell to eligible Customers the Systems and Services in each Product Group they are appointed to.

It is important to note that the Contractor can, at any time during the term of this Agreement request a change to the Product Group they are able to supply from. In addition, in the event that the Contract Authority determines that a Contractor is deemed to be an inappropriate supplier of systems and/or services in a Product Group or that their performance is unsatisfactory, the Contract Authority may reclassify or remove them from the panel or Product Group.

The NSW Government will also require Contractors offering specialised Telecommunications Systems and Services for niche areas such as, but not limited to:

- Disability requirements
- Specific Agency requirements (e.g. Corrective Services, Emergency Services)

- Additional security
- Supplying ruggedised design equipment
- Operating in extreme environment

All solutions are to strictly adhere to Copyright and Privacy Laws, as well as all relevant Australian/New Zealand Standards. For example: in Product Groups where a feature such as “Music on Hold” is integrated.

8.1 Telephony Systems and Associated Systems and Services (including IP Systems)

This Product Group includes any and all associated voice systems and services which provide a total voice solution. Individual components of this Product Group (e.g. handsets, headsets, voicemail, etc.) will also be listed separately in order to cater for smaller or niche suppliers. The Tenderer will however, be asked to nominate the Systems and Services within all Product Groups that they are able to provide as this will assist in the development of the knowledge-base. This Product Group covers the following Systems and Services, but not limited to:

- Small business telephone systems
- PABX's
- IP voice systems
- Networking solutions
- Hardware components
- Software solutions
- Professional services
- Specialised telecommunications application servers

Tenderers offering mainly professional services should assess if Product Group 8.16 is more appropriate.

8.1.1 System Sizing and Capacity Guide

The configuration and therefore size of each system will vary. The table below provides approximate sizing ranges, which are to be used as a guide. Note that these are approximate sizes in order to categorise the systems being offered.

It is intended that this information will be used for catalogue information in conjunction with a Contractor profile that will be provided to all eligible Customers via a knowledge-base.

Size Category	Approximate Number of Extensions
Small	1 – 100
Medium	100 – 1000
Large	1000 – 5000
Extra Large	5000+

Table 1 – telephone system size guide

The Tenderer will be required to list the systems being offered and the actual sizing range of the product. If a product being offered fits into more than one Size Category it should be listed in all Size Categories.

For example, if say the range is 50 – 800 extensions, you should include it in Small and Medium.

8.2 Voice and/or Video Mail and Unified Messaging Systems

This Product Group covers voice and/or video mail and unified messaging. These have been combined in the same Product Group and Tenderers have the opportunity to offer voice and/or video mail alone or as part of a unified messaging solution.

Voice and/or video mail is required for answering telephone calls, recording, saving, relaying messages, and in some cases for paging the user. It can also be used for basic call handling treatments. It is understood that the functionality will vary from system to system and in some cases will be dependant on size and capacity.

Unified messaging is a system that combines some or all of the following: voicemail, video mail, fax and e-mail into a single location or mailbox. Multimedia messages can be accessed and controlled via a touch-tone telephone, desktop application or portal. These systems provide the user the ability to playback messages, view and redirect faxes, voicemails and emails to other users, printers or faxes etc.

8.2.1 System Sizing and Capacity Guide

The configuration and therefore size of each system will vary. The table below provides approximate sizing ranges, which are to be used as a guide. The Contractor may be able to offer a single stand-alone system as a scalable solution that covers small single sites through to large multi sites. The Contractor can indicate in the Product Table the sizing or scalability of the system or service that is being offered.

Note that these are approximate sizes in order to categorise the systems being offered.

Size Category	Approximate Number of Voicemail ports
Small	20
Medium	100
Large	100 - 200
Extra Large	200+

Table 2 - Voice and Unified Messaging size guide

8.3 Network Systems and Services (including Voice, LAN/WAN etc.)

This Product Group covers networking Systems and Services (e.g. switches, routers, firewalls, etc.) to enable implementation of voice and data systems. Systems in this category should be able to support various brands of voice and data systems using a variety of protocols.

The system may also provide the following, but not limited to:

- Robust integrated voice, data and multimedia infrastructure
- Local Area and Wide Area networks and facilities
- Converging technologies (e.g. VOIP, Multimedia Applications etc.)
- Management of all network connections via a desktop application or portal from multiple locations
- Network monitoring and reporting tools
- Fault management tools

Tenderers offering mainly professional services should assess if Product Group 8.16 is more appropriate.

8.4 Call Accounting (TIMS)

This Product Group covers Call Accounting Systems used as a tool to help administer telecommunications costs, capture the traffic of PSTN, trunks, long distance carriers, and private networks. Call Accounting in most cases includes, but is not limited to the following:

- Comprehensive current and historical reporting of voice traffic
- Reports covering costs, charges and traffic volumes, via business units, cost centres, individual extensions or equipped ends
- Automated report scheduling
- Export to file
- Graphical reporting
- Hierarchies – cost centre
- Collection of voice traffic using either buffer box via LAN, WAN internet or dial-up connection
- Multiple carrier rate tables
- Single or Multi-site option – scalable.
- Easy configuration

8.5 Contact Centre Systems and Associated Systems and Services

This Product Group will cover all call and contact centre Systems and Services. Business requirements and complexity of technology vary greatly in this area and as such the Systems and Services below provide an indication of the types of technology the NSW Government currently utilises and is likely to deploy in the future, but not limited to.

- ACD
- Voice call reporting tools (real time and historical)
- CTI middleware (including CPE and exchange based)
- Intelligent multimedia routing (centralised and de-centralised)
- Multimedia reporting tools (real time and historical)
- Agent soft phones
- Workforce management applications (voice and multimedia)
- Wallboards and monitors for agent, queue and network statistics etc
- System integration
- Professional services

8.6 Interactive Voice Response Systems (IVR's)

This Product Group will cover systems that provide both touch-tone and voice recognition. IVR's are typically used to provide callers with menu choices in order to determine the most appropriate destination for the call. They are also used to provide self service type functions to callers (e.g. bill payments, timetable information etc).

This Product Group encompasses but is not limited to the following:

- CPE or network based solutions
- Customer managed or fully managed by supplier
- Hardware components
- Software solutions
- Intuitive user interface

- Reporting and monitoring tools
- Real time call flow changes
- Professional services, including scripting and recording services

8.7 After Market Products (including handsets, audio conference phones, headsets, circuit cards etc.)

This Product Group relates to After Market Products that are required to meet the ongoing business needs of the Customers. Below are some examples that may be required:

- Hardware and software upgrades
- Circuit/trunk cards
- Extension cards
- Analogue, digital and call centre handsets
- Telephone headsets
- Audio Conference devices
- Training Courses (user and technical)
- Wallboards and displays for contact centres

8.8 Music and Messaging on Hold Systems and Services

This Product Group covers both equipment and services required to deliver music on hold solutions. Music on hold solutions are not restricted to the playing of music whilst on hold, but may also include the playing of marketing material and/or other Customer provided material. This type of service may also require scripting, recording and commissioning.

8.9 Voice Recording Systems

This Product Group covers Voice Recording required to provide a complete call recording service where businesses can arrange to have their telephone calls recorded and stored for future use. This solution may be CPE or exchange based. This requirement and its capability will vary due to the size and business needs of the Customer.

8.10 Audio Conference Systems and Services

This Product Group covers multi-party Audio Conference Service solutions.

Examples of services include but are not limited to:

- CPE or network based solutions
- Operator assisted facilities
- Web-based facilities
- Audible alert when new parties access the conference call
- Security access features (via PIN, access code, name check etc.)
- Booking service
- Help desk

8.11 Video Conferencing and Webcam Systems and Services

This Product Group relates to all video conferencing, desktop and webcam Systems and Services, which encompass CPE, managed and hosted applications.

The range of Systems and Services offered under this Product Group include, but not limited to:

- CPE or network based solutions
- PSTN and ISDN Video Telephones (non PC based)
- PSTN, LAN/WAN and ISDN desktop video hardware and software
- Webcam
- Mobile video conferencing systems
- Portable video conferencing systems
- Studio/conference room systems
- Multi-point (bridging) hardware and software
- Collaboration applications and services
- Web based conferencing services
- Bureau Services and Facilities
- Professional Services (eg implementation, integration, design etc.)
- Training
- Associated Systems and Services

8.12 Consolidated Telecommunications Inventory and Cost Management (including carrier billing analysis tools)

This Product Group relates to Systems or Services that can accept service and equipment as well as billing feeds from all carriers. The system or service should also provide the ability for the Customer to insert multiple tariff tables from multiple carriers and perform rate checks on the carrier bills in order to confirm billing accuracy.

This system and or service should also provide the ability to tailor reports on Customer Spend (across multiple carriers) whilst maintaining the capability of drilling down to the finer details (e.g. number of local calls across multiple sites and carriers, number of ISDN services with a particular carrier and Customer Cost Centre reporting).

8.13 Managed Telecommunications Services

This Product Group will provide a modular range of managed services to fit all types of customers regardless of their current technology situation.

8.14 Private Paging and Public Address Systems

This Product Group relates to Systems or Services that are used in either small or large venues (eg. Interface to EWIS systems, making a speech, pre-recorded music, personal/public paging or a message that is required to be broadcast).

8.15 Broadcast Messaging Systems

This Product Group includes but is not limited to Electronic Broadcast Messaging which facilitates messaging methods via a central service providing access to Fax, SMS, Email and Text-to-Speech (Voice) broadcasting to domestic and international contacts.

8.16 System Commissioning, Decommissioning and Professional Services

This Product Group covers the components of a system implementation/commissioning, relocation and decommissioning of a Telecommunication System (e.g. PABX, voicemail, IVR etc.).

Examples of Professional Services include, but are not limited to:

- Solution Design and Implementation
- System Integration
- Project Management
- Subject Matter Experts
- Scoping
- Programming
- Development
- Training

8.17 System Maintenance (single and multi-vendor)

This Product Group relates to all system (hardware, software, licensing during a products supported life-cycle) maintenance and includes both single and multi-vendor options ranging from 1 to 5 year terms. This Product Group also covers maintenance options where uplift is offered to provide hardware and software upgrades as an optional extra.

All maintenance contracts entered into must include where appropriate a preventative maintenance program with an agreed checklist and frequency. Systems must be kept at N or N-1 Revision or Patch Level unless otherwise agreed with the Customer.

Contractors should hold sufficient spare parts to meet the agreed Service Level of Eligible Customers.

All maintenance contracts must be supported by the Tenderer's Help Desk in accordance with that detailed in Part E Clause 6.

8.18 New Telecommunications Technologies

This Product Group is to cater for Systems and Services clearly not included within the other Product Groups or other GTA Categories.

Tenderers must detail the characteristics of each new technology submitted together with the expected Customer benefits and any limitations or restrictions inherent with the technology.

Dictionary

Abbreviation or Term	Definition
ACD	Automatic Call Distribution
CPE	Customer Premises Equipment
CTI	Computer Telephony Interface
Government	Government of New South Wales.
GTA	Government Telecommunications Agreement
IP	Internet Protocol
IVR	Interactive Voice Response
LAN	Local Area Network
OEM	Original Equipment Manufacturer
PABX	Private and Branch Exchange
PSTN	Public Switched Telephone Network
TDM	Time Division Multiplexing
TIMS	Telephone Information Management System
WAN	Wide Area Network
VoIP	Voice Over Internet Protocol

PROCURE IT AGREEMENT

GOVERNMENT TELECOMMUNICATIONS AGREEMENT (GTA) RFT NO 0800182 - PART D

**STANDARD TERMS AND CONDITIONS [ONE]
DICTIONARY [TWO]
SCHEDULE [THREE]
MODULES [FOUR]
ORDER FORMS [FIVE]**



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Agreement

Deed of Agreement dated the day of 20

Between

State Contracts Control Board

for and on behalf of

State of New South Wales

of

2-24 Rawson Place, Sydney 2000

in the State of New South Wales ('the Contract Authority')

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 may enter into contracts with Customers for the supply of information technology and telecommunications Products and Services.
- B** The Contract Authority and the Contractor agree that the terms and conditions of this Agreement govern the provision of Products and Services to Customers over the Term of this Agreement.

[ONE]

STANDARD TERMS AND CONDITIONS

STANDARD TERMS AND CONDITIONS

1. Agreement Administration

1.1 CONTRACT AUTHORITY

- 1.1.1** The Contract Authority is responsible for the administration of this Agreement, and may administer any Contract, on behalf of the Eligible Customers and has authority to act on behalf of these entities in this respect.
- 1.1.2** Where the Contract Authority is required to give a consent under the terms of this Agreement it may do so upon such reasonable conditions as it sees fit to impose.

1.2 AUTHORISED REPRESENTATIVES

Each Party where applicable must nominate in Items 2(b) and 3(b) of the Agreement Details and in the Order, its duly authorised representatives. Each Party warrants that its 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 or Contract as applicable.

1.3 NOTICES

- 1.3.1** Any notice to or by a Party under this Agreement or a Contract shall be by Notice in Writing.
- 1.3.2** Any Notice in Writing must be sent to the receiving Party's Service Address addressed to the Party's nominee for receipt of notices, or if no such position is nominated, the Authorised Representative.
- 1.3.3** Any Notice in Writing shall be deemed to be received for the purposes of this Agreement or a Contract 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 Item 7 (a) of the Agreement Details and will expire on the date specified in Item 7 (b) of the Agreement Details. The Contractor agrees that the Contract Authority may by Notice in Writing extend this Agreement on the same terms for the period specified in Item 7 (c) of the Agreement Details.

2.2 ENTIRE AGREEMENT

- 2.2.1** This Agreement constitutes the entire agreement between the Contractor and the Contract Authority. Any prior arrangements, agreements, or undertakings regarding the subject matter of the Agreement by the Contractor and the Contract Authority are superseded and shall have no effect.
- 2.2.2** Subject to clause 6.7, the Contractor agrees to fulfil all Orders under this Agreement in accordance with the terms of this Agreement.

2.3 NON-EXCLUSIVE SUPPLY

This Agreement does not:

- (a) imply that the Contractor is the exclusive provider of the Product or Service; or
- (b) oblige any Eligible Customer to place an Order with the Contractor for the Product or Service.

2.4 CUSTOMER MAY ENFORCE AGREEMENT

The Parties agree that any Customer, although not a Party to this Agreement, may take the benefit of, and enforce, this Agreement in its own name.

2.5 ORDER OF PRECEDENCE

The order of precedence of this Agreement is (in descending order of priority):

- (a) Part 4 Modules referenced in Agreement Details.
- (b) Part 1 Standard Terms and Conditions, and Part 2 Dictionary.
- (c) Part 3 Schedules.
- (d) Orders

3. Management of Agreement

3.1 MANAGEMENT FEE

If specified in Item 11 of the Agreement Details, a Management Fee will apply to this Agreement and be payable by the Contractor to the Contract Authority in accordance with the following terms and conditions:

- 3.1.1 (a) The Contractor shall, subject to clause 3.1.2, pay to the Contract Authority a Management Fee at the rate set out at Item 11 of the Agreement Details on the value (exclusive of any GST) of all Products or Services invoiced to and paid for by a Customer pursuant to an Order or where the supply of the Deliverables to the Customer should have been made under this Agreement.
- (b) The Contractor shall use its best endeavours to ensure that the obligations imposed on it in relation to the Management Fee are met, including ensuring that:
 - (i) all Eligible Customers use an Order for placing orders for Deliverables,
 - (ii) the Contractor sells the Deliverables to Eligible Customers on the terms and conditions of this Agreement; and
 - (iii) the Contractor acts in good faith in relation to all its obligations under this clause 3.1.1.

3.1.2 On or about the date of the end of each Payment Period the Contract Authority shall forward to the Contractor a requisition for a report (hereinafter referred to as a Sales Report) which relates to the relevant Payment Period and which requires the Contractor to report:

- (i) the total amount all Customers are liable to pay in respect of all items invoiced by the Contractor to those Customers;
- (ii) the names of the five largest Customers, listed by dollar value, invoiced by the Contractor; and
- (iii) such other relevant information as the Contract Authority may reasonably require.

The parties agree that the Contract Authority may by prior notice in writing to the Contractor amend the procedure for collection of information set out in this clause 3.1 from time to time.

3.1.3 (a) Upon receipt of a Sales Report the Contractor shall within thirty days complete the Report for the relevant Payment Period and return same by post to the Contract Authority.

- (b) In the event that the Contractor does not complete the Report within thirty days, the Contractor shall be liable to pay to the Contract Authority the cost to the Contract Authority of ensuring the compliance by the Contractor with its obligations under this clause 3.1.3 in the amount of the administrative fee in item 11 (e) of the Agreement Details calculated from the date the sales return was first due to be submitted. The statement by the Contract Authority as to the amount of the administrative costs payable under this clause shall be final and binding and the amount shall be payable on demand by the Contract Authority and may be demanded at any time by the Contract Authority.

3.1.4 The Contract Authority shall compile an invoice for the Management Fee based on the Sales Report and forward that Tax Invoice to the Contractor.

3.1.5 (a) The Contractor shall then forward to the Contract Authority payment, for each Tax Invoice received, within thirty days of the date of the Tax Invoice.

- (b) In the event that the Contractor does not provide payment within thirty days, the Contractor shall be liable to pay to the Contract Authority the cost to the Contract Authority of ensuring the compliance by the Contractor with its obligations under this clause 3.1.5 an amount contained in item 11(e) of the Agreement Details calculated from the date the payment was first due to be made. The statement by the Contract Authority as to the amount of the costs payable under this clause shall be final and binding and the amount shall be payable on demand by the Contract Authority and may be demanded at any time by the Contract Authority.

3.1.6 Payment shall be by means of electronic funds transfer to a bank as advised in the invoice referred to in Clause 3.1.4 or by a cheque made payable to the addressee set out at Item 11(c) of the Agreement Details and shall be forwarded to the address set out at Item 11(d) of the Agreement Details.

3.1.7 Where the Contractor considers that an accounting adjustment to the amount of Management Fee paid or payable during a Payment Period is required, it shall consult with the Contract Authority and the Parties may agree on the amount of any adjustment.

3.1.8 Where the Contractor has not issued any invoice to a Customer during a Payment Period, the Contractor shall provide, within 30 days from the conclusion of that Payment Period, a report stating that no payment was made during that Payment Period and shall be supported by a Statutory Declaration.

- 3.1.9** The Parties agree that all orders placed by an Eligible Customer for Deliverables, howsoever placed, shall be treated as purchases pursuant to a Contract under this Agreement, unless the Contractor can provide evidence to the satisfaction of the Contract Authority that the purchase was made under another contract between that Eligible Customer and the Contractor. Further, the Contractor agrees to ensure that all Eligible Customers submit an Order in the required form in respect of all Deliverables acquired in accordance with this Agreement.
- 3.1.10** The Contractor acknowledges that the Management Fee payable has been allowed for in the tendered price together with all costs associated with calculation proving and payment of the Management Fee and agrees that the amount of the Management Fee will not under any circumstances be shown as a separate charge in any quotation or invoice.
- 3.1.11** The Contractor shall set up and maintain a system to the reasonable satisfaction of the Contract Authority, suitable for identifying all purchasers of the Deliverables provided by the Contractor that are Eligible Customers, the monitoring by the Contract Authority of Orders placed with, and invoices issued by, the Contractor, and for the provision of the information required under clause 3.1.2. The system shall enable the Contract Authority to check whether any Eligible Customers have procured Deliverables from the Contractor.
- 3.1.12** The Contract Authority may take such measures as are reasonable in all the circumstances (including the appointment of an auditor) to verify that the Contractor has paid the correct amount of Management Fee due to the Contract Authority. If the Contract Authority appoints an auditor (being an auditor who must not be a competitor of the Contractor), the Contract Authority will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with the auditor appointed by the Contract Authority including providing access within 10 working days of the written notification from the Contract Authority that an audit will take place, to information about all sales of Deliverables made to Eligible Customers (whether pursuant to an Order or otherwise), copies of all contracts, orders and invoices (excluding disclosure of the Contractor's internal costings, profit margins and information not associated with compliance with the Agreement) between the Contractor and any Eligible Customers. The Contractor agrees to provide the Auditor appointed by the Contract Authority access on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement in the form set out in Schedule 14, and in accordance with the Contractor's reasonable access and security requirements.

If the measures taken in this clause 3.1.12 demonstrate that the Contractor has not paid the Management Fee that is actually due to the Contract Authority, the Contractor shall:

- (a) pay the difference between the Management Fee paid to the Contract Authority and the Management Fee actually payable to the Contract Authority within 30 days of a direction from the Contract Authority; and
- (b) at the discretion of the Contract Authority, reimburse the Contract Authority's costs and expenses of the measures (including without limitation, the appointed auditor's fees) taken under this clause 3.1.12 to the Contract Authority in accordance with the sliding scale set out below:

Proportion of audit cost to be borne	Difference between Management Fee paid and payable
\$0	95% of payable Management Fee was paid
50% of audit and other costs	75-95% of payable Management Fee paid
75% of audit and other costs	50-75% of payable Management Fee paid
100% of audit and other costs	less than 50% of payable Management Fee paid

- 3.1.13** The Contractor shall, while this Agreement is in force, and for a 12 month period after this Agreement has expired, or, if this Agreement is terminated before that time, for a period of 12 months from the date the Agreement was terminated, keep secure all relevant Documents and supporting materials and give any auditor appointed by the Contract Authority or any

auditor it may appoint access at all reasonable times to those Documents and supporting materials.

- 3.1.14** The Contractor will pay to the Contract Authority an amount equal to the GST payable by the Contract Authority on the taxable supply made by the Contract Authority for which the Management Fee is payable under this Agreement. That amount will be paid to the Contract Authority at the time the Management Fee is payable under this Agreement and will be paid in addition to the Management Fee. The Contract Authority will provide the Contractor with a tax invoice in respect of the taxable supply.
- 3.1.15** A breach by the Contractor of this clause (including without limitation, a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 3.1.12) shall be a Substantial Breach of this Agreement which will entitle the Contract Authority to terminate this Agreement pursuant to clause 18.2 without prejudice however to the right of the Contract Authority to recover from the Contractor any sums payable to the Contract Authority under this Agreement or otherwise, or the right of the Contract Authority to deduct those sums from any money that may be or become payable by the Contract Authority to the Contractor on any other account.
- 3.1.16** For the purposes of this clause, 'Payment Period' means each calendar month period (or part thereof)
- 3.1.17** This clause 3.1 shall survive the termination or expiry of this Agreement for a period of 6 months following last expiration or termination of a Contract created under this Agreement.

3.2 REVIEW OF CONTRACTOR'S PERFORMANCE BY CONTRACT AUTHORITY

- 3.2.1** The Contract Authority may from time to time conduct performance reviews to evaluate, monitor or review the Contractor's performance and compliance with this Agreement or any Contracts. This review may include consideration of Contractor Information and/or Performance Criteria.
- 3.2.2** The Contract Authority will give the Contractor the opportunity to participate in any performance reviews and to seek a review of each written performance report compiled in response to any performance review by a senior officer of the Contract Authority. A written performance report will note any objections by the Contractor made when participating in the performance review as provided for in this clause. The Contract Authority regards and the Contractor acknowledges that the provision of any performance reports is privileged within the legislation referenced at item 5(b) of the Agreement Details.

3.3 EXCHANGE OF CONTRACTOR INFORMATION

- 3.3.1** The Contractor authorises the Contract Authority and its Personnel to make available any Contractor Information to any other Agency.
- 3.3.2** The Contract Authority regards and the Contractor acknowledges that the provision of the Contractor Information to any Agency is privileged within the legislation referenced at item 5(b) of the Agreement Details.
- 3.3.3** The Contractor releases the Contract Authority, the State, and its Personnel from any claim in respect of any matter arising out of the disclosure of any of the Contractor Information to any other Agency in accordance with clause 3.3.1.
- 3.3.4** This clause 3.3 shall survive the termination or expiry of this Agreement for a period of 6 years.

3.4 NOTIFICATION OF CHANGE IN CONTROL OR TRANSFER OF OWNERSHIP

During the Term, the Contractor must immediately notify the Contract Authority and any Customers under an existing Contract in writing of any Change in Control or other action to reconstruct or amalgamate itself.

3.5 NOTIFICATION OF CONTRACTOR'S INSOLVENCY

3.5.1 The Contractor must immediately notify the Contract Authority in writing of the Contractor's Insolvency and disclose the details of any:

- (a) action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement or any Contracts;
- (b) existing Contracts which the Contractor has entered into under this Agreement; and
- (c) applicable Performance Guarantees or Financial Securities that the Contractor has entered into under a Contract.

3.5.2 The Contractor must immediately notify all Customers under an existing Contract in writing of the Contractor's Insolvency.

3.6 ELECTRONIC COMMERCE

If requested by the Contract Authority, the Contractor must implement any arrangements for electronic commerce specified in Schedule 2 or in Item 10 of the Agreement Details.

4. Product or Service

4.1 PRODUCT AND SERVICE LIST

Any Product or Service listed in Schedule 3 may be supplied by the Contractor under this Agreement.

4.2 VARIATION OF DESCRIPTION OF PRODUCT OR SERVICE

4.2.1 The Contractor must promptly notify the Contract Authority of any proposed variation to the description of a Product or Service offered in Schedule 3.

4.2.2 A variation under this clause 4.2 excludes a variation:

- (a) to the Price of a Product or Service;
- (b) that modifies or upgrades a Product or Service; or
- (c) that introduces a new Product or Service.

4.2.3 The Contract Authority will notify the Contractor in writing whether it accepts the variation to the description of the Product or Service and the incorporation of the accepted variations into Schedule 3.

4.3 MODIFICATIONS, UPGRADES AND IMPROVEMENTS TO PRODUCT OR SERVICE

4.3.1 If during the Term the Contractor makes available on a general commercial basis products or services that:

- (a) are modified or enhanced versions or upgrades of a Product or Service; or
- (b) have a function or purpose similar to that performed by a Product or Service; or
- (c) have a new function or purpose consistent with the nature of a Product or Service,

then the Contractor must offer to the Contract Authority within 60 days of the product being available on a general commercial basis to include those products or services in Schedule 3.

- 4.3.2** If during the Term the Contractor makes available on a general commercial basis, new products or services with a function or purpose unrelated to a Product or Service, the Contractor may, at its discretion, offer to the Contract Authority to include those products or services in Schedule 3.
- 4.3.3** The products and services offered by the Contractor under this clause 4.3 will form part of Schedule 3 when the Contract Authority notifies the Contractor of its acceptance of the offer.
- 4.3.4** In the event that the Contract Authority has not notified the Contractor of its acceptance of the Contractor's offer within 30 days, the offer will be deemed not to have been accepted.

5. Pricing

5.1 MAXIMUM PRICE FOR THE DELIVERABLES

The Price is the maximum price payable by a Customer for a Deliverable during the Term subject to any increase made in accordance with any price variation mechanism specified in Schedule 3.

5.2 REDUCTIONS IN PRICE

- 5.2.1** The Contractor may reduce the Price or increase the discount applicable to a Deliverable at any time by notifying the Contract Authority in writing.
- 5.2.2** Where the Contractor offers a temporary price special that is lower than a Price specified in Schedule 3 the Contractor must make available that lower price to all Customers.

5.3 BULK PURCHASE DISCOUNTS

- 5.3.1** The Contract Authority may request quotations from the Contractor for:
- (a) discounts on volume purchases of Deliverables on behalf of a Customer; and/or
 - (b) aggregating purchases of Deliverables on behalf of Customers.
- 5.3.2** The Parties agree that any new volume or bulk purchase discount under this clause 5.3 constitutes a variation to Schedule 3 under clause 17.1.

5.4 BEST PRICE

- 5.4.1** The Contractor warrants that it will offer to Customers a Price for a Deliverable which is no less favourable than the price paid by any other purchaser in Australia from the Contractor of similar Deliverables purchased in similar circumstances including volumes (where Price is volume dependent), timing where it has a substantial impact on price, or terms and conditions where they have a substantial impact on price.
- 5.4.2** Where the Contractor offers more favourable prices to any other purchaser of similar Deliverables in Australia purchased in similar circumstances including volumes (where Price is volume dependent), timing where it has a substantial impact on price, or terms and conditions where they have a substantial impact on price, it must promptly make the more favourable price available to all Eligible Customers entitled to the benefit of this Agreement for future Orders, and amend Schedule 3 accordingly.

5.5 TAXES, DUTIES AND GOVERNMENT CHARGES

- 5.5.1** Excepting clause 5.5.2 to 5.5.5 inclusive, 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.

- 5.5.2** No amount is payable under this Agreement or a Contract until a Correctly Rendered Invoice is received.
- 5.5.3** If there is any abolition or reduction, increase or introduction of any tax, duty, excise or statutory charge the Consideration payable for the Deliverable must be varied so that the Contractor's net dollar margin for the Deliverable remains the same.
- 5.5.4** 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 or a Contract, must include a clause in equivalent terms to clause 5.5.2.
- 5.5.5** The Parties agree that all amounts payable or Consideration given by a Party to the other under this Agreement are inclusive of all taxes, duties, excises and statutory charges.

6. Formation of Contract

6.1 CREATION OF CONTRACT

- 6.1.1** A Contract between a Contractor and Customer will be created under this Agreement upon:
- (a) the Parties mutually agreeing to the Order Details and any Additional Conditions; and
 - (b) the Customer and the Contractor signing the Order on the agreed terms, including by way of an electronic communication with the Contractor.
- 6.1.2** The Parties acknowledge and agree that each time a Customer places an Order with the Contractor in accordance with clause 6.1.1, a separate Contract is created which will take effect from the Commencement Date.
- 6.1.3** No legal or equitable rights or obligations in relation to a Product or Service arise between a Customer and the Contractor unless and until a Contract has been created.

6.2 NON-COMPLETION OF ORDER DETAILS

To the extent that a Customer has not included details relevant to an item in the Order, that item will be deemed not applicable unless the Contract Authority and the Contractor have agreed minimum conditions as to this item under the Agreement.

6.3 ADDITIONAL CONDITIONS IN CONFLICT WITH AGREEMENT

Any Additional Conditions that have an effect that is contrary to the terms and conditions of this Agreement are void and of no legal effect, unless the Contract Authority has given its prior written consent to their inclusion in the Order.

6.4 TERMS AND CONDITIONS OF CONTRACT

The terms and conditions of the Contract are those appearing in:

- (a) the terms of any variation to the Agreement relating to the specified Contract, approved pursuant to the Agreement by the Contract Authority;
- (b) the Modules to this Agreement referenced in or attached to the Order,
- (c) the terms of the Agreement (excluding the Modules) at the Commencement Date;
- (d) the Order.

Any inconsistency between the above documents shall be determined in the order of priority from (a), (b) (c) and (d), to the extent of any inconsistency.

6.5 SUPPLY THROUGH APPROVED PARTIES

- 6.5.1** The Contractor may supply Deliverables to the Customer through Approved Parties as authorised in writing by the Contract Authority or through those listed in the Agreement Details.
- 6.5.2** If an Order is placed by a Customer with an Approved Party, the Contractor is deemed to have entered into a Contract with the Customer.
- 6.5.3** The Contractor must ensure that its Approved Parties supply the Deliverables only in accordance with the terms of this Agreement and any Contract pursuant to which the Approved Party is to supply the Deliverables.
- 6.5.4** If the Contract Authority requires it, the Contractor must arrange for its Approved Parties to execute a statutory declaration substantially in the form of Schedule 4.
- 6.5.5** The Contractor's obligations under this Agreement are not affected in any way by the supply through Approved Parties.
- 6.5.6** The Contractor shall at all times indemnify the Customer and its Personnel against all claims, actions, loss or damage and all other liability arising out of the performance by the Approved Party of the Contractor's obligations under the Contract.

6.6 NOMINEE PURCHASERS

- 6.6.1** The Contractor must satisfy any Order placed under this Agreement by a Nominee Purchaser, provided that the Nominee Purchaser:
- (a) provides its current registration number as given by the Contract Authority;
 - (b) provides its nominating agency's Australian Business Number (ABN); and
 - (c) provides the Contractor with the written authorisation of the Contract Authority that includes the details of the Nominee Purchaser's rights to purchase Deliverables under this Agreement.
- 6.6.2** The terms of this Agreement apply to any Orders placed by the Nominee Purchaser.
- 6.6.3** If the Contractor makes a supply under the Agreement to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under this Agreement.

6.7 RESTRICTIONS ON SUPPLYING TO PARTICULAR CUSTOMERS

The Contractor may refuse to supply Deliverables to a particular Customer or Nominee Purchaser provided it has used reasonable endeavours to reach agreement with the Customer or Nominee Purchaser and it has first obtained the Contract Authority's prior written consent to the restriction. The Contract Authority will not act unreasonably in delaying or withholding consent.

7. Conduct and Dispute Resolution

7.1 CO-OPERATION

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

7.2 DUTY NOT TO HINDER PERFORMANCE

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

7.3 ISSUE RESOLUTION

7.3.1 The Parties agree to resolve any conflicts or issues between them in relation to this Agreement or any Contracts in accordance with the provisions of clauses 7.3 to 7.5 inclusive and Schedule 5.

7.3.2 The Parties must follow the issue resolution process in clauses 7.4, 7.5 and Schedule 5 which documents the Expert Determination Procedure before either commences legal proceedings or takes similar action except to seek an urgent injunction or declaration.

7.4 AMICABLE RESOLUTION

7.4.1 A Party may submit notice ("the Issue Notice") to the other Party of an issue, including a dispute or difference about the meaning or effect of the Agreement or any matter arising under or out of the Contract. The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue.

7.4.2 The Party submitting the Issue Notice must submit it to the other Party's authorised representative.

7.4.3 If a Party submits an Issue Notice under this clause, each Party will nominate in writing, within 7 days, a senior executive. The nominated senior executives will promptly confer at a time and place that is mutually convenient to resolve the issue. The nominated senior executives may invite other Personnel to attend the mutually convenient conference subject to a list of additional invited Personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.

7.4.4 If the Parties are able to agree upon a resolution to the dispute, the terms of the agreement are to be documented and signed by both nominated senior executives. Such an agreement will be binding on both parties.

7.4.5 Each Party will bear its own costs under this clause 7.4.

7.5 REFERRAL TO EXPERT DETERMINATION

7.5.1 A Party is not entitled to refer an issue to Expert Determination until 21 days after the submitting of the Issue Notice and the issue resolution process in clause 7.4 has failed to resolve the dispute

7.5.2 A Party may only refer an issue to Expert Determination by submitting Notice in Writing specifying the issue to be decided ("the Referral Notice").

7.5.3 The Party submitting the Referral Notice must submit the Referral Notice to the other Party.

7.5.4 If the Contract Authority is not the referring party or has not received a notice pursuant to clause 7.5.3, the referring party will provide a copy of the Referral Notice to the Contract Authority.

7.5.5 Upon referring an issue to Expert Determination, the Parties will be bound by the provisions and procedures contained in Schedule 5.

7.5.6 If a Referral Notice has not been submitted within 60 days of becoming entitled under clause 7.5.1 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

7.5.7 Notwithstanding the existence of a dispute each Party shall continue to perform its obligations under the Agreement and Contract.

7.5.8 Unless the Parties otherwise agree in writing this clause 7 does not apply to disputes the subject matter of which exceeds the amount nominated in Item 12 of Schedule 1. In the event that the Parties are unable to agree on the amount of the subject matter, then either Party may submit an Issue Notice to the other Party and the provisions of this clause 7 shall be followed for the sole purpose of determining the amount in dispute.

8. Risk Management

8.1 MINIMUM INSURANCE REQUIREMENTS

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

- (a) public liability insurance with an indemnity of at least the amount specified in item 8 (a) of the Agreement Details in respect of each claim;
- (b) products liability insurance with an indemnity of at least the amount specified in item 8 (b) of the Agreement Details for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover, with at least one automatic reinstatement provision;
- (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees;
- (d) professional indemnity insurance with an indemnity of at least the amount specified in Item 8 (c) of the Agreement Details. The Professional indemnity insurance must:
 - (i) indemnify the Contractor for its liability to the Contract Authority and the Customer in respect of the Services and any Products supplied pursuant to or ancillary to the Services;
 - (ii) be maintained by the Contractor for the period specified in Item 8 (c) of the Agreement Details;

and

 - (iii) include, satisfactory to the Contract Authority, a description of the risk covered by the policy; and
- (e) such other insurances as are specified in item 8 (d) of the Agreement Details, or as the Contract Authority reasonably requires.

8.1.2 Sub-contractors need not hold and maintain the insurance policies required in clause 8.1.1 for the same amounts of coverage as the Contractor where the price of their sub-contract is less than the Contractor's price to the Contract Authority or Customer.

8.1.3 All policies of insurance must be effected with an insurer Rated A- or better by AM Best or an equivalent rating organisation.

8.1.4 The Contractor must notify its subcontractors, the Contract Authority and its Customer of any material variation or cancellation of any policy of insurance required to be held and maintained pursuant to clause 8.1.1.

- 8.1.5** The Contractor must, and must ensure that all its subcontractors, as soon as practicable, inform the Contract Authority and the Customer 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 that is relevant to the Contractor's provision of Services under the Agreement, and must ensure that the Contract Authority and the Customer are kept fully informed of subsequent action and developments concerning the claim.
- 8.1.6** The Contractor must when requested in writing by the Contract Authority:
- (a) supply such proof as may reasonably be required that all insurance policies required to be effected by this Agreement are current; and
 - (b) arrange for its insurer or insurance broker to complete and sign a "Confirmation of Insurances Obtained Form" substantially in the form of Schedule 6, and on-send this to the Contract Authority within 30 days of the request.
- 8.1.7** If the Contractor fails to comply with clauses 8.1.1, 8.1.2 or 8.1.3, the Contract Authority may treat the failure as a Substantial Breach of the Agreement.
- 8.1.8** Where the Contractor is insured under a parent company's or holding company's insurance policy, that insurance policy must clearly extend coverage to the Contractor in accordance with clause 8.1.1.
- 8.1.9** The effecting of insurance does not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.
- 8.1.10** In addition to any insurances provided by the Contractor under this Agreement, the Contractor agrees to effect any insurances required by the Customer and specified in the Order, in accordance with the provisions of this clause 8.1.

Self Insurers

- 8.1.11** Where the Contractor does not wish to effect insurance through a recognised insurer or insurance broker as required by clause 8.1.1, it may make application to the Contract Authority supported by such documentation (including but not limited to financial records, details of claims made, and licences from the relevant licensing authority) as is reasonably required by the Contract Authority to be exempted from the provisions of clauses 8.1.1 – 8.1.9. The Contract Authority in its absolute discretion may accept, conditionally accept or reject the Contractor's application.
- 8.1.12** Without limiting the conditions under which the Contract Authority may signify its acceptance under clause 8.1.11, the Contract Authority may require the Contractor to ensure that all its subcontractors hold the relevant insurance policies required by clause 8.1.1.
- 8.1.13** Where the Contract Authority has accepted the Contractor's application under clause 8.1.11, the Contractor must ensure that all its subcontractors, as soon as practicable, inform the Contract Authority and the Customer in writing of the occurrence of an event that may give rise to a claim which may have a substantial impact on the Contractor's ability to meet its potential liabilities arising from a Contract or this Agreement, and must ensure that the Contract Authority and the Customer are kept fully informed of subsequent action and developments concerning the claim.

8.2 FINANCIAL SECURITY

- 8.2.1** The Contract Authority 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. The Contractor must, following such a request, ensure that the Financial Security is provided before the placement of any further Orders under this Agreement by a Customer.
- 8.2.2** 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 and any Contracts.
- 8.2.3** The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution ("Issuer") acceptable to the Contract Authority.
- 8.2.4** If the Contractor fails to properly perform and complete its obligations under this Agreement or a Contract and the Contract Authority or the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Contract Authority or the Customer may deduct any or all such loss or damage (as ascertained and certified by the Contract Authority) from the Financial Security.
- 8.2.5** If the Financial Security is not sufficient to meet payment of all the loss or damage suffered by the Contract Authority or the Customer, the balance remaining will be a debt due and owing from the Contractor to the Contract Authority or the Customer and may be recovered by the Contract Authority or the Customer in accordance with clause 16.3.
- 8.2.6** The Contractor agrees that the Contract Authority or the Customer will have no liability for any loss or damage suffered or incurred by the Contractor where the Contract Authority or the Customer exercises its rights under this clause in good faith.
- 8.2.7** The Contractor waives any rights it may have to obtain an injunction or otherwise prevent the Contract Authority or the Customer from making a claim or receiving a payment under the Financial Security. This clause 8.2.7 does not prevent the Contractor from taking action to recover from the Contract Authority or the Customer any amount invalidly received by the Contract Authority under any such Financial Security.
- 8.2.8** 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 or a Contract; and
 - (b) in the reasonable opinion of the Contract Authority or the Customer as applicable, there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to the Contract Authority or the Customer.
- 8.2.9** The Customer may on reasonable grounds specify in the Order or otherwise request in writing, a Financial Security where one has not previously been provided or an increase in the Financial Security provided by the Contractor at the request of the Contract Authority or a Customer. The Contractor must provide the security required by the Customer in accordance with the provisions of this clause 8.2. The Customer shall not be obliged to make any further payments under the Contract, whether or not such payments are due, until such security has been provided.

- 8.2.10** Upon performance of part of the Contract to the satisfaction of the Customer, the Contractor may request the Customer to consent to the discharge of the security provided pursuant to clause 8.2.9 and the substitution of another security in substantially the same form but for a lesser maximum aggregate sum. The Customer shall not unreasonably withhold its consent to the substitution where the part performance of the Contract has proportionately reduced the risk for which the security was originally provided.

8.3 PERFORMANCE GUARANTEE

- 8.3.1** If requested by the Contract Authority or the Customer on reasonable grounds, the Contractor must arrange for a guarantor approved in writing by the Contract Authority or the Customer to enter into an agreement with the Contract Authority or the Customer substantially in the form of the agreement set out in Schedule 8.
- 8.3.2** The Customer may on reasonable grounds specify in the Order or otherwise request in writing, a Performance Guarantee where one has not previously been provided or additional guarantors where a Performance Guarantee has been provided by the Contractor at the request of the Contract Authority or a Customer. The Contractor must provide the guarantee required by the Customer in accordance with the provisions of this clause 8.3.

8.4 REDUCTION OF LIABILITY

- 8.4.1** The liability of a Party for any 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.
- 8.4.2** The Contractor will not be held accountable for a failure to meet its contractual obligations to the extent that the failure is attributable to the provision by the Customer of inaccurate or incomplete information which is required by the Contractor for the purposes of the Contract. The Contractor must notify the Customer as soon as practicable if it becomes aware that the provision by the Customer of incomplete or inaccurate information in any instance might prevent the Contractor from complying with its obligations under this Contract.

8.5 LIMITATION OF LIABILITY

- 8.5.1** Subject to clause 8.5.5, the Contractor's liability under a Contract in respect of each occurrence giving rise to any action is limited to the amount set out in item 16 of the Agreement Details. Should item 16 not be completed, the Contractor's liability under a Contract will remain uncapped.
- 8.5.2** Subject to clause 8.5.5, the Contract Authority may consent to the capped liability outlined in clause 8.5.1 being further reduced under a Contract in the following circumstances:
- (a) the Contractor is in a Small to Medium Enterprise category under the Agreement in which event liability can be capped at the upper limit of insurance specified in the Order form Part B1(a) (per event);
 - (b) Contractor is offering telecommunications services under the Agreement which involve end-to-end multi carrier networks without umbrella service level contracts and/or physical network assets which are in the public domain the liability can be capped at the upper limit of insurance specified in the Order form Part B1(a) (per event).
- 8.5.3** To the extent that the Contractor's liability under a Contract is not capped in accordance with clauses 8.5.1 and 8.5.2, liability may only be capped (subject to clause 8.5.5) if:
- (a) a risk management plan consistent with AS/NZ 4360:2004 is completed by the Customer and/or Contract Authority, and the Contractor; and
 - (b) the Contract Authority has approved in writing the risk management plan and the liability cap sought.

The risk management plan 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 treatment plan; and

must be provided substantially in the form of Schedule 13.

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

8.5.4 The Customer and the Contractor may agree to increase the amount of the cap on liability in relation to a Contract set under clause 8.5.1 upon such terms as they mutually agree and such agreement must be included in the Order.

8.5.5 The liability of the Contractor under the Contract in respect of the following occurrences will be unlimited:

- (a) personal injury (including sickness and death);
- (b) loss of, or damage to, tangible property;
- (c) breach of a Statutory Requirement;
- (d) infringement of a third party's intellectual property rights,

including liability under any indemnities provided under clause 11.1 in relation to any such occurrences.

8.5.6 In clause 8.5 "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.

8.5.7 Subject to clause 8.5.5, the liability of each party does not include Consequential Loss arising under this Agreement or any Contract or other arrangement entered into under this Agreement.

9. Information Management

9.1 CONFIDENTIALITY

9.1.1 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 of the other Party except in accordance with this Agreement or a Contract, unless the other Party gives its prior written consent.

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

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

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

9.1.5 If specified in the Order, the Contractor may disclose or use any information about a Contract where such information is in respect of know-how, techniques or methodologies which may be gained by the Contractor during the period of the Contract or disclosed by the Customer pursuant to a Contract except where such disclosure or use would infringe the Intellectual Property Rights of any other person.

9.1.6 This clause 9.1 shall survive the termination or expiry of the Agreement or a Contract for a period of six years.

9.2 INTELLECTUAL PROPERTY

9.2.1 Subject to clauses 9.2.2 and 9.2.3, all Intellectual Property rights in the Deliverables shall immediately vest upon their creation in the Customer without further need for assurance.

9.2.2 Nothing in this clause 9.2 will affect the ownership of any Intellectual Property rights in any tools, software (including source or object code), object libraries, methodologies and materials ("Materials") which came into existence independently of this agreement and are used to produce or are incorporated into a Deliverable. Where the Intellectual Property Rights in such Materials are owned by the Contractor or a third party, the Contractor grants and will ensure that relevant third parties grant to the Customer, at no additional cost a perpetual, non-exclusive, transferable licence which, at a minimum, permits the Customer:

- (a) to use, reproduce and adapt such Materials for its own use in connection with, or for the operation, support and/or use of, any Deliverable; and
- (b) where and only to the extent specified in the Order, 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.

9.2.3 The Customer and Contractor may specify in the Order that certain Intellectual Property rights in a Deliverable or Deliverables do not vest in the Customer under this Agreement. To the extent specified in the Order, Intellectual Property rights in the Deliverables vest on creation in the Contractor. In that event, the Contractor grants a perpetual, non-exclusive and transferable licence to the Customer to use, reproduce and adapt such Deliverables to support the Customer's business and administrative processes.

9.2.4 The Customer grants the Contractor a non-exclusive, non-transferable licence for the Contract Period to use the Customer's Materials to the extent necessary for the Contractor to provide the Deliverables.

9.2.5 In this clause 9.2, a reference to a licence being transferable, means that that licence may be transferred from the Customer to another Agency within the same tier of government as the Customer.

10. Access and Security

10.1 ACCESS TO CUSTOMER'S SITE

10.1.1 Where the Customer provides the Contractor with access to the Customer's Site, the Contractor shall:

- (a) ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security; and
- (b) be liable for any damage to the extent that such damage is caused by its Personnel on the Customer's Site.

10.1.2 Access to the Customer's Site may be temporarily denied or suspended by the Customer, at its sole discretion.

10.1.3 Except where denial of access is due to an adverse finding arising out of an investigation into

the conduct of the Contractor or its Personnel, the Customer must give a reasonable extension of time to complete any obligations affected by the denial of access.

- 10.1.4** The Customer 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 of the Contractor or its Personnel). Reimbursement of those costs shall be in total satisfaction of the liability of the Customer to the Contractor in respect of the denial of access.

10.2 PRIVACY

- 10.2.1** During this Agreement or a Contract, the Contractor must comply with its obligations under Schedule 10 and any Statutory Requirements relating to privacy.
- 10.2.2** The Contractor must immediately notify the Contract Authority or the Customer when the Contractor becomes aware of or receives a complaint relating to a breach of this clause 10.2 by its Personnel or Approved Parties.
- 10.2.3** The Contractor will indemnify the Contract Authority and the Customer 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 10.2.
- 10.2.4** The Contract Authority or Customer must give the Contractor fourteen days Notice in Writing of an intention to assume a liability, loss or expense in accordance with clause 10.2.3 including in that notice an explanation of how that liability or expense was assessed and the Contractor's proposed share of that liability.
- 10.2.5** This clause 10.2 will survive the termination or expiry of this Agreement or relevant Contract for a period of six years.

10.3 SECRECY AND SECURITY

- (a) The Contractor shall comply and shall ensure that its Personnel comply with the secrecy and security requirements of the Customer as set out in the Order, or as notified by the Customer to the Contractor from time to time.
- (b) Should the Customer provide notice of additional secrecy and security requirements subsequent to the Commencement Date, the Contractor is entitled to be reimbursed by the Customer for any expenses incurred in complying with such requirements.
- (c) Should the Customer provide notice of additional secrecy and security requirements subsequent to the Commencement Date, the Contractor will be entitled to an extension of time to the extent that the delay is caused by complying with the requirements.
- (d) In relation to paragraphs (b) and (c) the Contractor will mitigate any expenses incurred or delay caused as a result of complying with the requirements.

11. Contractor's Obligations

11.1 GENERAL INDEMNITY FOR CONTRACT AUTHORITY AND CUSTOMER

- 11.1.1** The Contractor will be liable in respect of, and indemnifies, and will keep indemnified, the Contract Authority and the Customer (including their Personnel) against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together, "the Loss") as a result of any wrongful (including negligent) act or omission of the Contractor or its Personnel or subcontractors in the performance of this Agreement.

The Contract Authority and the Customer must use their best endeavours to mitigate any Loss under the indemnity set out in this clause.

11.1.2 The Contractor's liability in respect of any indemnity provided under:

- (a) this clause 11.1.1; or
- (b) any of clauses 6.5.6, 10.2.3 and 11.11.2,

will be subject to any applicable limitations on liability contained in clause 8.5.

11.1.3 This clause 11.1 will survive the termination or expiry of this Agreement or any Contract for a period of six years.

11.2 INDEMNITY – THIRD PARTY CLAIMS

11.2.1 The Contractor must indemnify the Contract Authority and the Customer (including their Personnel) against a loss or liability that has been incurred by the Contract Authority or the Customer as the result of any claim made by a third party:

- (a) where that loss or liability, including personal injury, death or property damage, was caused or contributed to (but only to the extent of that contribution) by any wrongful (including negligent) act or omission by the Contractor or its Personnel; or
- (b) where that loss or liability arises from a claim made or threatened against the Customer in which it is alleged that a Deliverable (including the Customer's use of a Deliverable) infringes the Intellectual Property, including the Moral Rights of a third party or individual who has performed work under the Contract on behalf of the Contractor.

11.2.2 For the purposes of clause 11.2.1(b) an infringement of Intellectual Property rights includes unauthorised acts which would, but for the operation of the Patents Act (Cth) 1990 s.163, the Designs Act (Cth) 2003 ss 96, 100, the Copyright Act (Cth) 1968 s.183 and the Circuits Layout Act (Cth) 1989 s.25, constitute an infringement.

11.2.3 The Customer may in its discretion permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 11.2.1, subject to the Contractor agreeing to comply at all times with the Customer's reasonable directions and government policy relevant to the conduct of the litigation.

11.2.4 Where the Customer permits the Contractor to handle the claim, the Customer will, upon the Contractor confirming its obligations under the indemnity in clause 11.2.1, provide the Contractor with reasonable assistance in defending, settling or otherwise conducting the claim at the Contractor's expense.

11.2.5 Notwithstanding clause 11.2.1, the Contractor shall not be required to indemnify the Contract Authority if a Customer institutes legal proceedings against the Contract Authority for a breach of the Authority's obligations to the Customer.

11.2.6 Without prejudice to the Customer's rights under clause 11.2.1 if a claim of infringement of Intellectual Property rights is made by a third party, the Contractor must with the consent of the Customer, at the Contractor's expense, either:

- (a) obtain for the Customer the right to the continued use of the Deliverable; or
- (b) replace or modify the Deliverable so that the alleged infringement ceases and the replaced or modified Deliverable provides the Customer with equivalent functionality and performance as required in the Contract Specifications.

11.2.7 This clause 11.2 will survive the termination or expiry of this Agreement or any Contract for a period of six years. **11.2.8** Notwithstanding any other provision of this Agreement (including clause 8.5 and clause 11.1), the liability of the Contractor under this clause 11.2 will be unlimited.

11.3 CONTRACTOR'S WARRANTIES

The Contractor warrants until the end of the Warranty Period that:

- (a) it has the right and authority to enter into this Agreement and any Contract;
- (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 or any Contract;
- (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;
- (d) to the best of its knowledge it has obtained all licences, approvals and consents necessary to grant any rights or perform any obligations under this Agreement or any Contract;
- (e) to the best of its knowledge the Deliverables do not infringe the Intellectual Property or Moral Rights of a third party;
- (f) if any information in this clause ceases to remain correct or accurate, it will immediately notify the Contract Authority and Customer; and
- (g) if a Virus is introduced into the Customer's Systems as a result of the supply by the Contractor or an Approved Party 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, immediately remove or allow the Customer to remove the Virus and reinstate the affected Deliverable.

This clause, with the exception of subclause (g), survives for a period of six years the termination or expiry of this Agreement and any Contract.

11.4 PRODUCT AND SERVICE WARRANTIES

Product warranty

11.4.1 In relation to a Deliverable that comprises Products, the Contractor warrants, until the end of the Warranty Period, that each Product:

- (a) shall be supplied in accordance with the requirements of the Contract;
- (b) shall be free from any charge or liability;
- (c) shall be new unless otherwise specified in the Order and shall conform to the Contract Specifications;
- (d) shall conform to the description and model number provided by the Contractor; and
- (e) shall be free from material defects in workmanship.

Service warranty

11.4.2 In relation to a Deliverable that comprises Services, the Contractor warrants, until the end of

the Warranty Period, that:

- (a) the Contractor will provide the Services in accordance with the requirements of the Contract and with due care and skill;
- (b) where specified in the Order, 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 Contract Period; 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 Customer without obtaining the Customer's prior written consent.

11.5 RECTIFICATION OF DEFECTS

11.5.1 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.

11.5.2 Any remedial work or replacement provided in accordance with clause 11.5.1, is warranted by the Contractor to the same extent as the Deliverable, from completion of that rectification work or replacement.

11.5.3 **11.5.3** Where the Contractor does not comply with clause 11.5.1 within a reasonable time of becoming aware of a Defect, the Customer may perform or have performed the necessary rectification work and the reasonable costs incurred shall be a debt due by the Contractor to the Customer and recoverable in accordance with clause 16.3.

11.5.4 Subject to clause 11.5.5, any work performed by or on behalf of the Customer pursuant to clause 11.5.3 shall not have the effect of invalidating any warranty provided by the Contractor under the Contract. The Contractor shall not be required to provide a warranty for the work performed or to fix any problems caused solely by a third party arising from the rectification work.

11.5.5 The Contractor shall not be liable at any time under this clause 11.5 for any Defect in any Deliverable resulting from any failure of the Customer to use the Deliverable in compliance with any Documentation supplied to the Customer.

11.6 THIRD PARTY WARRANTY

11.6.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor shall as soon as reasonably practical provide to the Customer written notification of any details of any warranties given by the third parties.

11.6.2 The Contractor must if requested by the Customer, at the Customer's expense, and subject to the agreement of the third party, procure the assignment of those third party warranties to the Customer 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 the Contract.

11.7 COMPLIANCE WITH LAWS, STANDARDS AND CODES

The Parties must, in performing their obligations under the Contract, comply with:

- (a) all Statutory Requirements;
- (b) the codes, policies, and guidelines specified in the Schedule 1; and
- (c) those standards specified in the Schedule 1.

11.8 INDUSTRIAL RELATIONS ISSUES

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

11.9 LICENCES AND APPROVALS

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

11.10 KEEPING OF RECORDS AND ACCESS TO RECORDS

The Contractor must keep accurate and detailed financial records and other information relevant to the performance of the Contract. The Contractor must give the Customer access to and copies of such records and information (excluding information relating to profit margins) within a reasonable time of a written request from the Customer.

11.11 CONTRACTOR'S OBLIGATIONS - CUSTOMER SUPPLIED ITEMS (CSI)

11.11.1 The Contractor must:

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

11.11.2 The Contractor shall indemnify the Customer for any loss or destruction of, or damage to any CSI caused by a breach of the Contract by any unlawful or negligent act or omission of the Contractor or its Approved Parties.

11.11.3 If no longer required for the purposes of the Contract, the CSI must be returned to the Customer as soon as practicable unless other arrangements are agreed by the Parties.

11.12 REPORTS

The Contractor must provide to the Customer the reports specified in the Order in the time frame and format either agreed in the Order or as otherwise agreed in writing between the parties.

12 Customer's Obligations

12.1 CUSTOMER TO PROVIDE INFORMATION

12.1.1 The Customer must include in or annex to the Order its Statement of Requirements.

12.1.2 During the Contract Period the Customer must as soon as practicable when required under a Contract:

- (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 Customer's requirements in connection with a Contract.

12.2 CUSTOMER'S OBLIGATIONS - CUSTOMER SUPPLIED ITEMS (CSI)

12.2.1 The Customer shall provide the CSI specified in the Order.

12.2.2 The CSI must comply with Contract Specifications.

12.2.3 Provided the Contractor complies with its obligations under clause 11.11 the Customer must repair or replace CSI within a reasonable time of becoming aware that the CSI does not comply with the Contract specifications.

12.3 SITE PREPARATION

Subject to clause 15.5, the Customer is responsible for Site preparation and maintenance of Site conditions to enable the supply of a Deliverable, unless otherwise specified in the Order.

12.4 CUSTOMER'S RIGHTS

The Customer shall have the right to appoint a representative of the New South Wales Government to act as its agent for the purpose of exercising any of the Customer's rights arising from the contract.

13. Personnel

13.1 RESTRICTION ON ENGAGING PERSONNEL OF OTHER PARTY

13.1.1 The Customer and the Contractor agree that neither Party may, without the prior written 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 the Contract to enter into a contract for service or a contract of employment with it.

13.1.2 The restriction referred to in clause 13.1.1 shall apply during the performance of the Contract and for a period of six months after termination or expiry of the Contract.

13.1.3 A general solicitation for employment such as a newspaper advertisement shall not constitute a breach of this clause 13.1.

13.2 CONTRACTOR'S PERSONNEL

13.2.1 The Contractor must employ only such persons in respect of the Contract who:

- (a) are skilled and experienced in the provision of the Services or similar Services; and
- (b) hold all necessary qualifications, licences, permits and authorities (where applicable).

13.3 CUSTOMER'S PERSONNEL

13.3.1 The Customer shall make available Personnel to work with the Contractor and the Parties will identify such personnel and their roles in the Order.

13.3.2 The Customer must use reasonable efforts to ensure that personnel made available to work

with the Contractor have the requisite qualifications, competencies, skills, and experience to perform the tasks.

- 13.3.3** The Contractor must ensure a safe system of work for any personnel made available by the Customer that perform work under the control and direction of the Contractor.

13.4 REMOVAL OF SPECIFIED PERSONNEL

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

13.5 SUB-CONTRACTING

- 13.5.1** The Contractor must not subcontract more than 10% of the work, the value of which exceeds \$20,000, under the Contract to any particular subcontractor (based on the value of work to be performed by that subcontractor, as compared with the total fees payable by the Customer under the Contract) without obtaining the prior written consent of the Customer which will not be unreasonably withheld, and which may be given on such conditions as the Customer thinks fit.

- 13.5.2** The Contractor:

- (a) must ensure that the subcontractor is aware of all the terms and conditions of the Contract that are relevant to the subcontractor's performance of any work;
- (b) shall not be relieved of its liabilities and obligations arising out of a Contract 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 sub-contract in accordance with the provisions of clause 18.4; and
- (d) must ensure that the subcontractor immediately ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 13. 5.1.

- 13.5.3** If required by the Customer, the Contractor shall obtain from the subcontractor a signed statutory declaration substantially in the form of Schedule 4.

14. Performance of the Contract

14.1 DELIVERY NOTIFICATION

The Customer must specify in the Order any Deliverables required by the Customer, 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.

14.2 DELIVERY

- 14.2.1** The Contractor must deliver any Deliverables to the Site between the hours specified in the Order or as otherwise agreed between the Contractor and the Customer.

- 14.2.2** The Contract Price is inclusive of any additional or separate delivery costs, except where otherwise specified in the Order.

14.3 REJECTION AND ACTUAL ACCEPTANCE DATE

14.3.1 The Customer may reject Deliverables in the event that the Deliverables:

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

14.3.2 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 Order following the delivery of a Deliverable in accordance with the Contract (where "delivery" means the date on which the Contractor provides notice in writing to the Customer that the Deliverables are available in accordance with the requirements set out in this Agreement); or
- (b) where Acceptance Tests are required, on the date the Customer issues a certificate of acceptance within the Acceptance Notification Period.

14.3.3 The AAD for a Deliverable will occur, in all cases other than those specified in clause 14.3.2, on the date acceptance is deemed to have occurred in clause 14.5.12.

14.4 REJECTION NOTIFICATION

14.4.1 The Customer may issue a rejection notice at any time prior to acceptance in accordance with clause 14.3. The rejection notice shall provide instructions to the Contractor relating to the removal, replacement, modification, rectification and/or redelivery of any rejected Deliverables as required to ensure compliance with the Contract. The Contractor must, at the Contractor's expense, comply with the rejection notice within a reasonable time.

14.4.2 The Parties may agree to any reduction in the Contract Price as an alternative to the rejection of the Deliverable.

14.5 ACCEPTANCE TESTING

14.5.1 If specified in the Order, Acceptance Tests must be conducted in relation to the Deliverables and the following provisions in this clause 14.5 will apply.

14.5.2 The Customer must, in consultation with the Contractor, include in the Order an Acceptance Test plan which 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 Order.

14.5.3 The Customer is responsible for setting the Acceptance Criteria at the time of the Order 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 relevant to the Acceptance Criteria.

14.5.4 The Customer'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.

- 14.5.5** Each Party shall provide all reasonable cooperation and assistance to enable the performance of any Acceptance Test.
- 14.5.6** The Parties shall be entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Test.
- 14.5.7** 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.
- 14.5.8** The Customer may at any time during the Acceptance Period require the Contractor to carry out Supplementary Tests.
- 14.5.9** Subject to clause 14.5.10 the costs of any Supplementary Tests shall be paid by the Customer.
- 14.5.10** Where the Supplementary Tests establish that the Deliverables do not comply with the Contract Specifications, the costs of such of those Supplementary Tests as were reasonably required to establish non-compliance shall be borne by the Contractor.
- 14.5.11** Where a Deliverable fails an Acceptance Test or part thereof, the Customer may:
- (a) waive the requirement for the Acceptance Test to be satisfactorily completed;
 - (b) require that Acceptance Tests be repeated at the Contractor's expense, such tests to be satisfactorily completed in accordance with this clause 14.5 within the period agreed by the Parties (and for the avoidance of doubt the Customer may require the Supplier to repeat the Acceptance Tests for as many cycles and for as long as is necessary for the Acceptance Tests to be passed);
 - (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 Customer;
 - (d) accept the Deliverable subject to an agreed reduction in the Contract Price; or
 - (e) subject to the Customer having provided the Contractor with at least one opportunity to repeat the Acceptance Tests, the Customer may without limiting any other remedy (including the right to require further Acceptance Tests under clause 14.5.11(b)), reject and require the removal of the Deliverable or any materials associated with the rejected Deliverable, and the restoration of anything affected by the Deliverable to its pre Contract state.
- 14.5.12** The Customer shall be treated as having accepted any Deliverables in the event that the Customer:
- (a) notifies the Contractor that the Customer has accepted the Deliverables in compliance with this provision;
 - (b) notifies the Contractor that the Customer has accepted any previously rejected Deliverables following replacement, modification, rectification and/or redelivery by the Contractor in compliance with any instruction by the Customer;
 - (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;
 - (d) fails to notify the Contractor of the delivery rejection of the Deliverables within the

Acceptance Notification Period unless otherwise agreed; or

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

14.6 DOCUMENTATION

- 14.6.1** The Contractor must provide, at no additional cost to the Customer, at least one copy of the Documentation and such material as the Contractor usually makes available free to its other customers, upon supply of the Deliverable to the Customer.
- 14.6.2** Additional copies of the Documentation must, if requested by the Customer, be provided by the Contractor at the Price specified in the Order or if the Price is not specified, at a pre advised commercial price.
- 14.6.3** The Contractor must amend inaccurate Documentation and must promptly supply to the Customer a duly amended version of the Documentation (or part thereof) at no additional cost to the Customer.
- 14.6.4** The Customer may use the Documentation for any training purposes associated with the Deliverables.

14.7 EXTENSION OF TIME

- 14.7.1** 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, and the Parties must then investigate how to avoid or minimise any adverse effect on the Contract.
- 14.7.2** The Customer may consent to a request for extension of time provided that the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of any delay.
- 14.7.3** Unless the delay has occurred substantially because of the Customer's failure to perform its obligations in accordance with the Contract, 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.

14.8 ESCROW OF SOURCE CODE

- 14.8.1** If specified in the Order the Contractor must arrange:
 - (a) for itself, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement in relation to the Escrow Materials; or
 - (b) for the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.
- 14.8.2** Any escrow arrangements to which the Customer becomes a Party under this clause 14.8 must endure for at least the period specified in the Order unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in writing.
- 14.8.3** The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under this clause 14.8.

15. Project Management

15.1 APPLICATION OF PROJECT MANAGEMENT CLAUSES

The following clauses 15.1 to 15.10 inclusive apply only if and to the extent specified in the Order.

15.2 MANAGEMENT COMMITTEE

- 15.2.1** By the date specified in the Order, the Parties must mutually agree and establish a management committee and a process for the conduct of the committee's business.
- 15.2.2** The management committee must, unless the Parties agree otherwise in writing, consist of the persons specified as its members in the Order.
- 15.2.3** The management committee must:
- (a) review and monitor progress under the Contract and report to the Customer's project officer or other person nominated by the Customer from time to time; and
 - (b) carry out such other functions as set out in the Order.
- 15.2.4** The members of the management committee or their authorised representatives must meet weekly at the Customer's offices (unless the Parties agree otherwise) at a time agreed between the Parties.
- 15.2.5** 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 the Contract.

15.3 PROGRESS REPORTING

- 15.3.1** The Parties must each nominate their respective project managers or officers in the Order or the Project Implementation and Payment Plan.
- 15.3.2** At least 24 hours prior to a management committee meeting, the Contractor's project manager must submit to the Customer's project officer a report of progress under the Contract, 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;
 - (d) any proposed Contract Variations;
 - (e) reviewing progress of any Change Request; and
 - (f) reviewing the risk register.
- 15.3.3** If the Customer disagrees with the details recorded in the report, then the Customer may place on the record its version of the details.

15.4 CONTRACT REVIEW PROCEDURES

- 15.4.1** If specified in the Order, the Parties must at regular intervals conduct a service and performance review of the Contractor's performance of the Contract including its obligations under any Service Level Agreement;

- 15.4.2** 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 Contract Authority in any review.

15.5 SITE SPECIFICATION

- 15.5.3** The Contractor or an Approved Party must inspect the Site and provide the Customer with a Site Specification for approval.
- 15.5.4** The Contractor or the Approved Party must make any amendment to the Site Specification that is reasonably required by the Customer following approval providing such amendments are requested prior to the delivery of the Deliverables

15.6 IMPLEMENTATION PLANNING STUDY

- 15.6.1** Within the time specified in the Order and prior to the commencement of a project to be implemented under a Contract, the Contractor must complete an implementation planning study.
- 15.6.2** The implementation planning study must meet the objectives specified in the Order 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 Customer);
 - (d) development of a Project Implementation and Payment Plan or a Service Level Agreement as relevant; or
 - (e) any other requirements specified in the Order.

15.7 PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 15.7.1** The Contractor must prepare the PIPP which will include the information specified in the Order, and which will, when approved by the Customer, form part of the Contract Specifications.
- 15.7.2** The Parties must perform their obligations at the times and in the manner set out in the PIPP.
- 15.7.3** Subject to clause 17.2, 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.

15.8 STAGED IMPLEMENTATION AND THE RIGHT TO TERMINATE

- 15.8.1** The Parties agree to perform the Contract in accordance with the Stages set out in the PIPP.
- 15.8.2** The formation of the Contract is deemed to be sufficient notification for the purposes of this clause 15.8 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 Customer to proceed with the work in that Stage
- 15.8.3** Nothing in the Contract shall be construed as obliging the Customer to give the notification referred to in clause 15.8.2 in respect of Stage two or any other subsequent Stage.
- 15.8.4** The Customer's liability to the Contractor for not proceeding to a subsequent Stage shall be limited to those costs that have been identified in the Order.

15.9 TIME OF THE ESSENCE / LIQUIDATED DAMAGES

15.9.1 The Contractor acknowledges that time is of the essence in completing any obligations under the Contract where the due date for their performance has been specified in the Order or the PIPP as being an obligation subject to this clause 15.9 ("Due Date").

15.9.2 Where the Contractor has not completed obligations by the Due Date, the Contractor must, if notified by the Customer, pay the Customer liquidated damages except where the delay is caused by:

- an Event,
- the Customer, or
- the delay is permitted by an extension of time granted under clause 14.7, 10.1 or 10.3.

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

15.9.4 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 Customer terminates the Contract;

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

15.9.5 Liquidated damages paid under this clause 15.9:

- (a) will be the Customer'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 a Contract.

15.10 BUSINESS CONTINGENCY ARRANGEMENTS

15.10.1 If specified in the Order, the Contractor must prepare a Business Contingency Plan within the time specified in the Order for the approval of the Customer.

15.10.2 The Business Contingency Plan must be documented in the form specified by the Customer in the Order and must be available at all reasonable times for review by the Customer.

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

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

15.11 SERVICE LEVEL AGREEMENT

15.11.1 The Parties must perform their obligations in accordance with any Service Level Agreement.

15.11.2 The Parties may, in consultation with each other, prepare and mutually agree any relevant Service Level Agreement that must be signed by the authorised representatives of each party

nominated in the Order.

- 15.11.3** Subject to clause 17.2, either Party may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to a Service Level Agreement may be implemented as a Change Request in accordance with the procedures set out in Schedule 12.

16. Payment

16.1 PAYMENT OF CONTRACT PRICE

- 16.1.1** In consideration for the Contractor providing a Deliverable in accordance with the Contract, the Customer must pay the Contractor the Contract Price in the amounts and at the times specified in the Order.
- 16.1.2** The Contract Price shall be fixed for the Contract Period, unless otherwise specified in the Order.
- 16.1.3** A Customer may pay any amount due under the Contract by credit/debit card or electronic facility as stated in the item 10 of the Agreement Detail or the Order.

16.2 INVOICES AND TIME FOR PAYMENT

- 16.2.1** The Parties agree subject to the further provisions of this clause 16.2, that payment for the Deliverables must be made within 30 days after receipt of a Correctly Rendered Invoice.
- 16.2.2** The Contractor must provide any further details in regard to an invoice that are reasonably requested by the Customer.
- 16.2.3** The making of a payment is not an acknowledgement that the Deliverables have been supplied or accepted in accordance with the Contract.
- 16.2.4** If the Customer disputes the invoiced amount the Customer must:
- (a) certify the amount it believes is due for payment;
 - (b) pay that amount; and
 - (c) if the amount paid under paragraph (b) is less than the amount claimed in the invoice, provide reasons for not paying the unpaid portion.

16.3 SET-OFF/MONEY RECOVERABLE BY THE CUSTOMER

- 16.3.1** Any rebates, fees and liquidated damages, or other damages, losses, and expenses awarded or agreed upon pursuant to clause 7 ('Loss') recoverable by the Customer from the Contractor may be deducted from any money then due to the Contractor under the Contract or Financial Security. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Customer and may be recovered from the Contractor by the Customer in any court of competent jurisdiction.
- 16.3.2** For the purposes of this clause 16.3, the Contract Authority may act for and on behalf of any Customer for the purpose of assessing and certifying any Loss sustained or incurred by the Customer as a result of the breach of the Contract by the Contractor.

16.4 SUSPENSION OF PAYMENTS

A Customer may by Notice in Writing to the Contractor hold back payments to the Contractor without penalty if the Contractor refuses, neglects or fails to perform its obligations under the Contract until such obligations are completed in accordance with the Contract. The payments held back must directly relate to the refusal, neglect or failure to perform. All other monies due and payable under the Contract are to be paid to the Contractor.

16.5 RETENTION OF MONEYS

- 16.5.1** The Customer may retain a proportion of the payment for any Milestones 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 a Contract incurred prior to the end of the Warranty Period or a period otherwise nominated in the PIPP.

- 16.5.2** The Customer must upon the completion of the Contractor's entire obligations in accordance with the Contract (incurred prior to the end of the Warranty Period or a period otherwise nominated in the PIPP) pay to the Contractor any amount retained under clause 16.5.1.

17. Variations

17.1 AGREEMENT VARIATIONS

Subject to any other rights given under this Agreement to vary its terms, a variation to this Agreement shall not be valid unless effected by agreement in writing signed by both the Contract Authority and the Contractor.

17.2 CONTRACT VARIATIONS

- 17.2.1** Subject to any other rights given under this Agreement to vary the terms of a Contract and the following provisions of this clause 17.2, a Contract Variation shall not be valid unless agreed in writing and signed by both the Customer and the Contractor.

- 17.2.2** A Contract Variation to:

- (a) Notification of Change in Control (clause 3.4)
- (b) Additional Conditions (clause 6.4);
- (c) Issue Resolution (clauses 7.3 to 7.5 inclusive and Schedule 5);
- (d) Insurance and Liability (clause 8);
- (e) Intellectual Property (clause 9.2);
- (f) Privacy (clause 10.2 and Schedule 10);
- (g) Third Party Indemnity (clause 11.2);
- (h) Termination (clauses 18.1 to 18.5 inclusive);
- (i) Conflict of Interest (clause 19.1);
- (j) No assignment or novation (clause 19.3); and
- (k) Applicable Law (clause 19.7);

shall be void and of no legal effect unless the Contract Authority's prior written consent to such Contract Variations has been obtained by the Customer and the Contractor.

- 17.2.3** If specified in the Order, the Parties must effect a Contract Variation in accordance with the procedures set out in Schedule 12.

18. Termination

18.1 TERMINATION OF THE AGREEMENT

- 18.1.1** The Contract Authority or the Contractor may by giving at least 60 days' Notice in Writing to the other Party, terminate this Agreement in whole or in part and upon such termination neither Party shall bear any further liability to the other arising out of the termination of this Agreement.
- 18.1.2** If this Agreement is terminated, discharged or in any other way comes to an end, in whole or in part, whether pursuant to this clause or otherwise, no Contract will be affected in any way, unless the context necessarily requires it.

18.2 TERMINATION OF CONTRACT/AGREEMENT FOR BREACH BY CONTRACTOR

- 18.2.1** The Customer/Contract Authority may terminate the respective Contract/Agreement for Substantial Breach or the 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.
- 18.2.2** In the case of Substantial Breach the Customer/Contract Authority must first by notice in writing given to the Contractor that it has 14 days notice to remedy the Substantial Breach or such other longer period specified in the notice.
- 18.2.3** If the Contractor fails to give the Customer/Contract Authority a notice containing clear evidence that it has remedied a Substantial Breach, or fails to propose steps reasonably acceptable to the Customer/Contract Authority to remedy the Substantial Breach, the Customer/Contract Authority may terminate the Contract/Agreement by Notice in Writing to the Contractor.

18.3 EFFECT OF TERMINATION OF CONTRACT / AGREEMENT

In the event of termination under clause 18.2, the Customer/Contract Authority may:

- (a) obtain from any other source a reasonably similar alternative to the Deliverable in which case the Contractor shall be liable to the Customer/Contract Authority for any reasonable expenses incurred and any losses sustained (including any price difference between the Deliverable and the similar alternative) by the Customer/Contract Authority; 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 Customer's premises by a date specified in that notice.

18.4 TERMINATION OF CONTRACT FOR CONVENIENCE

- 18.4.1** The Customer may by Notice in Writing at any time terminate the Contract 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 the Contract under this clause 18.4.
- 18.4.2** The Customer shall indemnify the Contractor against any liabilities or expenses, which are reasonably and properly incurred by the Contractor in connection with the Contract to the extent that those liabilities or expenses were incurred as a result of termination or suspension of the Contract in accordance with this clause 18.4. Unless otherwise specified in the Order, no further compensation will be payable to the Contractor in respect of a termination or suspension under this clause 18.4.
- 18.4.3** This clause 18.4 does not apply to termination or suspension in accordance with clause 19.2 or termination occurring because of a default by the Contractor as specified in clause 18.2, unless the Customer in its absolute discretion elects to apply this clause 18.4.

- 18.4.4** The Contractor must, in each sub-contract or Order placed with any subcontractor for the purposes of the Contract, reserve a right of termination or suspension to take account of the Customer's right of termination or suspension under this clause.

18.5 TERMINATION FOR BREACH BY THE CUSTOMER

- 18.5.1** If the Customer fails to pay the Contractor any amount in accordance with the Contract which is not in dispute, or commits any Fundamental Breach of the Contract, then the Contractor may by Notice in writing require the Customer to remedy the default within 28 days after receiving the notice.
- 18.5.2** If the Customer 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 the Contract without prejudice to any other right of action or remedy which has accrued or might accrue to either Party.

19. General

19.1 DISCLOSURE OF CONFLICT OF INTEREST

The Contractor must:

- (a) notify the Contract Authority or the Customer 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 Contract Authority or the Customer in relation to managing that Conflict of Interest.

19.2 EVENTS

- 19.2.1** 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.
- 19.2.2** 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 the Contract for 60 days or such other period as the Parties agree in writing, then the other Party may in its sole discretion immediately terminate the Contract by giving Notice in Writing of termination to the other Party.
- 19.2.3** Where the Contract is terminated by the Customer in accordance with clause 19.2.2:
- (a) the Contractor shall be entitled to payment for work completed in accordance with the Contract up to the date of termination; and
 - (b) the Parties must otherwise bear their own costs and will be under no further liability to perform the Contract.

19.3 ASSIGNMENT OR NOVATION

- 19.3.1** The Contractor must not assign in whole or in part this Agreement or a Contract without obtaining the prior written consent of the Contract Authority or the Customer as applicable which consent may not be unreasonably withheld.
- 19.3.2** The Contractor must not novate this Agreement or a Contract without obtaining the prior written consent of the Contract Authority or the Customer as applicable which consent may be withheld at their absolute discretion.
- 19.3.3** The Contractor acknowledges that the Contract Authority or the Customer may conduct financial and other inquiries or checks on the entity proposing to take over the Contract before

determining whether or not to give consent to the assignment or novation.

- 19.3.4** The Contract Authority or the Customer at its own cost, may assign or novate, this Agreement or a Contract, where by operation of statute the Contract Authority or Customer is reconstituted into a new legal entity, to that new legal entity. If the assignment or novation changes the scope of the obligations or Deliverables to be provided by a Contractor under a Contract, a Contract Variation must be effected.

19.4 WAIVER

A waiver in respect of a breach of a term of this Agreement or a Contract 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 or a Contract will not be interpreted as a waiver of that term.

19.5 SEVERABILITY

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

19.6 COUNTERPARTS

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

19.7 APPLICABLE LAW

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

19.8 RIGHTS CUMULATIVE

Subject to clause 15.9.5, the rights and remedies provided under this Agreement or a Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

19.9 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 Contract Authority, or the Customer.

EXECUTED AS A DEED

Signed for and on behalf of [insert name of Contract Authority]

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

In the presence of: [insert name of witness]

Signature of Contract Authority Representative

Print name

Signature of Witness

Print name

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

in accordance with s127 of the Corporations Act 2001 by:

Signature Director

Print name

Signature of Director/Secretary

Print name

[TWO]

DICTIONARY

Now the parties agree as follows:

1. INTERPRETATION

This part contains a Dictionary (Glossary) of defined terms that feature in the terms and conditions of this Agreement or a Contract. Specific terms used only in some Modules are defined in those Modules.

1.1 DEFINITIONS

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

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

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

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

“Actual Acceptance Date” or **“AAD”** means the date when acceptance is notified in accordance with clause 14.3.2 and 14.3.3.

“Additional Conditions” means any terms or conditions which are additional to the Agreement, which are specified or referenced in the Order.

“Agency” means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, state or Territory legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the Governor-General, a state Governor, or by a Minister of state of the Commonwealth, a state or a Territory; or
- (c) an incorporated company over which the Commonwealth, a state or a Territory exercises control.

“Agreement” means Parts 1 and 2 of this Document between the Contract Authority and the Contractor, the Schedules in Part 3 and the Modules in Part 4 referenced in or annexed to the Agreement Details.

“Agreement Details” means those details listed in Schedule 1.

“Approved Parties” means any agent, distributor, reseller or other supplier through which the Contractor is authorised by the Contract Authority to supply a Deliverable to the Customer.

“Business Contingency Plan” means a plan detailing the nature and scope of the business contingency Services to be provided by the Contractor to overcome any interruption to the Customer's business including as applicable information about time-frames, scheduling, Service Levels, methodologies, systems, processes or programs for the implementation of such Services and any other information specified in the Order.

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

- (a) by virtue of the change of a direct holding of at least fifteen percent of the voting shares in the Contractor or a holding company of the Contractor; or
- (b) by any other means whatsoever.

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

“Commencement Date” means in relation to a Contract either:

- (a) the Commencement Date specified in the Order; or
- (b) if no Commencement Date is specified in the Order the date the Order is forwarded to the Contractor by the Customer.

“Confidant” means the recipient of Confidential Information.

“Confidential Information” means information that:

- (a) is by its nature confidential; or
- (b) is communicated by the disclosing party to the Confidant as confidential; or
- (c) the Confidant knows or ought to know is confidential; and
- (d) includes but is in no way limited to:
 - (i) the Deliverables;
 - (ii) materials including the financial, the corporate and the commercial information of any Party;
 - (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 Customer, if the other person did not breach any law or agreement by giving it to the Confidant.

“Conflict of Interest” includes engaging in any activity, or obtaining any interest, likely to restrict the Contractor in performing its obligations under this Agreement or a Contract. A Conflict of Interest also includes any matters materially affecting the Contractor's ability to perform any of its obligations under this Agreement or a Contract 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 Approved Party or subcontractor proposed to be engaged in respect of this Agreement; or
- (d) any obligation under another contract compliance with which may place the Contractor in breach of this Agreement or a Contract.

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

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

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

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

“Contract” means the contract that is formed when the Customer places an Order with the Contractor pursuant to clause 6.1.

“Contract Authority” means the entity described in item 2 of the Agreement Details and its duly authorised representatives and officers.

“Contract Price” means the total of all Prices payable by the Customer to the Contractor for the Deliverables supplied under a Contract.

“Contract Period” means the period of the Contract specified in the Order, including any period or periods of extension of the Contract specified in the Order.

“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 the Contract and may include:

- (a) any specifications agreed to and brought into existence by the Customer and the Contractor in the performance of their obligations under and in accordance with the terms of the Contract;
- (b) any specifications detailed or referred to by the Customer in the Order; and/or
- (c) those specifications generally published or made publicly available by the Contractor which specifically relates to the Deliverables under a Contract; and to the extent that there is any inconsistency between the Contract Specifications referred to in (a), (b) and (c), the priority shall be (a), (b) and (c) to the extent of any inconsistency.

“Contract Variation” means a variation to the terms and conditions of a Contract between the Customer and the Contractor.

“Contractor” means the person or body corporate referred to in item 3 of the Agreement Details who agrees to supply the Deliverables and includes its Personnel.

“Contractor Information” includes information relating to the Contractor contained in or arising out of:

- (a) this Agreement and any Contract formed pursuant to this Agreement subject to the exclusions specified in item 5(a) of the Agreement Details ;
- (b) the Contractor's performance under this Agreement or a Contract including any substantiated reports of satisfactory or unsatisfactory performance;
- (c) the financial position or reputation of the Contractor; and/or
- (d) the shareholdings in the Contractor, or the corporate structure, directorship or shareholdings of the Contractor.

However excludes, Customer Materials, trade secrets and Intellectual Property (except for trade marks)

“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 or the ability to obtain the resources required to perform this Agreement or any Contract;
- (c) an application for winding up is made regarding the Contractor and not stayed within 21 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 Customer to ascertain what the invoice covers and the Contract Price payable;
- (c) the invoice is accompanied by documentary evidence that signifies that acceptance (where appropriate) has occurred in accordance with the Contract; and
- (d) the invoice is addressed to the officer specified in the Order to receive invoices.

“Customer” means the Eligible Customer that has placed an Order under this Agreement.

“Customer's Materials” means any documentation, information or material supplied by or on behalf of the Customer to the Contractor.

“Customer Supplied Items (CSI)” means the items set out in the Order to be supplied by the Customer under a Contract.

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

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

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

“Department” means an administrative unit or department of the Commonwealth, a State or a Territory.

“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.

“Eligible Customer” means a Department, an Agency or, where approved in writing by the Contract Authority, an Eligible non-Government Body, which requires a Product or Service.

“Eligible non-Government Body” means a body (including a private school) which is:

- (a) directly or indirectly, partially or entirely, funded by the Commonwealth, a State or a Territory; and/or
- (b) non-profit making.

“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 Order.

“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 Cyberterrorism) and acts of vandalism; or
- (d) war.

“Financial Security” means the security described in item 13 of the Agreement Details.

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

“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.

“Hardware Warranty Period” means the first 365 days after the AAD or any greater period specified in the Order.

“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 1988 (NSW)*.

“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, 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).

“Management Fee” means the fee referred to in item 11 of the Agreement Details, payable by the Contractor to the Contract Authority in accordance with clause 3.1.

“Milestones” means the groups of tasks relating to and including the provision of Deliverables to be performed or provided by the Contractor under the Contract.

“Module” means Modules 1 to 12 of Part 4 of this Agreement.

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

“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 designated purpose of the Deliverable.

“Nominee Purchaser” means a contractor to a Customer that is nominated by the Customer and authorised by the Contract Authority, to place Orders under this Agreement on behalf of the Customer as its agent.

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

“Order” means the written document containing the Order Details and as relevant any Additional Conditions that the Customer places with the Contractor in accordance with clause 6.

“Order Details” means all those details of the Contract to be included in an Order by the Customer and Contractor.

“Parties” means the Contract Authority and the Contractor in relation to this Agreement, and means the Customer and the Contractor in relation to an Order or a Contract.

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

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

"Performance Guarantee" means the performance guarantee described in item 14 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:

- (a) in the case of the Contractor, the Contractor's employees, officers, Approved Parties and subcontractors: and
- (b) in the case of respectively the Contract Authority and the Customer, their employees, officers, agents and subcontractors.

"Price" means an itemised price (including a rate for a quality unit) in Schedule 3, and as otherwise determined under a contract as, payable in Australian dollars by a Customer for a Deliverable under the Contract.

"Procure IT" means the framework for the procurement of information technology Products and Services and includes:

- (a) Part 1 – Agreement;
- (b) Part 2 – Dictionary;
- (c) Part 3 – Schedules;
- (d) Part 4 – Modules;
- (e) Part 5 – Order Forms; and
- (f) Part 6 – Service Level Agreement.

"Product" means a good set out in Schedule 3 that the Contractor offers to supply or provides to a Customer 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 the Order.

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

“Schedules” means Schedules 1 to 14 of this Agreement.

“Service” means the services set out in Schedule 3 including any associated materials, that the Contractor offers to provide or provides to a Customer in accordance with this Agreement.

“Service Address” means:

- (a) in the case of the Contract Authority: the address set out in this Agreement;
- (b) in the case of the Contractor, the address set out in this Agreement or in relation to a Contract the address set out in the Order or such other address as is notified in writing by the Contractor for notices to be served on it from time to time; or
- (c) in the case of the Customer, the address set out in the Order or address as is notified in writing by the Customer for notices to be served to it from time to time.

“Service Level Agreement” means the Document that sets out the performance expectations of the Parties and defines the benchmarks for measuring the performance of the Services.

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

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

“Small to Medium Enterprise” means an enterprise or business with less than 200 full time employees.

“Specified Personnel” means the key personnel of the Contractor nominated in the Order 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 the Contract.

“State” means the state or territory specified in item 6 of the Agreement Details.

“Statement of Requirements” means the Customer's statement of any requirements that the Contractor must fulfill 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 statutes, regulations and by-laws relating to the performance of this Agreement or a Contract or the lawful requirements of any authority with respect to the performance of this Agreement and/or a Contract.

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

- (a) Failing to comply with any of the Management Fee provisions under clause 3.1
- (b) failing to effect and maintain insurance policies as required under 8.1;
- (c) failing to provide a Financial Security as required under clause 8.2;

- (d) failing to provide a Performance Guarantee as required under clause 8.3;
- (e) breaching any warranty under clauses 11.3, 11.4
- (f) failing to provide suitable replacement personnel as required under clause 13.4 which prevents the Contractor from performing fundamental obligations under the Contract;
- (g) failing to pass Acceptance Tests which results in rejection of the Deliverable by the Customer under clause 14.5.8(e);
- (h) where a delay continues beyond the extension of time granted under clause 14.7.2; and
- (i) the existence of a Conflict of Interest which in the Customer's reasonable opinion prevents the full and proper performance of the Contract by the Contractor.

"Supplementary Tests" means the additional or different tests that are reasonably required by a Customer to demonstrate that a Deliverable complies with the Contract Specifications.

"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 item 7 of the Agreement Details and any extension of the term in accordance with clause 2.1.

"Time and Materials" basis means the fee agreed to by the Parties as specified in the Order 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 the Deliverable's Contract Specifications.

"Warranty Period" means the first 365 days after the AAD or any greater period specified in the Order.

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

1.2 RULES FOR INTERPRETING THIS AGREEMENT

1.2.1 In this Agreement, and any Contracts created under 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 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 Customer.
- (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 and Contracts will be interpreted to give effect to undertaking business in this manner.

[THREE]

SCHEDULES

Schedule 1 – Agreement Details

Item 1	Agreement Number	
Item 2	(a) Contract Authority's Name / Address	State Contracts Control Board
		2-24 Rawson Place Sydney NSW 2000
	(b) Authorised Representative	
	(c) Authorised Representative Position:	
	Address:	
	Telephone:	
	Facsimile:	
	Item 3	(a) Contractor's Name/Address and ABN/ACN
(b) Authorised Representative		
(c) Authorised Representative Position:		
Address:		
Telephone:		
Facsimile:		

Item 4**Modules agreed between the Parties**

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

Module 1 – Hardware Acquisition and Installation	<input checked="" type="checkbox"/>	Module 8 – Data Management	<input type="checkbox"/>
Module 2 – Hardware Maintenance Services	<input checked="" type="checkbox"/>	Module 9 – Telecommunications	<input checked="" type="checkbox"/>
Module 3 – Licensed Software	<input checked="" type="checkbox"/>	Module 10 – Web Services	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 11 – Managed Services	<input checked="" type="checkbox"/>
Module 5 – Software Support Services	<input checked="" type="checkbox"/>	Module 12 – Systems Integration Services	<input checked="" type="checkbox"/>
Module 6 – IT Personnel	<input type="checkbox"/>		
Module 7 – Professional Services	<input checked="" type="checkbox"/>		

Item 5**Exchange of Contractor Information between Government Agencies**

- (a) Contractor Information exclusions:
- (b) Defamation Legislation (clause 3.3)
-

Item 6**Applicable Law (clause 19.7):**

Item 7**Term: (clause 2.1)**

- (a) Commencement Date of the Agreement Period:
- (b) Expiry Date of the Agreement Period:
- (c) Period of extended term (if any): (clause 2.1)

Item 8**Insurance Policy Amount (clause 8.1.1)**

- (a) Public Liability Insurance Limit of Indemnity: \$AUS M:
- (b) Product Liability Insurance Limit of Indemnity: \$AUS M:
- (c) (if requested in 8.1.1) Professional Indemnity Insurance Limit of Indemnity: \$AUS M:
- The Contract Authority is to state the period that the Contractor must maintain their Professional Indemnity Insurance
- If the Contractor is a member of occupational association with an approved scheme under The Professional Standards Act (NSW) 1994 or similar State or Territory legislation, then the insurance amount may be limited by the Contract Authority, accordingly.
- (d) (if requested in 8.1.1) Insert other insurances required:
-

Item 9**Standards and Codes (clause 11.7)**

Item 10	Credit/Debit Card and Electronic Facility (clause 16.1.3)
	Credit/Debit Card Facility (insert details) <input type="text" value="N/A"/>
	Electronic Facility (insert details) <input type="text" value="Electronic Commerce provisions (Smartbuy®) are contained in Schedule 3 to this Agreement"/>
Item 11	Management Fee (clause 3.1)
	(a) Is the Management Fee payable? (Yes / No) <input type="text" value="Yes"/>
	(b) Management Fee rate (clause 3.1) <input type="text" value="2.5%"/>
	(c) Management Fee payable to (clause 3.1.6) <input type="text" value="In accordance with invoice"/>
	(d) Address Management Fee forwarded to (clause.3.1.6) <input type="text" value="In accordance with invoice"/>
	(e) Administrative Fee (clause 3.1.3 and 3.1.5) <input type="text" value="Hourly rate in accordance with applicable award rates for Contract Authority staff involved in administering these clauses."/>
Item 12	Expert Determination Amount (clause 7.3, 7.4, 7.5 and Schedule 5):\$A:
	\$A: <input type="text" value="250,000 for Contracts under \$50 Million"/> 1,000,000 for Contracts over \$50 Million 100,000 for the Agreement
Item 13	Financial Security (clause 8.2 and Schedule 7)
	Specify here if Financial Security is required: (Yes / No) <input type="text"/>
	Amount: <input type="text"/>
Item 14	Performance Guarantee (clause 8.3 and Schedule 8)
	Specify here if Performance Guarantee is required: (Yes / No) <input type="text"/>
Item 15	List of Approved Parties (Clause 6.5)
	<input type="text"/>
Item 16	Liability (clause 8.5)

Liability is capped at \$

The Contractor is offering Products or Services under the Agreement which the Contract Authority has identified as suitable to have liability caps applied. Liability can be capped at the level set by the Contract Authority which has determined a Liability cap

The level of the liability cap is determined on the basis of the "value of the order" (as measured in terms of the total Charges (exclusive of GST) payable by the Customer to the Contractor under the relevant order up until the date that the cause of action arises) - cap (\$AUD):

- Under \$300,000 : \$1 million
- \$300,000 – \$500,000 : \$2 million
- \$500,000 – \$1 million : \$4 million
- Above \$1 million: 3 times the value of the Order, subject to a minimum cap in the initial 12 month period equal to 3 times the aggregate Charges (exclusive of GST) payable by the Customer to the Contractor for all services:
 - that are substantially similar to those acquired under the relevant order; and
 - that are acquired by the Customer under any other contract(s) between the Contractor and the Customer (including any contract(s) that have subsequently terminated or expired) up until the date that the cause of action arises.

Item 17 List of Subcontractors (clause 13.5)

Schedule 2 – Agreement Documents

Itemise all documentation (including any supplemental terms and conditions agreed to by the Contract Authority, accepted tenders, offers or quotes from the Contractor, and any letter of acceptance or award issued by the Contract Authority) between the Contract Authority 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

Include Details of Products and Services to be provided including any Pricing details in Australian dollars, and specify whether any price variation mechanism is to apply (clause 4.1)

Schedule 4 – Statutory Declaration by Approved Party or Subcontractor

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AGREEMENT
SCHEDULES

Oaths Act (NSW), 1900 Ninth Schedule

- I, do solemnly and sincerely declare that to the best of my knowledge and belief:
1. [insert full Approved Party/subcontractor company name and its ACN/ABN] ("the Declarant") has been selected as an Approved Party, or subcontractor to, [insert name of the Contractor] ("the Contractor") under an agreement between the [insert name of the Contract Authority] for and on behalf of the Crown in right of the State ("the Contract Authority") and the Contractor for the supply of the Deliverables to certain Customers ("the Agreement")
 2. The Declarant is aware of:
 - (a) where relevant, the responsibilities imposed on Contractors under clause 6.5 of the Agreement in relation to use of Approved Parties including obligations to ensure that these persons supply relevant sales information to the Contractor and permit independent audit of that information by the Contract Authority; and
 - (b) the standard terms and conditions of Contracts as set out in the Agreement.
 3. The Declarant, if an Approved Party of the Contractor, offers to supply:
 - (a) under the standard terms and conditions of the Agreement and any Contract;
 - (b) on terms that enable compliance by the Contractor with clause 6.5 of the Agreement.
 4. The Declarant, if a subcontractor to the Contractor, will offer to sub-contract on terms that will:
 - (a) be consistent with the standard terms and conditions of the Agreement and any Contract; and
 - (b) enable compliance by the Contractor with clause 13.5 of the Agreement.
 5. There are no reasons of which I am aware that would prevent a Contract or subcontract (as relevant) from being signed and performed in a manner that would allow the satisfactory and timely performance of:
 - (a) a Contract; and
 - (b) 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

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AGREEMENT
SCHEDULES

EXPERT DETERMINATION

- 1 If a Referral Notice is submitted under clause 7.5.2 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 a Contract or has a Conflict of Interest, as the case maybe; or
 - (c) a person who the Parties have not been able to agree on.
- 3 When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
 - (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for the determination set out in this Schedule; and
 - (d) any other matter which is relevant to the engagement.
- 4 **Submissions**
 - 4.1 **The procedure for submissions to the expert is as follows:**
 - (a) The Party to the Agreement or Contract 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 Contract Authority or Customer as applicable 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 or Contract 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 or Contract. 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 or a Contract:
 - (i) for damages for breach of the Agreement or a Contract, or
 - (ii) otherwise in law?
- (b) If so:
 - (i) what is the event, act or omission?
 - (ii) on what date did the event, act or omission occur?
 - (iii) what is the legal right which gives rise to the liability to compensation?
 - (iv) is that right extinguished, barred or reduced by any provision of the Agreement or Contract, 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 The Contract Authority may act for the Customer during the course of the Expert Determination upon the Customer's request.

10 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.

11 Unless a Party has a right to commence litigation under clause 10 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.

12 Role of Expert

12.1 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.

12.2 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

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Insurer:

Contractor: The Insured)

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

between the Insured and the “Contract Authority” [insert Contract Authority/Customer 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

(d) Workers Compensation Insurance

2. The insurance policies conform with the requirements of clause 8.1 of the Agreement between the Contract Authority 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 'Contract Authority/Customer'] ('the Customer')

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

What is agreed:

1. The [insert name of the Contractor and the ACN/ABN] ('Contractor') has agreed to supply Deliverables to the Customer pursuant to a contract ('Contract'). The following undertakings are given in respect of the Contract:
 - (a) The Guarantor unconditionally agrees to pay to the Customer on demand without reference to the Contractor and separate from any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by the Customer to a maximum aggregate sum of \$ [insert dollar amount]
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 Customer 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 Customer'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

Postal address
Phone number
Fax number
Email address

Customer

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 Contract Authority/Customer]

By [insert name of Contract Authority/Customer representative]

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

Signature of Contract Authority/Customer representative

Signature of Contract 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]

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

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AGREEMENT
SCHEDULES

Deed of Agreement dated the [] day of [] 20 []

Between [insert name of the 'Contract Authority/Customer'] ('the Customer')

[]

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 Customer pursuant to the contract ("the Contract").

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

What is agreed:

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

1. If the Contractor (unless relieved from the performance of the Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Contract.
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 Contract is then terminated for default, the Guarantor will indemnify the Customer 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 Customer 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 Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
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:
 - (a) the obligations and liabilities of the Contractor under the Contract; and
 - (b) \$ [insert dollar amount] []
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 Customer's registered address.
8. Where the Contractor has failed to perform under the Contract, 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 Contract 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

Customer

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 Contract Authority/Customer]

By [insert name of Contract Authority/Customer representative]

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

Signature of Contract Authority/Customer representative

Signature of Contract 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]

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

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

Schedule 9 – Deed of Confidentiality

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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 Contract and/or 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 Contract Authority 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 Customer, if the other person did not breach any law or agreement by giving it to the Confidant.

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

"**Customer**" has the same meaning as in the Contract;

“Contract” means the contract between the Customer and the Contractor for the supply of the Deliverables dated [insert date]

“Customer’s Materials” means any documentation, information or material supplied by or on behalf of the Customer, or a Customer to the Confidant;

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

“Express Purpose” means the Confidant performing the obligations under the Contract and/or 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; and

“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 Contract and/or 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 if, in its reasonable opinion, it believes it necessary, 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 or is required to be disclosed under operation of law:
- (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 Contract / 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 Customer 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 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 Signature

In the presence of

Signature of Witness

Print name

Print name

Schedule 10 - Privacy

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AGREEMENT
SCHEDULES

CONTRACTOR'S PRIVACY OBLIGATIONS

Pursuant to clause 10.2 of the contract, the Contractor agrees:

- 1** to use, access, retain or disclose Personal Information obtained during the course of providing the Deliverables under the Contract 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 Customer, 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 Customer carrying out and discharging those obligations;
- 4** to notify the Customer 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 Customer in relation to the care and protection of Personal Information held in connection with the Contract 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 Contract 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 Contract 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 Contract Authority 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 Customer”) of the third part

RECITALS:

- a. By Contract made on the day of 20 the Contractor has agreed to grant a licence to the Customer to use the Licensed Software.
- b. The Contractor and the Customer 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:

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

“**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 Customer under the Contract 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;

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

“**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 Contract ;“**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:

- i. monetary references are references to Australian currency;
- ii. 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;
- iii. a cross reference to a clause number is a reference to all its subclauses;
- iv. words in the singular number include the plural and vice versa;
- v. words importing a gender include any other gender;
- vi. a reference to a person includes a partnership and a body whether corporate or otherwise;
- vii. a reference to a clause or subclause is a reference to a clause or subclause of this Agreement;
- viii. a reference to an Attachment is a reference to an Attachment to this Document;
- ix. 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 Customer 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.

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 Customer 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 Customer 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 Customer 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 Customer 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 Customer 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 Customer 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 Customer upon written notice from the Customer 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 Customer Contract has been terminated by the Customer for breach of contract by the Contractor; or
- (d) if this Agreement is terminated.

8.3 Where the Contract has been terminated by the Contractor or where the Customer 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 Customer and the Contractor, terminate this Agreement subject to the pro-rata refund of any advance payment of the Escrow Fee.

9.2 The Customer 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 Contract remains in force, the Customer 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 Customer and the Contractor.

9.4 The Customer 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 Customer 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 Customer 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

Customer

Physical address

Postal address

Phone number

Fax number

Email address

addressor 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]

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]

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 Customer]

By [insert name of Customer representative]

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

Signature of Customer Representative

Signature of 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

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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 Parties must evaluate the request or recommendation and, as appropriate:
 - i. request further information;
 - ii. provide a Contract, Price and performance impact summary including amendments to the terms of the Contract;
 - iii. notify approval or rejection to the other Party of the variation;
 - iv. arrange for two copies of an approved variation to be signed by or on behalf of both Parties; and
 - v. if required by the Contract, submit the variation to the Contract Authority 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) a Party 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 Customer no longer wishes to proceed with the variation, the Customer 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 Contract as if the variation request or recommendation had never been made.

VARIATION REQUEST FORM

Guide Note: If the proposed variation will vary the Contract terms, specifications or any other documents forming part of the Contract, 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 Contract, relevant Contract Schedules including Service Level Agreement) (note that variations to the Agreement Clauses require the Contract Authority's approval (clause 17.2))*

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 Customer or as varied by variation

Payment Profile: (Charges to apply)

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

Signed by [name and position of person signing]

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

in the presence of

Signature of Customer

Signature of Witness

Print name

Print name

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

Print name

Print name

The (Contract Authority) hereby endorses its consent to this Variation.

Request No

Schedule 13 – Risk Management

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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

Schedule 14 – Management Fee Audit Confidential Disclosure Agreement

Effective Date:

Auditor (Company):

This Confidential Disclosure Agreement is entered into by and between the Contractor ("**Contractor**") ABN and the "Auditor", which has been engaged by the State Contracts Control Board ("**Board**") to carry out a review of the Contractor's records and systems in connection with the contract referred to in clause 1 below as notified to the Contractor by the Board on [date] ("**the Audit**").

The Contractor and the Auditor agree in relation to the confidential information disclosed to the Auditor by the Contractor as follows:

1. **Disclosure of Information.** The Audit relates to the following contract between the Board and the Contractor "**Contract**", and is to be governed by the terms and conditions contained therein:

Name of contract

In accordance with the clause ## of the Contract the Contractor will disclose to the Auditor all information that the Auditor may reasonably require in connection with the following purposes:

"The Principal may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor has paid the correct amount of Management Fee due to the Principal by the Contractor and the Contractor agrees to cooperate with the Principal (including any auditor appointed by the Principal) including providing access to information about all sales made to any entity that is eligible to buy Deliverables under this Agreement, copies of all contracts, orders and invoices between the Contractor and any such entity."

2. **Representatives.** The officer(s) responsible for disclosing or receiving Confidential Information are:

On behalf of the Contractor:

Name: _____

Title: _____

The Contractor's address: _____

Other officer: _____

On behalf of Auditor:

Name: _____ and any other partner or employee of the Auditor who is involved in the Audit or has a need to know in connection with the Audit.

Title: _____

Work Address of Auditor's representative above: _____

3. **Definition of Confidential Information.** The "Confidential Information" disclosed under this Agreement is all information in any form received in connection with the Audit. A recipient of Confidential Information under this Agreement shall have a duty to protect all such Confidential Information whether expressly disclosed as Confidential Information or not.

4. **Disclosure Period and Term.** This Agreement controls only Confidential Information which is disclosed between the Effective Date and 3 months thereafter ("Disclosure Period"). The Auditor's duty to protect Confidential Information disclosed under this Agreement expires six (6) years after the end of the Disclosure Period ("the Term").

5. **Use of Confidential Information.** The Auditor shall use, and shall ensure that any of its employees or contractors use, the Confidential Information for the sole purpose of fulfilling the Auditor's obligations to the Board in relation to the Audit.

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6. **Protection of Confidential Information.** The Auditor shall not disclose the Confidential Information to a third party other than the Board, and solely for the purposes for which the information was disclosed and where such persons have a need to know. The Auditor shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorised use, dissemination or publication of the Confidential Information as the Auditor uses to protect its own confidential information of a like nature. For the avoidance of doubt, the Auditor's partners and employees referred to in clause 2 are not third parties for the purposes of this clause.

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7. **Exclusions.** This Agreement imposes no obligation upon a Recipient of the Auditor with respect to the Confidential Information which:

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- (a) is or becomes a matter of public knowledge through no fault of the Recipient;
- (b) is required to be disclosed under operation of law; or
- (c) is disclosed by the Recipient or the Participant with the Discloser's prior written approval; or
- (d) is disclosed to a party's legal adviser in connection with the Review of this agreement.

8. **Proprietary Rights.** Neither party to this Agreement acquires any intellectual property rights or any other rights under this Agreement except the limited right to use set out in paragraph 5 above.

9. Indemnity and release

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

9.1.1 a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or

9.1.2 the disclosure or use of the Confidential Information by the Auditor or the permitted recipients other than in accordance with this Deed.

10. **General.** The parties do not intend that any agency or partnership relationship be created between them by this Agreement. This Agreement sets forth the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous agreements concerning such Confidential Information, whether written or oral. All additions or modifications to this Agreement must be made in writing and must be signed by both parties. This Agreement shall be governed by the laws of the State of New South Wales and shall be subject to the jurisdiction of the Courts in Sydney, Australia.

CONTRACTOR:
ABN/ACN:

Authorised Signature:

Name:

Title:

Date:

AUDITOR:
ABN/ACN:

Authorised Signature:

Name:

Title:

Date:

[FOUR]

MODULES

MODULES ATTACHED

- MODULE 1
- MODULE 2
- MODULE 3
- MODULE 5
- MODULE 7
- MODULE 9
- MODULE 11
- MODULE 12

MODULE 01 HARDWARE ACQUISITION AND INSTALLATION – GTA

1. INTERPRETATION

1.1 The terms and conditions included in this Module 1 form part of the Contract and apply when a Customer places an Order for Hardware.

1.2 In this Module, unless the contrary intention appears:

“Bundled Software” means firmware, embedded software and any other software product provided by the Contractor with the Hardware (other than to the extent software products are licensed under a separate Module or Order).

“Hardware” means the Product specified in the Order, and includes each individual item, unit or component of Hardware (including Bundled Software).

“Integration” or **“Integrate”** in respect of the Hardware includes the implementation and setting to work of the Hardware with or within the Customer’s existing hardware and software environment so that it is ready for use by the Customer and complies with all relevant functional and performance requirements specified in the Contract Specifications.

“Load and Performance Requirements” means, where applicable, that part of the Contract Specifications detailing the performance levels required and the anticipated memory requirements of the software application(s) that will be installed on the Hardware.

1.2 Other capitalised words and expressions used in this Module are defined in Part 2 of the Agreement.

2. DELIVERY AND INSTALLATION OF THE HARDWARE

2.1 Unless otherwise specified in the Order, the Contractor must install and demonstrate the use of the Hardware in accordance with the Contract Specifications.

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

2.3 Unless otherwise specified in Schedule 3, all Hardware provided by the Contractor must be newly manufactured, and reconditioned or used items must not be provided to the Customer.

2.4 Risk in and title of each item of Hardware passes on acceptance of that item of Hardware to the Customer.

2.5 The Contractor grants to the Customer a non-exclusive, perpetual, irrevocable, royalty free and transferable licence to use (including to store, load, install, execute or display) the Bundled Software. The right to transfer any licence is limited to a transfer by the Customer to:

- (a) a third party supplier engaged by the Customer (including any outsourced service provider) but only for the purposes of that supplier providing services to the Customer; or
- (b) any person to whom the Customer sells, rents, lends or otherwise transfers an item of Hardware.

2.6 The Contractor must use its best efforts to ensure that no Viruses are introduced into the Hardware, Bundled Software or any systems used by the Customer and must not invoke any disabling code that is included in any Bundled Software. In addition to its obligations under clause 11.3(g) of Part 1 of the

Agreement, the Contractor must at its own cost mitigate and remedy any loss or corruption of data or software caused by the elimination of the Virus.

- 2.7** Where any item of Hardware is provided to the Customer with additional capacity that can be activated by the Customer on a temporary or permanent basis (with any such items of Hardware and additional capacity to be specified in Schedule 3), the following terms apply to such activation:
- (a) where the Customer first activates all of the additional capacity for any period of 30 consecutive days or more, the Customer will be deemed to have permanently activated the additional capacity and may use all additional capacity available;
 - (b) where paragraph (a) applies, the Customer must pay to the Contractor (subject to receiving a correctly rendered invoice from the Contractor) a one-off addition to the Contract Price. The amount of this addition to the Contract Price must be specified in the Order. If no such addition is specified, the Customer will not be liable for any additional fee or other charge; and
 - (c) where the Customer activates all or some of the additional capacity for any duration less than that contemplated in paragraph (a), the Customer will not be liable for any additional fee or other charge.

3. INTEGRATION AND TRAINING

- 3.1** The Contractor shall integrate the Hardware and provide training to the Customer as specified in the Order.

- 3.2** Where Load and Performance Requirements are included in the Contract Specification, the Contractor must ensure that the Hardware provided complies with the Load and Performance Requirements. To the extent that the configuration of the Hardware provided and installed by the Contractor under the Order does not comply with, or provide satisfactory system performance based on, the Load and Performance Requirements or otherwise detrimentally impacts on the performance of the Customer's current hardware and software environment, the Contractor must, at its cost, immediately reconfigure the Hardware to overcome such failure (including by repairing or replacing Hardware, or providing to Customer new hardware or other products, as is necessary to remedy such failure or detrimental impact).

4. WARRANTY PERIOD AND ADDITIONAL WARRANTIES

- 4.1** Without limiting clause 11.5 of Part 1 of the Agreement, the Contractor must promptly rectify any Defect that occurs during the Hardware Warranty Period (in compliance with the Service Level Agreement, if applicable).
- 4.2** If the Contractor fails, within a reasonable time, to rectify:
- (a) a Defect in any item of Hardware; or
 - (b) non-conformance of an item of Hardware in relation to a condition as warranted, the Customer will, in addition to any other right or remedy the Customer may have, be entitled to a refund of the relevant portion of the Contract Price upon prompt return of the item of Hardware to the Contractor. The Contractor will pay expenses for return of and shipment of repaired or replacement Hardware.
- 4.3** Without limiting clause 11.4 of Part 1 of the Agreement, the Contractor undertakes, in relation to the Hardware, that:
- (a) all Hardware, for the duration of the relevant Warranty Period:
 - (i) will be free from defects or omissions in materials, workmanship, design and performance;
 - (ii) will be and remain compatible and interoperable with Customer's then current hardware and software environment as it exists at the time each Product passes the relevant Acceptance Tests;
 - (iii) will be and remain sufficient and appropriate to enable each software product that is to be installed on the Hardware to operate in satisfaction of the Contract Specifications, provided that the relevant software products have been disclosed to the Contractor prior to the date of the Order;
 - (iv) has the capacity and will maintain the level of reliability and availability specified in the Contract Specifications; and
 - (v) will be fully scalable to accommodate the Customer's changing requirements as specified by Customer to the Contractor prior to the date of the Order;
 - (b) in addition to the Contractor's obligations under clause 14.6 of Part 1 of the Agreement, the Documentation to be provided by the Contractor will not be limited to material the Contractor usually makes available free to its other customers, and must at a minimum:
 - (i) be specific to the Hardware, so that the unique aspects of the Hardware, as Installed within the Customer's existing hardware and software environment are taken into account, and
 - (ii) provide adequate instructions on how to operate and use the Hardware without reference to the Contractor;
 - (c) components of the Hardware will not emit fumes, liquids, electromagnetic radiation or noise, in normal operating conditions, which could be detrimental to personnel, the Hardware or the operation of other equipment; and
 - (d) it has and will continue to have the right and authority to grant to the Customer the licences and rights

that it grants to the Customer in relation to Bundled Software.

5. CONTINUED AVAILABILITY OF HARDWARE

5.1 The Contractor warrants that, for a period of three years commencing on the AAD, it will:

- (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 Order, provide training and such other assistance reasonably required by the Customer to enable the Customer 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 Customer to purchase spare parts to enable its continued use and maintenance of the Hardware.

ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems and Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 1 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 1 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 1).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

MODULE 02 HARDWARE MAINTENANCE SERVICES – GTA

Module 02 – Hardware Maintenance Services**1. INTERPRETATION**

1.1 The terms and conditions included in this Module 2 form part of the Contract and apply when a Customer places an Order for Hardware Maintenance Services.

1.2 In this Module, unless the contrary intention appears:

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

“Hardware Maintenance Services” means the Services specified in the Order 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 2 of the Agreement.

2. PERIOD OF SERVICES

2.1 The Hardware Maintenance Services must be provided for the Contract Period unless the Contract is terminated earlier in accordance with its terms. If no Contract Period is specified in the Order, then the Hardware Maintenance Services will be provided for from the Commencement Date until either party cancels the Hardware Maintenance Services by providing 30 days prior Notice in Writing to the other.

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. Without limiting the Contractor's obligations under clause 13.2.1 of Part 1 of the Agreement, the Contractor must at all times ensure that the specific Personnel that perform the Hardware Maintenance Services are appropriately qualified and experienced Personnel, and have reasonable knowledge of the Customer's hardware and software environment.

3.2 The Customer 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. The Contractor agrees that it uses such facilities at its own risk.

3.3 Without limiting any other rights of the Customer, 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 (in compliance with the Service Level Agreement, if applicable).

3.4 Where the performance of Hardware Maintenance Services will commence on or during the Warranty Period:

- (a) the Contractor acknowledges that there is a potential overlap between the Contractor's obligation to remedy Defects for no additional cost during the Warranty Period and the Contractor's obligations to remedy Defects as part of Hardware Maintenance Services; and
- (b) taking paragraph (a) into account, for so long as Hardware Maintenance Services are being performed during the Warranty Period, the Customer will pay the Contractor for those Hardware Maintenance Services an amount equal to 65% of the Contract Price applicable to such Hardware Maintenance Services (or such other amount as is specified in the Order) and the Contractor must ensure that it invoices the Customer accordingly.

4. PREVENTATIVE MAINTENANCE

4.1 If Preventive Maintenance Services are specified in the Order, 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 Customer'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 Order or the Service Level Agreement;
- (c) to the extent that it is practical, implement measures to minimise disruption to the Customer's operations during maintenance work and perform the Services at times likely to cause the least possible disruption to the Customer's business and in all cases only by prior arrangement with the Customer; and
- (d) comply with any other requirements specified in the Order 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 Contract. The Customer 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 Customer;
- (b) the replacement parts become the property of the Customer 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 Customer concerning the protection of the Customer's Confidential Information; and
- (d) the Customer 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 Customer.

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

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

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 Contract for the Contract Period.

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 Contract Period.

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 Customer's system described in the Order.

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 Customer 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 Customer, which result directly from the Customer not implementing an engineering change, or upgrade offered to the Customer by the Contractor.

8. MODIFICATION OR ATTACHMENT OF ADDITIONAL EQUIPMENT

8.1 The Customer may, in its absolute discretion, acquire additional equipment for attachment to or use in connection with the Hardware maintained by the Contractor, and where the Customer exercises this discretion, the Contractor must provide all reasonable assistance and co-operation to the Customer and any alternative supplier in effecting the system interfaces involved.

8.2 Without limiting the effect of clause 8.1, if the Customer notifies the Contractor of the attachment, or intended attachment of equipment to the Hardware, the Contractor must provide the Customer with any information which the Contractor is aware of indicating that the attachment is likely to or may be detrimental in any way to the operation of the Hardware.

9. REMOVAL OR SUBSTITUTION OF HARDWARE

9.1 The Customer may for any reason during the Contract Period:

- (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 Customer exercises its rights under clause 9.1, the Customer 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 Customer 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 Contract.

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 Customer may move the Hardware without prior reference to the Contractor without any reduction of the Contractor's obligations under the Contract. The Contractor is not responsible for any damage that occurs due to such movement. The Customer 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 Customer 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 Customer within four (4) days of a request.

12. SUSPENSION OF HARDWARE MAINTENANCE SERVICES

- 12.1** The Customer may at any time suspend the Hardware Maintenance Services, upon 30 days notice in writing to the Contractor. On receipt of any such notice, the Contractor must immediately return to the Customer a pro rata amount of the Contract Price for Hardware Maintenance Services prepaid (if any) by the Customer. This suspension right is additional to any rights that the Customer has to terminate any Contract.
- 12.2** Unless otherwise specified in the Order, the Customer may require the Contractor to again commence the Hardware Maintenance Services after suspending them. Where the Customer requires such recommencement, it will notify the Contractor and will be liable to pay to the Contractor an amount equal to 50% of the fees (or such other amount specified in the Order) that would have been payable in respect of the Hardware Maintenance Services had the Customer not suspended or cancelled them in accordance with clause 12.1 or such other amount as is specified in the Order.

13. ADDITIONAL MAINTENANCE

- 13.1** The Customer may, at any time during the Contract Term:
- a) request additional ad hoc Hardware Maintenance Services in respect of existing Hardware; or
 - b) request Hardware Maintenance Services for additional hardware obtained after the Commencement Date.
- 13.2** In the event that the Customer requests additional Hardware Maintenance Services in relation to paragraphs (a) or (b), the Contractor must provide a fixed price quote for the additional Hardware Maintenance Services. Where the Customer agrees in writing to a quote, the Contractor will perform the additional Hardware Maintenance Services and the Customer will be liable for no more than the quoted amount.

14 SERVICE LEVELS

- 14.1** To the extent that no Service Level Agreement is set out or referred to in the Order, if requested by the Customer, the parties will as soon as possible use their reasonable efforts to negotiate service levels applicable to Hardware Maintenance Services, which must include, at a minimum, committed response and resolution times and availability measures, and service credits that may be imposed where the Contractor fails to meet service levels.

15 FAILURE TO PERFORM MAINTENANCE

- 15.1** In the event that the Contractor fails to perform Hardware Maintenance Services in accordance with the timetable set out in the Order, Service Level Agreement or any other time agreed between the parties, and without limiting any other rights or remedies of the Customer under the Contract:
- (a) the Contractor must provide to Customer such additional hardware as may be necessary to mitigate and remedy the failure to perform Hardware Maintenance Services; and
 - (b) the Customer may itself, or through a third party, rectify or replace the Hardware, without in any way diminishing any other warranty or obligation of the Contractor arising under this Agreement or limiting any rights or remedies of the Customer. In this case:
 - (i) the Contractor shall provide the Customer whatever assistance Customer may reasonably require to rectify or remedy the defective Hardware; and
 - (ii) all costs incurred by the Customer pursuant to this clause shall be reimbursed by the Contractor as a debt due to the Customer and may be deducted by the Customer from any moneys due to the Contractor.

ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 2 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 2 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 2).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

MODULE 03 LICENSED SOFTWARE – GTA

1. INTERPRETATION

1.1 The terms and conditions included in this Module 3 form part of the Contract and apply when a Customer places an Order for 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 Order.

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

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

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

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

“**Software Support Services**” means the Services the Contractor agrees to provide for the Licensed Software where an Order is placed under Module 5 of this Agreement.

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

1.3 Other capitalised words and expressions used in this Module are defined in Part 2 of the Agreement.

2. SCOPE OF LICENCE

2.1 The Contractor grants to the Customer a non-exclusive Licence of the Class specified in the Order 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 Customer is non transferable.

3. CONTRACTOR'S RIGHTS IN THE LICENSED SOFTWARE

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

3.2 The Customer 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 Contract.

4. LICENCE RIGHTS

4.1 Unless otherwise specified in the Order, the Contractor grants the Customer a non-exclusive licence to:

- (a) install the Licensed Software without affecting any applicable warranty provided by the Contractor under the Contract;
- (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 Customer 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 Customer'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 Customer, subject to giving prior written notice to the Contractor and to the other agency consenting to the terms of the Contract.

5. WARRANTY PERIOD

5.1 Without limiting any other rights of the Customer, the Contractor must promptly rectify any Defect in the Licensed Software that occurs during the Warranty Period in accordance with clauses 11.2 and 11.3 of Part 1 of the Agreement.

6. PROTECTION AND SECURITY OF THE LICENSED SOFTWARE

6.1 The Customer 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
- (c) ensure that, prior to the disposal of any media, any Licensed Software contained on it has been erased or destroyed.

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

7. UPDATES AND NEW RELEASES

7.1 The Contractor must offer the Customer 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 Customer including its Personnel, to operate the Update or New Release on the Designated Equipment.

7.3 The Customer is to notify the Contractor within 30 days from the receipt of the offer 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 Customer 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 Customer provided that the Customer continues to possess a valid licence for that version of the Licensed Software.

7.4 If the Customer accepts the Update or New Release:

- (a) the Contractor if requested by the Customer shall install an Update or New Release of the Licensed Software, co-ordinating and scheduling such installation with the Customer. 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 Customer must upon request return to the Contractor all copies of the original Licensed Softwares 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 Customer 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 Customer 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 Order;
- (f) the Contractor must offer to the Customer any Updates or New Releases as they become available for Licensed Software during any Software Support Services that it provides to the Customer for the Licensed Software; and
- (g) the Contractor must specify in the Order any additional software that it considers does not fall within an Update or New Release and which it intends to charge the Customer for during the Contract Period.

8. CHANGE OF DESIGNATED EQUIPMENT

8.1 If use of the Licensed Software is specified in the Order to be restricted to use on Designated Equipment, the Customer 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 Customer 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 Customer 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 Contract or otherwise surrendered by the Customer, the Licence remains in force for the duration of the Licence Period.

10. CONSEQUENCES OF TERMINATION OF LICENCE

10.1 If specified in the Order the Customer 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 Customer may retain a copy of the Licensed Software and its related Documentation as may be reasonably required by the Customer to comply with any relevant Statutory Requirements.

10.2 The Customer's obligation to make any payments under the Contract for use of the Licensed Software shall cease after the date of termination or revocation of the Licence except for any amounts due and payable in respect of the period prior to termination or revocation.

11. NEW LICENCE

11.1 Where the Customer 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 follow the procedure set out in clause 17 of Part 1 of the Agreement for establishing a new Contract [and the Contractor shall allow the Customer to set-off against the new Licence the amount that is payable for the balance of the Licence Period by the Customer 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 Order, the Customer shall not, in contravention of the Copyright Act 1968 (Cth), reverse assemble or reverse compile the Licensed Software in whole or in part.

CATEGORY 5 SPECIAL TERMS AND CONDITIONS

ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems and Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 3 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 3 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 3).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

MODULE 05 SOFTWARE SUPPORT SERVICES – GTA

1. INTERPRETATION

1.1 The terms and conditions included in this Module form part of the Contract and apply when a Customer places an Order for Software Support Services.

1.2 In this Module, unless the contrary intention appears:

“**Designated Equipment**” means the equipment specified in the Order 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 and/or the Order.

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

“**Supported Software**” means the software specified in the Order 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 Customer Site(s) specified in the Order, which may be on a monthly, quarterly or yearly basis or any other term that is specified in the Order.

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

1.3 Other capitalised words and expressions used in this Module are defined in Part 2 of the Agreement.

2. PERIOD OF SERVICES

2.1 The Software Support Services must be provided for the Contract Period unless earlier terminated in accordance with the Agreement. 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 Order. 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 Order.

2.2 If no Contract Period is specified in the Order, then the Software Support Services will be provided from the Commencement Date until either party cancels the Software Support Services by providing 30 days prior written notice to the other.

3. SOFTWARE SUPPORT SERVICES

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

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 Contract.

- 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. CUSTOMER'S OBLIGATIONS**
- 4.1** The Customer must if practicable during the Contract Period for the Support Services provide the Contractor with:
- (a) access to the Customer's premises during normal working hours or as otherwise agreed as is necessary for the Contractor to supply the Software Support Services; and
 - (b) information, in the Customer's possession or control that the Contractor reasonably requires to supply Software Support Services.
- 5. DEFECTS**
- 5.1** If the Customer identifies and notifies the Contractor of a Defect in the Supported Software during the Contract Period, the Contractor will as soon as possible (and, where relevant, within the Service Levels remedy the defect.
- 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 Customer 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 Customer 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 Customer 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 Customer shall be entitled to any performance rebates specified in the Service Level Agreement or the Order.
- 7.2** The Customer may conduct a review of the Service Levels targets on an annual basis or as otherwise agreed by the Parties in writing during the Contract. The Contractor must not unreasonably refuse to agree to a Change Request to the Service Levels.
- 8. CUSTOMER'S OBLIGATIONS**
- 8.1** The Customer must allow the Contractor reasonable access to the Customer's premises and/or facilities and provide the Contractor with information, in the Customer's possession or control, that the Contractor reasonably requires to supply the Software Support Services.
- 9. TRANSITION**
- 9.1** On termination and/or expiry of the Support Services, the Contractor must render any reasonable assistance to the Customer on the same terms as the Contract to the extent necessary to effect an orderly assumption by a replacement contractor of the performance of the Contractor's obligations under the Contract.

CATEGORY 5 SPECIAL TERMS AND CONDITIONS

ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems and Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 5 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 5 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 5).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

MODULE 07 PROFESSIONAL SERVICES – GTA

1. INTERPRETATION

- 1.1** The terms and conditions included in this Module form part of the Contract and apply when a Customer places an Order for Professional Services.
- 1.2** In this Module, unless the contrary intention appears:
- “**Professional Services**” means the Services specified in the Order to be supplied by the Contractor to the Customer.
- 1.3** Other capitalised words and expressions used in this Module are defined in Part 2 of the Agreement.

2. PERIOD OF SERVICES

- 2.1** The Professional Services shall be provided for the Contract Period. If no Contract Period is specified in the Order, for the period from the Commencement Date until either party cancels the Professional Services by providing 30 days prior Notice in Writing to the other.

3. PROFESSIONAL SERVICES

- 3.1** The Contractor must provide the Professional Services in accordance with the Contract.
- 3.2** Unless otherwise specified in the Order and in addition to the requirements of clauses 13.2 and 13.3 of Part 1 of the Agreement, the Contractor must ensure that the Specified Personnel must not, during the period of the Professional Services, be engaged on any work other than the Professional Services, without the consent of the Customer.

4. PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

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

CATEGORY 5 SPECIAL TERMS AND CONDITIONS

ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems and Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 7 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 7 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 7).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

MODULE 09 TELECOMMUNICATIONS SERVICES – GTA

1. INTERPRETATION

1.1 The terms and conditions included in this Module 9 of the Agreement form part of the Contract and apply when a Customer places an Order for Telecommunications Services.

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

“**Back Billing Period**” means a period of 90 days from the date that charges are incurred by the Customer.

“**Benchmarking Panel**” means:

- (a) Oscom Pty Ltd;
- (b) Ovum Pty Ltd;
- (c) Gartners;
- (d) Compass;
- (e) Housley Consultants; and
- (f) GQ-AAS,

and such other persons or entities as the Parties may agree in writing from time to time.

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

- (a) in which the Intellectual Property rights are owned by the Contractor prior to their use in performing the Telecommunications Services;
- (b) which are developed by or for the Contractor independently of the Agreement;
- (c) which the Contractor can reasonably demonstrate was developed at its or their sole cost; or
- (d) in which the Intellectual Property rights are owned by a third party and used by the Contractor and/or any of its subcontractors under licence.

“**Contractor Tools and Methodologies**” means all methodologies, tools, ideas, processes, reports, concepts, techniques and other material used by or for the Contractor in performing the Telecommunications Services:

- (a) in which the Intellectual Property rights are owned by the Contractor, its subcontractors or any other third party prior to their use in performing the Telecommunications Services; or
- (b) which are developed by or for the Contractor, its subcontractors or any other third party independently of the Agreement.

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

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

and does not include:

- (c) events such as cable cuts; or

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

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

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

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

“Standard Terms and Conditions” means the terms and conditions identified as such in Part One of the Agreement.

“Telecommunication Services” means those telecommunication services identified in the relevant Order, and more fully described in the catalogue of Services set out in Schedule 2.

“Transition-In Plan” has the meaning given to it by clause 14.1 of this Module 9.

“Transition-In Services” has the meaning given to it by clause 14.1 of this Module 9.

“Transition-Out Plan” has the meaning given to it by clause 15.5 of this Module 9.

“Transition-Out Services” has the meaning given to it by clause 15.2 of this Module 9.

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

- 1.3 Definitions of other capitalised words and expressions used in this Module and not defined in clause 1.2 are contained in Part 2 of the Agreement.

2. PERIOD OF SERVICES

- 2.1 The Telecommunication Services shall be provided for the Contract Period specified in the Order unless terminated earlier in accordance with the Contract. If no Contract Period is specified in the Order, then the Telecommunication Services will be provided for the period continuing from the Commencement Date until either Party cancels the Telecommunication Services with 30 days Notice in Writing.

3. TELECOMMUNICATION SERVICES

- 3.1 The Telecommunications Services shall be provided at the Sites or via the links specified in the Order.
- 3.2 The Contractor shall provide the Telecommunication Services with sufficient capacity, availability and quality during the Contract Period as necessary to comply with the requirements of the Service Level Agreement and the Contract Specifications.
- 3.3 The Contractor must monitor Telecommunication Services at all times to ensure availability to the Customer in accordance with the Service Levels.
- 3.4 If requested by the Customer, the Contractor shall provide the Customer with relevant information in relation to Product compatibility with the Telecommunication Services.
- 3.5 The Contractor acknowledges that it has:
- (a) examined all information relevant to the risks, contingencies and other circumstances which could affect the supply of the Telecommunication Services, obtainable by making reasonable enquiries; and
 - (b) satisfied itself as to the availability of labour, resources and services required to supply the Telecommunication Services.
- 3.6 The Customer will not and shall use reasonable endeavours to ensure that its Users do not use the Telecommunication Services:
- (a) for any illegal, fraudulent or defamatory purposes;
 - (b) to engage in the bulk transmission of unsolicited electronic mail;
 - (c) to send or cause to be sent any computer worms, Viruses, or other similar programs;

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

3.7 The Contractor is entitled to suspend the Telecommunications Services in the event of an emergency to the extent necessary to enable the Contractor to comply with the order or direction of a regulator, emergency services organisation or other competent authority, and such suspension pursuant to this clause 3.7 will not give rise to a breach of the Agreement.

4. SCALABILITY

4.1 The Contractor warrants that the Telecommunications Services are scalable for the purpose of providing any reasonable adjustments to the capacity of the Telecommunications Services during the Contract Period.

5. TELEPHONE NUMBERS AND ADDRESSES

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

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

5.2 The Telecommunications Service may use one or more identifiers such as a telephone number, IP address or domain name ("**Public Addressing Identifiers**"). The Customer must comply with the requirements of any regulator or other body which administers Public Addressing Identifiers. The Customer acknowledges and agrees that:

- (a) the Contractor does not control the allocation of Public Addressing Identifiers;
- (b) the Contractor is not liable to the Customer if the Contractor is required to change any Public Addressing Identifier as a result of any direction given by a regulator or other body which administers Public Addressing Identifiers; and
- (c) on cancellation of the applicable Telecommunications Service, the Contractor will use best endeavours to procure for the Customer the right to use any related Public Addressing Identifier, where technically feasible and where commercial arrangements exist for porting of the relevant Public Addressing Identifier.

6. STANDARD FORMS OF AGREEMENT

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

7. CONTRACT PRICE

7.1 The Contractor warrants that the Contract Price for the Telecommunication Services identifies all charges for all elements of the Telecommunication Services (including any charges for training, installation license fees, set up and ongoing access and usage costs identified in Schedule 2 of the Agreement).

7.2 Notwithstanding anything contained in clause 5.2 of the Standard Terms and Conditions, where any reduction in the Contract Price for Telecommunications Services is proposed for any Customer and such reduction is permitted by the Agreement, the reduction must be implemented on a permanent basis for all existing Contracts and new Contracts to the extent applicable (except in relation to installation charges).

7.3 Where the Customer requires:

- (a) additional insurance pursuant to clause 8.1.10 of the Standard Terms and Conditions; or
- (b) additional Financial Security pursuant to clause 8.2 of the Standard Terms and Conditions; or
- (c) an additional Performance Guarantee pursuant to clause 8.3 of the Standard Terms and Conditions; or
- (d) compliance with additional secrecy and security obligations pursuant to clause 10.3 of the Standard Terms and Conditions,

which is in excess of the requirements set out in the Standard Terms and Conditions and the Agreement Details, the Customer's specific requirements must be set out in the Order, and the Customer will be liable to pay the agreed additional fees set out in the Order. Where the Customer's requirements are notified by the Customer after completion of the relevant Order, the Customer will be liable to pay such additional fees as are agreed in writing between the Parties in advance.

8. BILLING

8.1 A Correctly Rendered Invoice for a Telecommunication Service must be:

- (a) rendered within the first 10 days of each month and relate to the charges incurred during the previous month;
- (b) delivered in the format specified in Schedule 2 of the Agreement (provided that in the absence of any requirements relating to format in Schedule 2, it means the format (if any) specified in the Order); and
- (c) itemise the Telecommunication Services to which the invoice relates; including
 - (i) the respective charges for the Telecommunication Services; and
 - (ii) the date and time at which the charges were incurred.

8.2 Subject to clause 8.3 charges not invoiced in accordance with clause 8.1 may be included in a subsequent Correctly Rendered Invoice if the:

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

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

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

8.4 The Contractor shall comply with requirements of the Customer for aggregated or consolidated invoicing as set out in Schedule 2 (provided that in the absence of any requirements relating to invoicing in Schedule 2, it means the format (if any) specified in the Order).

9. AUDITS

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

9.2 The Parties agree that:

- (a) the Contract Authority will be permitted to arrange an audit of any invoices at the Contract Authority's election (limited to those invoices rendered to the Customer within the six month period prior to the relevant audit);
- (b) the Contractor is to do all things reasonably necessary to facilitate a prompt and efficient audit. Reasonable notice is to be provided of an intended Contract Authority audit;
- (c) the audit is to be carried out by an auditor, inspector, regulator or other representative nominated by the Contract Authority (with suitable qualifications and experience) during normal business hours (unless the Contractor agrees otherwise), and the Contract Authority (and its auditors) shall be required to comply with the Contractor's standard security procedures whilst on the Contractor's premises.

9.3 The Parties agree that the Contract Authority may at its own cost (except where the Contractor is required to bear certain costs under clause 9.3(d)) engage an independent consultant (with suitable qualifications and experience, who must not be a competitor of the Contractor) to undertake the billing services audit in accordance with the following terms:

- (a) The Contract Authority must ensure that the independent consultant provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.

- (b) The Contractor must, at no additional cost to the Customer or the Contract Authority:
 - (i) provide all co-operation reasonably required by the independent consultant; and
 - (ii) provide the independent consultant with access (at reasonable times and on reasonable notice) to all Documentation, materials and other information (including information in electronic form) relating to the provision of billing services to the Customer or relating to the Agreement for the purposes and to the extent reasonably necessary to enable the conduct of audit of the Contractor's provision of the billing services.
- (c) The independent consultant is not entitled to have access to:
 - (i) the Contractor's network;
 - (ii) any information that would enable the independent consultant to determine the costs of the Contractor; or
 - (iii) the Contractor's core billing systems.
- (d) The Customer and/or the Contract Authority shall pay for the audit unless the audit discloses:
 - (i) a discrepancy between the charges invoiced during the period audited and the auditor's assessment of the applicable charges for that period; and
 - (ii) that any amount invoiced during the period audited is found by the independent consultant to be overcharged in error by more than 5 per cent, in which case the Customer may recover:
 - (i) the overcharged amount; and
 - (ii) the costs of the audit conducted, subject to the following limitations:
 - (A) limited to a maximum of 50% of the costs of the audit in those circumstances where the discrepancy is 5% or more, but less than 10%;
 - (B) limited to a maximum of 75% of the costs of the audit in those circumstances where the discrepancy is 10% or more, but less than 20%; and
 - (C) 100% of the costs of the audit in those circumstances where the discrepancy is 20% or greater,

in accordance with clause 16.3 of the Standard Terms and Conditions.

9.4 The Parties agree that the Contract Authority may request an audit of the Contractor's performance of the Telecommunications Services (other than billing services), including the Contractor's compliance with the Service Levels, no more than once annually unless a second or subsequent audit during that period is required to be conducted:

- (a) at the request of the internal audit department of the Contract Authority or the Customer in the course of conducting an agency-wide audit;
- (b) for the purpose of verifying the accuracy of any incident report provided by the Contractor in relation to a significant failure, or recurring failures, in relation to the Telecommunications Services;
- (c) for the purpose of verifying that the Contractor has undertaken any actions required as a result of a previous audit, provided that the Contract Authority cannot reasonably achieve that purpose without conducting an audit; or
- (d) at the request or direction of a regulator.

The Contractor shall keep and ensure all its records, invoices and all relevant supporting documentation are available for a period of six years following the termination or expiration of this Agreement.

9.5 The Contractor is to do all things reasonably necessary to facilitate a prompt and efficient audit of the Telecommunications Services. Reasonable notice is to be provided of an intended Contract Authority audit. The audit is to be carried out during normal business hours (unless the Contractor agrees otherwise) at a time and date mutually agreed between the Contract Authority and the Contractor and in a manner that does not unduly interfere with the Contractor's normal business activities. The Contract Authority (and its auditors) are to comply with the Contractor's standard security procedures whilst on the Contractor's premises. Any audit will be conducted subject to the confidentiality provisions set out in the Standard Terms and Conditions.

9.6 The Parties agree that the Contract Authority may at its own cost engage an independent consultant (with suitable qualifications and experience) to undertake the audit of the Telecommunications Services in accordance with the following terms:

- (a) The Contract Authority must ensure that the independent consultant provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.
- (b) The Contractor must, at no additional cost to the Customer or the Contract Authority:
 - (i) provide all co-operation reasonably required by the independent consultant; and
 - (ii) provide the independent consultant with access (at reasonable times and on reasonable notice) to Sites only to the extent reasonably necessary to enable the independent expert to audit the provision of the Telecommunications Services (other than billing services) at those Sites under the Agreement, provided that such access shall be limited as follows:
 - (A) in relation to disaster recovery, to be limited to access to a copy of the Contractor's disaster recovery plan to the extent relevant to the Telecommunications Services at those Sites; and
 - (B) in relation to the network, to be limited to access to the monitoring tools applicable to the Telecommunications Services provided at those Sites (any such access to be in the presence of, and under the supervision of, the Contractor's nominated personnel).
- (c) The audit rights under this clause 9.5 extend to audits or practices, procedures, systems and general controls relating to the Telecommunications Services (including security), but do not include audits of all or part of the Contractor's network or the Contractor's billing systems.

10. ISSUE RESOLUTION

10.1 For the avoidance of doubt, an Issue Notice in relation to a Telecommunication Service shall include the following information (if it is reasonably available):-

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

11. NETWORK MANAGEMENT AND SERVICE LEVELS

11.1 The Contractor must:

- (a) use all reasonable endeavours to undertake all maintenance of the Contractor's network at such times and in such manner as to avoid any impact on the provision of Telecommunications Services to Customers in accordance with the Agreement; and
- (b) continue to meet or exceed the Service Levels while undertaking maintenance of the Contractor's network, provided that the Contractor may undertake scheduled maintenance (upon giving 48 hours written notice) that causes non-compliance with the Service Levels up to a maximum of 24 hours in any 365 day period (as measured across all Telecommunications Services provided to the Customer). The Contractor must ensure that the Contractor's network has sufficient redundancy to enable the Contractor to comply with its obligation in relation to the Service Levels under this clause 11.1.

11.2 Without prejudice to its obligation under clause 11.1 of this Module 9, where the Contractor reasonably anticipates that:

- (a) any scheduled maintenance of the Network will or might have an impact on the provision of Telecommunications Services to the Customers; and
- (b) the Contractor may not be able to meet or exceed the Service Levels while undertaking such maintenance;

the Contractor must obtain the Customer's express written approval at least 5 business days prior to undertaking such maintenance, and the Customer must act reasonably in giving or withholding such approval.

11.3 Notwithstanding clause 11.2 of this Module 9, the Contractor may conduct non-scheduled maintenance on the Contractor's network in the event of an emergency.

11.4 The Contractor must monitor the Telecommunications Services at all times to ensure availability to the Customer in accordance with the Service Levels.

11.5 The Contractor will immediately notify the Customer of the occurrence of, or the pending or threatened occurrence of any event that may adversely affect the Contractor's ability to perform the Telecommunication Services in accordance with the Agreement, including the Service Levels.

- 11.6 The Contractor warrants that Customer will have access to the Telecommunication Services in accordance with the Service Levels. Where a fault occurs in a Telecommunication Service, then the Contractor is to proceed with reasonable skill and care to remedy or assist in remedying the fault.
- 11.7 Unless the fault or delay of the Contractor is caused by an Event, the Price of the affected Telecommunication Service shall be adjusted in accordance with the Service Level Agreement where the provision of the Telecommunication Services by the Contractor has not complied with the Service Levels.
- 11.8 During the Term, the Contractor will maintain a telephone help desk in accordance with the scope and service levels set out in Schedule 2 of the Agreement, to provide consultations, assistance, advice and problem determination to the Customer on:
- (a) the operation and function of the Telecommunications Services; and
 - (b) faults in the Telecommunications Services.
- 11.9 Help desk services will be provided by the Contractor in accordance with the specific requirements set out in Schedule 2 of the Agreement.
- 11.10 In exercising its rights under clause 11.5.3 of the Standard Terms and Conditions, the Customer is not entitled to have access to the Contractor's network.
- 12. REPORTING REQUIREMENTS**
- 12.1 The Contractor must comply with the reporting requirements set out in Schedule 2 of the Agreement.
- 12.2 Without limiting the foregoing, the Contractor must also make available to the Contract Authority a copy of all reports and records that the Contractor is required to provide to the Customer under Schedule 2 of the Agreement, together with copies of all Orders received from Customers in the prior month, at no additional cost to the Customer.
- 13. BENCHMARKING OF SERVICES**
- 13.1 The Contract Authority may undertake benchmarking of Telecommunication Services no more than twice annually, for the purposes and scope specified below:
- (a) to compare:
 - (i) the Prices the Customer is paying to the Contractor for the Telecommunications Services; and
 - (ii) the quality and standard of performance of the Telecommunications Services (as reflected in, among other things, the Service Levels),
 against prices being paid by, and the quality and standard of performance of services being provided to, the Customer's peer organisations for the same or similar services at similar volumes, functionality and in similar geographic regions; and
 - (b) to implement the results of the Benchmarking Report in accordance with clause 13.7 of this Module 9.
- 13.2 The Contract Authority may at its own cost engage an independent consultant to undertake the benchmarking (**Benchmarker**). The Benchmarker will be selected from the Benchmarking Panel. The Parties agree that the Contract Authority may disclose to the Benchmarker any provisions of this Module 9 and the Agreement relevant to the Telecommunications Services, and that the Benchmarker will be required to comply with each of the Parties' reasonable confidentiality and security requirements.
- 13.3 The Parties must give the Benchmarker:
- (a) access to any premises, equipment, personnel, records or documents; and
 - (b) any assistance,
- reasonably required by the Benchmarker to conduct the benchmarking exercise. Without limiting the foregoing, the Contractor must provide the Benchmarker with reasonable access to its price, staffing and configuration information on request, but may require this to be in confidence. The Contractor is under no obligation to disclose information dealing with customer-specific internal costs, profit margins or confidential customer information if that information identifies the customer, but must provide the required information to the Benchmarker in a way that does not identify the customer.
- 13.4 Each Party will bear its own internal costs of complying with its obligations under this clause 13.

13.5 A benchmarking exercise will be based on average data for broadly equivalent services in Australia for the immediately preceding 12 month period. The Contract Authority must instruct the Benchmarker to benchmark the Telecommunications Services on the basis of the following measures:

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

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

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

13.7 Where the Benchmarker finds that the Prices charged by the Contractor for any Telecommunications Services are higher than those identified in the benchmarking report the Contractor must adjust the Prices to match the benchmark with effect from two months following the date of commencement of the benchmarking exercise.

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

- (a) terminate the Agreement, in whole or in part, on at least 30 days' notice, without having to pay any compensation to the Contractor (subject to the obligations of the Customer in relation to fees due and payable under the Agreement in respect of Telecommunications Services provided up until the date of termination, and subject to the Parties' obligations in relation to the Transition-Out Services under clause 15 of this Module 9); and
- (b) cease to acquire the whole or any specified part of the Telecommunications Services affected by the benchmarking exercise, and in such case the Customer will have no obligation to pay any fees in respect of those Telecommunications Services, following the date of termination.

14. TRANSITION IN ARRANGEMENTS

14.1 On request by a Customer, the Contractor must prepare a plan for transition-in in accordance with the specific requirements set out in Schedule 2 (**Transition-In Plan**) for the transition of Telecommunications Services to the Contractor (**Transition-In Services**) within 30 days following the Customer's request, which must be approved by the Customer prior to the Contractor implementing any of the required Telecommunications Services.

14.2 The Transition-In Plan shall be binding on the relevant Parties following approval by the Customer pursuant to clause 14.1 of this Module 9, and the Contractor must perform all of the Transition In Services identified in the Transition-In Plan. Subject to clause 14.3 of this Module 9, the Contractor must perform the Transition In Services without any disruption to the Customer's business.

14.3 For the avoidance of doubt, the Contractor will be liable for any disruption in the performance of the Transition In Services except where such disruption:

- (a) has been identified by the Contractor as a planned disruption in the Transition-In Plan; or
- (b) is beyond the effective control of the Contractor.

15. TRANSITION OUT ARRANGEMENTS

15.1 On termination or expiry of the Contract or part of the Contract by the Customer, the Contractor will provide such assistance as is reasonably necessary for the Telecommunication Services to continue without interruption for a period of up to six months (**Transition Out Period**) on the same terms as the Contract to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer (except in those circumstances where termination arises as a result of the Customer's failure to pay moneys owing in accordance with clause 18.5 of the Standard Terms and Conditions).

15.2 Telecommunications Services disengaged in accordance with this clause 15 (whether encompassing all or part of the Telecommunications Services), and any additional services which the Contractor is required to provide under this clause 15, are referred to in this clause 15 as the Transition Out Services.

15.3 The Contractor must, in relation to the Telecommunications Services disengaged under this clause 15:

- (a) continue to provide such Telecommunications Services (including any associated monitoring, reporting and other related services required under the Agreement), during the Transition-Out Period in accordance with the terms of the Agreement;

- (b) do everything within its control to ensure that there is no disruption to such Telecommunications Services during the Transition-Out Period; and
- (c) provide for the orderly hand over of such Telecommunications Services to a third party supplier nominated by the Customer.

- 15.4** The Customer may terminate the Transition-Out Services, in whole or in part, at any time by giving the Contractor 10 business days written notice of such termination.
- 15.5** On request by a Customer, the Contractor must prepare a plan for the disengagement of Telecommunications Services in accordance with the specific requirements set out in Schedule 2 (**Transition-Out Plan**) within 30 days.
- 15.6** The Customer must pay the Contractor for any Telecommunications Services provided during the Transition-Out Period in accordance with the Prices specified in the Agreement in effect immediately prior to the commencement of the Transition-Out Period.
- 15.7** The Customer must also pay the Contractor a reasonable amount for any additional services (other than Telecommunications Services referred to in clause 15.6 of this Module 9), costs and expenses incurred in the provision of the Transition-Out Services calculated to the extent practicable in a manner consistent with the Prices, such amount to be agreed and specified in the Transition-Out Plan.

16. COOPERATION WITH THIRD PARTY SUPPLIERS

- 16.1** Without limiting clause 17 of this Module 9, the Contractor agrees to comply with the Customer's reasonable requests for cooperation and assistance for the Customer and its third party suppliers (if any) in connection with the Telecommunications Services but which cooperation must at a minimum include providing all reasonable co-operation and assistance in relation to the following matters:

- (a) ensuring that the Telecommunications Services are able to be delivered in conjunction with other relevant projects and services in a coordinated, effective and timely manner;
- (b) providing:
 - (i) connection to any infrastructure, facilities or equipment, or access to the Documentation or materials used in providing the Telecommunications Services; or
 - (ii) any information regarding the network or system constraints, protocols, interfaces, architecture and other operating parameters which provision is necessary to enable the Customer to properly receive the Telecommunications Services or for the third party supplier to perform any related services;
- (c) connection or interfacing between the Customer's or third party supplier's equipment or software and the Contractor's facilities or systems used to provide the Telecommunications Services, and making the Customer's or third party supplier's equipment or the output of any services compatible with the Contractor's facilities or systems used to provide the Telecommunications Services; and
- (d) agreeing on procedures with the Customer and any third party suppliers for the division of responsibilities in relation to services and functions that may overlap between the Contractor and third party suppliers.

- 16.2** If the Contractor provides a connection to any infrastructure, facilities, equipment or access to any Documentation under this clause 16, this connectivity or access is subject to the Contractor's reasonable security requirements and procedures. If the Contractor provides information to a third party supplier under this clause, that third party supplier must, if required by the Contractor, sign a non-disclosure undertaking in a form reasonably requested by the Contractor and affording no less protection than those standards applied by the Contractor to the protection and disclosure of its own confidential information.

17. COOPERATIVE PROBLEM RESOLUTION PROCEDURES

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

- (a) determines that it is responsible for resolving the problem, in which case the Contractor must notify the Customer accordingly and proceed to remedy the problem in a timely manner and in accordance with its obligations under the Agreement; or
- (b) has handed over responsibility for the resolution of the problem to the third party provider in accordance with this clause 17.

- 17.2** The Contractor may only hand over responsibility for the resolution of a problem referred to in this clause 17 to a third party provider where the Contractor:

- (a) has investigated the problem in accordance with this clause 17;
- (b) has reasonable grounds to believe that the cause of the problem is a factor for which the third party provider is responsible; and
- (c) has given the Customer and the third party provider:
 - (i) notice that it has investigated the problem;
 - (ii) a description of the factor or factors which the Contractor considers to have caused the problem; and
 - (iii) a copy of any network or service reports and such other data as reasonably necessary to establish that the cause of the problem is a factor for which the third party provider is responsible.

17.3 If, after handing over responsibility for the resolution of a problem to the third party provider in accordance with this clause 17, the third party provider subsequently notifies the Contractor that it believes that the Contractor is responsible for the resolution of the problem, the matter will be resolved in accordance with the issue resolution procedures set out in the Agreement.

18. SECURITY

18.1 The Contractor must use all reasonable endeavours to:

- (a) implement and maintain appropriate security measures relating to the Telecommunications Services with the purpose of the prevention of unauthorised access:
 - (i) by any third party to the Contractor's network; and
 - (ii) by any Customer to the data or Confidential Information of another Customer;
- (b) ensure that all software deployed in the delivery of the Telecommunications Services incorporates industry best practice in relation to the implementation of encryption systems, anti-virus protection, patches, updates and upgrades for security purposes;
- (c) implement and maintain appropriate measures to maintain the confidentiality and integrity of data in the Contractor's network;
- (d) provide an applicable Information Security Management System in accordance with AS/NZS ISO/IEC 17799:2001 Information Technology – Code of Practice for Information Security Management (as updated from time to time) and, as relevant, AS 13335 Parts 1 to 5 Information Technology – Guidelines for the Management of IT Security (as updated from time to time) or equivalent;
- (e) meet the following standards:
 - (i) "Information Security Guidelines for NSW Government – Part 3: Information Security Baseline Controls" (January, 2001), as updated from time to time (available from <http://www.oict.nsw.gov.au/pages/4.3.18-Security-Pt3.htm>);
 - (ii) AS/NZS 7799.2:2000 (Previously known as 4444.2) Information security management - Specification for information security management systems, as updated from time to time; and
 - (iii) relevant information privacy statutes and codes of practice issued pursuant to such privacy statutes; and
- (f) address any specific security needs of the Customer in relation to the Telecommunications Services, as notified to the Contractor in writing from time to time, provided that to the extent such request is in addition to the requirements for compliance with this clause 19, the Customer must bear the cost of such additional requirements.

18.2 The Contractor must provide to the Customer:

- (a) as soon as reasonably practicable following a request by the Customer:
 - (i) a statement of the types and severity of any security risks to confidentiality and integrity against which the Contractor's network is safeguarded from time to time;
 - (ii) a copy of the Contractor's then current security policy; and
 - (iii) the details of any changes made to the security policy since the last time a copy was provided to that Customer; and

(b) following any security incident affecting the Contractor in respect of the Telecommunications Services:

- (i) notification of the security incident within one business day; and
- (ii) a detailed security incident report within 3 business days.

18.3 Clause 11.3(g) of the Standard Terms and Conditions shall have no application to Telecommunications Services under this Module 9.

19. INTELLECTUAL PROPERTY AND OWNERSHIP OF DATA

19.1 For the purposes of this Module 9, clause 9.2 of the Standard Terms and Conditions is replaced with this clause 19.

19.2 For the purposes of this clause 19:

“Customer Works” means

- (a) all information provided to the Contractor by the Customer under this Module;
- (b) any Confidential Information of the Customer or other information proprietary to it;
- (c) all reports, diagrams (including network diagrams), Documentation, cable records and all other material (including, for the avoidance of doubt, any business processes, tools or methodologies) created by the Contractor for the exclusive purpose of providing the Telecommunications Services to that Customer; and
- (d) all information and records (including all monitoring information and records) relating to the supply of the Telecommunications Services by Contractor to that Customer, including without limitation all details relating to utilisation levels and traffic data (but excluding Contractor Network Data);

“Contractor Network Data” means any network data and network information (including statistical data and configuration information, and any other such data necessary for administrative, corporate governance, network operations, facilities management and related purposes) relating directly to the Contractor's provision of the Telecommunications Services in accordance with this Agreement, which is generated by the Contractor, by the Contractor's network, or by the Contractor's software, systems or equipment which monitor the operation or performance of its network, and includes:

- (a) any documentation or records related to such data or information;
- (b) any products resulting from the use or manipulation of such data or information; and
- (c) any and all copies of any of the above.

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

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

19.3 The Customer will own all Intellectual Property Rights in the Customer Works immediately from creation (including part creation) regardless of whether the Intellectual Property Right arises during or after termination of the Agreement.

19.4 The Contractor assigns to the Customer all Intellectual Property Rights in all Customer Works created or developed by the Contractor. This assignment will be effected on the creation of such Intellectual Property Rights (including as a present assignment of future copyright) without the need for further consideration.

19.5 The Customer grants to the Contractor, for the effective period of the Contract, to the extent necessary and for the sole purpose of providing the Services, a royalty-free, non-exclusive, non-transferable licence to use the Customer Works in Australia for the purpose of providing the Telecommunications Services to the Customer.

19.6 The Contractor retains all Intellectual Property Rights in the Contractor Works immediately from creation (including part creation) regardless of whether the Intellectual Property Right arises during or after termination of the Agreement.

- 19.7** The Contractor grants to the Customer a royalty free, irrevocable, non-transferable and non-exclusive right and licence to use:
- (a) **during the Term and any Transition-Out Period:** the Contractor Works (including Contractor Works in which the Intellectual Property Rights are owned by a third party, or which relate to the Contractor's network) and all Generic Third Party Documentation, but excluding the Contractor Network Data which is governed by paragraph (b); and
 - (b) **in perpetuity:** the Documentation (other than Generic Third Party Documentation) and the Contractor Network Data, such use to be limited to the Customer's internal operational purposes.
- 19.8** The Contractor must, in addition to its obligations under clause 11.7 of the Standard Terms and Conditions and without limiting its obligations under the Standard Terms and Conditions in relation to compliance with the Statutory Obligations:
- (a) comply with all applicable telecommunications standards and codes; and
 - (b) obtain and maintain any licences, authorisations, consents, approvals and permits required under any applicable Statutory Obligations to provide the Telecommunications Services.
- 20. ESCROW OF SOURCE CODE**
- 20.1** For the purposes of this clause 20:
- "Escrow Agreement"** means an Agreement substantially in the form of Schedule 11 duly amended as necessary to include the Contract Authority in place of the Customer.
- "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 repaid that are specified in the Agreement.
- 20.2** If specified in the Agreement Details, the Contractor must arrange:
- (a) for itself, the Contract Authority and an escrow agent approved by the Contract Authority to enter into an Escrow Agreement in relation to the Escrow Materials; or
 - (b) for the Contract Authority to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.
- 20.3** Any escrow arrangements to which the Contract Authority becomes a Party under this clause 20 must endure for at least the Term of the Agreement unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in writing.
- 20.4** The Contractor must consult with and comply with the reasonable directions of the Contract Authority in any negotiations with the escrow agent arising under this clause 20.
- 20.5** The Contractor agrees that the Contract Authority may, if reasonably required by a Customer, disclose or provide to that Customer:
- (a) any Escrow Materials and Supporting Material received pursuant to this clause 20.
 - (b) documentation or conclusions formed or received by the Contract Authority or independent assessor in relation to testing and verification conducted in relation to the Source Code and Supporting Material.
- 20.6** Unless otherwise stated in the Agreement, clause 14.8 of the Standard Terms and Conditions is not to have effect.

CATEGORY 5 SPECIAL TERMS AND CONDITIONS

ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems and Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 9 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 9 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 9).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

MODULE 11 MANAGED SERVICES – GTA

1. INTERPRETATION

1.1 The terms and conditions included in this Module 11 form part of the Contract and apply when a Customer places an Order for Managed Services.

1.2 In this Module, unless the contrary intention appears:

“**Managed Services**” means Services whereby the Contractor agrees to either manage all or part of the Customer’s information technology requirements or otherwise to manage the external delivery of services to the Customer, as more particularly described in the Order.

1.3 Other capitalised words and expressions used in this Module are defined in Part 2 of the Agreement.

2. PERIOD OF SERVICES

2.1 The Managed Services must be provided for the Contract Period unless the Contract is earlier terminated in accordance with the Agreement. If no Contract Period is specified in the Order, then the Managed Services will be provided for the period continuing from the Commencement Date until either party cancels the Managed Services with 30 days prior Notice in Writing.

3. MANAGED SERVICES

3.1 The Contractor must provide the Managed Services specified in the Order in accordance with the Contract.

3.2 The Contractor agrees that the Managed Services must as a minimum:

- (a) meet the Contract Specifications;
- (b) be performed in accordance with the Service Level Agreement and any other performance measures specified in the Service Level Agreement; and
- (c) include a transition in plan and transition out plan which each sets out a methodology and program for meeting the obligations in clauses 4 and 6 respectively.

3.3 Unless otherwise specified in the Order, the Contractor must ensure that the resources and methodologies used in providing the Managed Services remain consistent with, and reflect, those used by the Contractor in delivering similar services to other customers at the same time and in similar circumstances.

3.4 If as part of the Managed Services a Deliverable is required to which the terms or conditions of another Module relate, those Deliverables may be procured by the Contractor either:

- (a) as a Nominee Purchaser, by placing an Order under the relevant Contract Authority agreements; or
- (b) as specified in the Order.

4. TRANSITION IN

The Contractor must, in addition to any other requirement specified in the Order, as necessary:

- (a) acquire from the Customer any assets specified in the transition plan;
- (b) comply with obligations specified in the Order regarding the transfer or management of third party agreements;
- (c) comply with the requirements of the transition plan concerning the future role of the Customer's existing Personnel, including the transfer of such Personnel to the Contractor;
- (d) ensure it is able to deliver the Managed Services from the date stated in the transition plan;
- (e) ensure (to the extent practical) that all third party agreements, licences or other contractual arrangements entered into by the Contractor for the purposes of the Contract ('agreements') from the date the transition in process commences incorporate a term requiring the third party to consent to novation or assignment of those agreements to an alternative service provider or to the Customer upon termination of the Managed Services for any reason. The Contractor will bear any costs resulting from the inclusion of the above term in those agreements; and
- (f) prepare a procedures manual which, once agreed by the Customer, will form part of the Contract and which, in addition to any other requirements specified in the Order, must describe how the Contractor will manage the delivery of the Managed Services, including:
 - (i) how compliance with the Service Levels and other performance factors will be measured and met;
 - (ii) procedures to identify and rectify failures in the quality of the Managed Services;
 - (iii) the acceptance procedure for Deliverables supplied pursuant to the Managed Services;
 - (iv) how changes to the Managed Services or method of delivery will be identified and met;
 - (v) proposed audit requirements; and
 - (vi) staffing, reporting, planning, and supervisory activities normally undertaken in respect of similar services in similar circumstances.

5. SERVICE DELIVERY

5.1 Unless the Customer agrees otherwise in writing, the Managed Services will be performed in Australia.

6. TRANSITION OUT PLAN

6.1 The Contractor shall, within six (6) months of the commencement of the Contract if required by the Customer develop to the Customer's satisfaction a comprehensive transition out plan on a Time and Materials basis. The parties shall annually (or other period deemed appropriate by the Customer) review the transition out plan and the Contractor shall implement any agreed changes.

7. TRANSITION OUT

On termination or expiry of the Contract or part of the Contract by the Customer, the Contractor will if requested by the Customer provide such assistance as is reasonably necessary for the Services to continue without interruption for a period of up to six months on the same terms of the Contract to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer. Unless otherwise specified in the transition out plan, the Contractor must implement arrangements for:

- (a) the novation or assignment (to the extent practical) of any third party agreements, licences and other contractual arrangements entered into by the Contractor for the purposes of the Contract ('agreements') or the transfer of management responsibility in respect of such agreements, from the Contractor to an alternative service provider or to the Customer. The Contractor must use its reasonable commercial endeavours to ensure that the transfer is effected without incurring to the Customer, any increases in or transfer charges for the products and services to which those agreements relate;
- (b) the selling to the alternative service provider or to the Customer at fair market value any equipment used by the Contractor for the purposes of the delivery of the Managed Services;
- (c) the transfer of the Customer's data to an alternative service provider and/or to the Customer; and

- (d) the granting by the Contractor to an alternative service provider and/or to the Customer of access to all material held by the Contractor and produced in connection with and for the purposes of delivering the Managed Services, regardless of the manner of storage, except that:
 - (i) there is no requirement pursuant to this sub-clause 6.1(d) for the Contractor to assign any Intellectual Property rights in such material; and
 - (ii) the Customer must agree to comply with any reasonable security and confidentiality requirements stipulated by the Contractor in respect of access to such material.

7.2 This clause 7 survives termination or expiry of the Contract for a period of six years.

CATEGORY 5 SPECIAL TERMS AND CONDITIONS**ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS**

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems and Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 11 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 11 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 11).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

MODULE 12 SYSTEMS INTEGRATION SERVICES – GTA

1. INTERPRETATION

1.1 The terms and conditions included in this Module 12 form part of the Contract and apply when a Customer places an Order for Systems Integration Services.

1.2 In this Module, unless the contrary intention appears:

“**System**” means the system specified in the Order 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 Order to be provided by the Contractor to the Customer.

“**Test Data**” means data or input that is used to ensure that an algorithm or program functions correctly.

1.3 Other capitalised words and expressions used in this Module are defined in Part 2 of the Agreement.

2. PERIOD OF SERVICES

2.1 The Systems Integration Services must be provided for the Contract Period unless the Contract is earlier terminated in accordance with the Agreement. If no Contract Period is specified in the Order, then the Systems Integration Services will be provided for the period continuing from the Commencement Date until either Party cancels the Systems Integration Services with 30 days prior Notice in Writing.

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 Contract Authority agreements; or
- (b) as specified in the Order;.

and the provisions of clause 3.2 shall apply.

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 Customer 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 Order in accordance with the Contract. The Contractor shall assume project management and control including management of the project risks which are identified as the Contractor's responsibility under the Contract.
- 4.2 The Contractor shall supply the equipment (CSE) specified in the Order.
- 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 Customer must include in or annex to the Order its Statement of Requirements. The Customer in accordance with clause 12 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 Customer's requirements in connection with the provision of the System.
- 4.6 The Customer shall supply the CSI specified in the Order and comply with its obligation under clause 12 of Part 1 of the Agreement to repair or replace the CSI.
- 4.7 The Customer will allow the Contractor reasonable access to the Site for the purpose of meeting its obligations to supply the System Integration Services.
- 4.8 The Contractor shall prepare and implementation planning study in accordance with clause 15.6 of the Agreement.

5. IMPLEMENTATION PLANNING STUDY

The Contractor shall prepare an implementation planning study in accordance with clause 15.6 of Part 1 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 Customer, 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 Order.
- 6.5** The PIPP for the Systems Integration Services must, unless otherwise specified in the Order, include the following Stages:
- (a) assessment and definition of the:
 - (i) Customer's existing system, if necessary;
 - (ii) System;
 - (iii) Customer's goals, requirements and expectations in respect of the Systems Integration which must include a statement of:
 - (A) the Contractor's understanding of the Customer'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 Customer); 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 Customer 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 Customer'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) Development of a Contract Specification for the Systems Integration Services which must be completed and approved in accordance with the Order;
 - (e) Implementation of the Systems Integration Services in accordance with clause 3;
 - (f) Testing and acceptance of the Systems Integration in accordance with clause 14.5 of Part 1 of the Agreement.

7. MAINTENANCE OF CUSTOMER SUPPLIED ITEMS (CSI)

- 7.1 If specified in the Order, the Contractor is hereby appointed as agent to manage any existing maintenance obligations in respect of CSI specified in the Order during the Contract Period.

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 14.5 of Part 1 of the Agreement; and
 - (b) on the date specified in the certificate of acceptance issued to the Contractor by the Customer.
- 8.2 For the purposes of clause 14.5.10 of Part 1 of the Agreement, a certificate of acceptance under 14.5.10(a) will be the only sufficient form of notification of acceptance that the Systems Integration Services have been performed in accordance with the Contract.
- 8.3 The Customer 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 Customer 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 Customer, final System Acceptance Tests in accordance with clause 14.5 of the Agreement may be conducted by the Customer.
- 8.5 Unless the Customer has notified the Contractor that it is not satisfied that the final System Acceptance tests have been passed, the Customer 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 Customer, 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 Order.

10. TRANSITION OUT PLAN

- 10.1 The Contractor shall, within 6 months of the commencement of the Contract if required by the Customer develop to the Customer's satisfaction a comprehensive transition out plan on a Time and Materials basis. The parties shall annually (or other period deemed appropriate by the Customer) 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 Order, the Contractor will, if requested by the Customer for the period of up to 6 months on the same terms of the Contract, assist the Customer in transferring responsibility for providing the Systems Integration Services either to an alternative service provider or to the Customer 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 Contract ('agreements') or the transfer of management responsibility in respect of such agreements, from the Contractor to an alternative service provider or to the Customer. The Contractor must use its reasonable commercial endeavours to ensure that the transfer is effected without incurring to the Customer, 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 Customer 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 Customer's data to an alternative service provider and/or to the Customer itself; and
- (d) the granting by the Contractor to an alternative service provider and/or to the Customer 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 10.1(d) for the Contractor to assign any Intellectual Property Rights in such material; and
 - (ii) the Customer 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 10 survives termination or expiry of the Contract for a period of 6 years.

CATEGORY 5 SPECIAL TERMS AND CONDITIONS

ST1 APPLICATION OF SPECIAL TERMS AND CONDITIONS

These special terms and conditions ("**Special Terms**"):

- (a) apply to the supply of GTA Category 5 Telecommunications Systems and Services (**GTA Category 5 Deliverables**); and
- (b) are incorporated into and form part of this Module 12 (including for the purposes of construing the Order of Priority recited in clause 6.4 of the Standard Terms and Conditions), provided that these Special Terms will take precedence over the Standard Terms and Conditions and/or the terms of Module 12 where and to the extent expressly stated.

ST2. PRICING

- (a) The Contractor may submit a quotation to the Eligible Customer in accordance with the specification and service level requirements of the Eligible Customer.
- (b) If the quotation submitted by the Contractor under clause ST2(a) is accepted by the Eligible Customer, the Contractor must deliver the product and or service for the price specified in the quotation and in accordance with the specification and service level requirements of the Eligible Customer.

ST3. PRESCRIBED CONTRACTING ARRANGEMENT

- (a) Subject to clause ST3(b) below, the Contractor must not, without the prior written consent of the Contract Authority, enter into any agreement for the supply of telecommunications products or services to an Eligible Customer after the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details, other than by entering into a Contract with the Eligible Customer pursuant to the terms of this Agreement (encompassing without limitation the Standard Terms and Conditions and this Module 12).
- (b) The provisions contained in clause ST3(a) do not apply to:
 - (i) telecommunications products or services of a type not supplied or required by the Contract Authority to be supplied as part of GTA Category 5 Deliverables, and which the Contract Authority certifies in writing are not subject to ST3(a); and
 - (ii) supply agreements between the Contract Authority and any Eligible Customer for the supply of telecommunications products or services that are in existence as at the "Commencement Date of the Agreement Period" as specified in Item 7(a) of the Agreement Details (but not extensions or renewals of the same).

[FIVE]

ORDER FORMS

Order Form

This Order is placed under this Agreement between the Contractor and the Contract Authority and includes Parts A, B and C of this Order.

PART A GENERAL ORDER DETAILS

(i) Customer

Name of Customer

Service Address

Customer's Representative

(ii) Contractor

Name of Contractor

Service Address

Contractor's Representative

(iii) Agreement

Specify Agreement number and title Title

(iv) Modules that apply to the Contract, as agreed between the Parties

Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>	Module 8 – Data Management	<input type="checkbox"/>
Module 2 – Hardware Maintenance Services	<input type="checkbox"/>	Module 9 – Telecommunications	<input type="checkbox"/>
Module 3 – Licensed Software	<input type="checkbox"/>	Module 9A – GTA Broadband Local Access	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 10 – Web Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input type="checkbox"/>	Module 11 – Managed Services	<input type="checkbox"/>
Module 6 – IT Personnel	<input type="checkbox"/>	Module 11A – GTA ISM	<input type="checkbox"/>
Module 7 – Professional Services	<input type="checkbox"/>	Module 12 – Systems Integration Services	<input type="checkbox"/>

(v) Person who has authorised Submission of this Order

Name Title

Signature

Date 20

(vi) List of Attachments

The following annexures are attached:[Set out particulars of any annexures]

(vii) Order Form Prevails

In the event of any inconsistency between the Official Order and any document attached to or expressly incorporated as part of the Official Order the content of the Official Order shall prevail.

(viii) Acknowledgment of Contractor

The Contractor hereby accepts all aspects of the Order.

In witness whereof the Contractor has signed this Order Form

on the day of

 20

SIGNED for and on behalf of the Contractor by

--

(who by this execution warrants his authority to so sign) in the presence of:-

--

Witness

--

OR

THE COMMON SEAL of [Name of Contractor and ACN]

--

has hereunto been duly affixed in the presence of:-

--

Director

No.	Details to be included from the Agreement	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
B1	Risk management (clause 8.1)		
	(a) Insurance Requirements	(a) Insurance Requirements	
	Insurance obtained by the Contractor under the Agreement (Contract Authority to include):		
	Customer to specify any additional insurance that it requires to the insurance the Contractor holds under the Agreement:		
	(i) Specify type of insurance required by the Customer:		
	(ii) Specify the term:		
	(iii) Specify the amount of insurance:		
	(b) Financial Security	(b) Financial Security	
	Financial Security provided by the Contractor under the Agreement (Contract Authority to include):		
	Customer to specify any additional security that it requires in addition to the Financial Security the Contractor has provided under the Agreement including:		
	(i) Specify the date by which required; and		
	(ii) The maximum aggregate sum:		
	(c) Performance Guarantee (clause 8.3)	(c) Performance Guarantee	
	Any Performance Guarantee provided under the Agreement (Contract Authority to include):		
	Customer to specify any additional Performance Guarantees it requires in addition to those provided under the Agreement.		

No.	Details to be included from the Agreement	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
	(d) Limitation of Liability (clause 8.5) Insert Liability agreed by Contract Authority (if any): Contractor is in a Small to Medium Enterprise category under the Agreement – liability can be capped at the upper limit of insurance specified in B1(a) (per event); Contractor is offering telecommunications services under the Agreement which involve end-to-end multicarrier networks without umbrella service level contracts and/or physical network assets which are in the public domain – liability can be capped at the upper limit of insurance specified in B1(a) (per event);	(d) Limitation of liability	
	Contractor is offering Products or Services under the Agreement which the Contract Authority has identified as suitable to have liability caps applied – liability can be capped at level set by Contract Authority and noted in this order Insert whether Customer requires increase in cap and amount Customer to specify if liability is to be capped under the Contract and the amount or method of determining the amount in accordance with clause 8.6.3: Customer to annex risk management assessment plan.		

No.	Details to be included from the Agreement	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
B2	Information Management (clause 9.1) Customer to specify and or annex any information that the Contractor must treat as Confidential Information: Contractor to specify any information that the Customer must treat as Confidential Information: Specify if limited disclosure of Confidential Information is permitted by a party and set out the conditions of disclosure:		
B3	Intellectual Property (clause 9.2) If Applicable the Customer is to specify any Deliverables that the Contractor will own and refer to any agreement in relation to royalties. Customer to specify in the Order if IP rights in Deliverables shall vest in both the Customer and the Contractor: Customer to specify any rights the Contractor has to use a Deliverables:		
B4	Secrecy and Security (clause 10.3) Customer to specify any secrecy or security requirements that the Contractor is to comply with during the Contract:		
B5	Contractor's Obligations (clause 11) (a) Quality Assurance Arrangements (clause 11.4.2(b)) Customer to specify any quality assurance and compliance arrangements that it requires: Specify whether Deliverables are new or otherwise: (b) Compliance with Standards and Codes (clause 11.7) (i) Customer is to specify any codes, policies or guidelines the Contractor is to comply with: (ii) any licence or accreditation requirements: (c) Credit/Debit Card (clause 16.1.3) Customer/Contractor to specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:		

No.	Details to be included from the Agreement	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
	<p>(d) CSI Costs (clause 11.11.1(d))</p> <p>Insert CSI costs:</p>		
	<p>(e) Reports (clause 11.12)</p> <p>Specify reports required, (if any) time for provision and format:</p>		
B6	<p>Customer's Obligations</p> <p>(a) CSI (clause 12.2)</p> <p>(i) Customer to specify any CSI it is providing and any costs the Contractor is to pay to use it:</p> <p>(ii) Customer to reference or attach any Contract Specifications relevant to the CSI:</p> <p>(b) Customers Personnel (clause 13.3)</p> <p>Customer to specify if it is making personnel available and their roles and responsibilities:</p> <p>(c) Site Preparation and maintenance (clause 12.3)</p> <p>Specify the Party responsible:</p>		
B7	<p>Personnel (clause 13.2)</p> <p>(a) Specified Personnel</p> <p>Nominate the key personnel (if any) who are to be dedicated to provide the Deliverables.</p> <p>(b) Sub-contractors (clause 13.5.3)</p> <p>Customer to specify if a statutory declaration subcontractors, substantially in the form of schedule 4, is required.</p>		
B8	<p>Performance of the Contract (clause 14)</p> <p>(a) Delivery (clause 14.1 and 14.2)</p> <p>Customer to specify the</p> <p>(i) nature of the Deliverable:</p> <p>(ii) volume of the Deliverable:</p> <p>(iii) date of delivery:</p> <p>(iv) Site to be delivered to:</p> <p>(v) hours of delivery.</p>		

No.	Details to be included from the Agreement	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
	<p>(b) Acceptance Testing (clause 14.5)</p> <p>Specify if Acceptance Testing is required:</p> <p>(i) specify Acceptance Notification Period:</p> <p>(ii) specify party to conduct Acceptance Tests and annex or detail information to be included in acceptance test plan:</p> <p>(iii) specify the commencement date for Acceptance Tests</p> <p>(iv) specify the Acceptance Period</p> <p>(v) specify the Acceptance Criteria</p> <p>(vi) if agreed, specify the number of hours on each normal working day for the running of the Acceptance Tests:</p> <p>If Acceptance Tests are not required, Customer to specify if the Actual Acceptance Date (AAD) will occur five business days or another number of days following the delivery of a Deliverable (clause 14.3.2).</p> <p>(c) Documentation (clause 14.6)</p> <p>Specify any additional publications or aids to be made available by the Contractor and the charge (if any):</p> <p>Specify the number of additional copies of the Documentation being purchased by the Customer and the charge:</p> <p>Specify dates Documentation is to be delivered:</p>		
B8	<p>(d) Escrow (clause 14.8)</p> <p>Specify if escrow arrangement is required.</p> <p>Time for escrow arrangement to endure.</p>		
B9	<p>Project management (clause 15)</p> <p>(a) Management Committee (clause 15.2)</p> <p>Specify if subclause 15.2.1 to 15.2.4 are to apply:</p> <p>If subclauses 15.2.1 to 15.2.4 are to apply, specify the persons on the Management Committee and any additional functions they are to carry out:</p> <p>Nominate Project Manager/Officer for each Party</p>		

No.	Details to be included from the Agreement	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
B9	(b) Customer Contract Review Procedures (clause 15.4)		
	Specify if subclauses 15.4.1 to 15.4.2 are to apply:		
	Specify any specific time intervals for service and performance reviews:		
	Specify any other matters to be reviewed:		
	(c) Site preparation (clause 15.5)		
	Specify if subclause 15.5.1 is to apply and the Contractor is to provide a Site Specification:		
	(d) Implementation planning study (clause 15.6)		
	Specify if subclause 15.6 is to apply:		
	Insert IPS objectives and time for provision of study:		
	(e) Project Implementation and Payment Plan (clause 15.7)		
	Specify if clause 15.7 is to apply:		
	(f) Staged Implementation and Right to Terminate (clause 15.8)		
	Specify if clause 15.8 is to apply:		
	(g) Time of the Essence (clause 15.10)		
	(i) specify if clause 15.10 to apply:		
	(ii) Due Date for performance and Milestones:		
	(iii) Method of calculation of Liquidated Damages (LDs):		
	(iv) No. of days LD is to be applied:		
	(h) Retention of Moneys (clause 16.5)		
	Customer to specify if percentage of Contract Price is to be retained by the Customer until AAD of a Deliverable:		
	(i) Business Contingency Plan (clause 15.11)		
	Specify if subclauses 15.11.1 to 15.11.4 are to apply:		
	(i) Customer to specify the Business Contingency Services it requires and the period of the Services:		
	(ii) Customer to state the periods that the Business Contingency Plan must be updated by the Contractor:		

No.	Details to be included from the Agreement	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
	(iii) Customer to specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:		
	(iv) Customer to specify any information to be included in the Business Contingency Plan (Part 2):		
B10	Payment (clause 16) Set out in the amounts and the times payment is due. (NB: Not required if a Project, Implementation and Payment Plan, which includes this information, exists): Specify whether the Contract Price is fixed.		
B11	Contract Variations (clause 17.2) Specify whether Schedule 12 to apply.		
B12	Termination for convenience (clause 18.4.2) Insert whether further compensation is payable and specify amount.		
B13	Additional Conditions (clause 6.3) Specify any additional conditions:		

ORDER FORM DETAILS **MODULE 1** HARDWARE ACQUISITION AND INSTALLATION

No.	Details to be included from Module 1 – Hardware Acquisition and Installation	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C1.1	Hardware being Ordered (clause 1.2) Specify the Hardware to be provided:		
C1.2	Delivery and Installation (clause 3) Specify if the Contractor is to install the Hardware: Specify if the Contractor is required to demonstrate the use of the Hardware: Specify any additional costs for installation and demonstration: Specify any additional costs for removal packaging: Contractor's Specification (clause 3.1) Annex reference the Contract Specifications:		
C 1.3	Integration and Training (clause 4.1) Specify any integration services the Contractor is to carry out: Specify and training to be carried out by the Contractor and any additional costs: Specify any training materials the Contractor is to provide:		
C 1.4	Warranty Period (clause 5.1) Specify if the Warranty Period is to be greater than 365 days from the AAD:		
C1.5	Contract Price Specify prices for Hardware:		

No.	Details to be included from Module 2 – Hardware Maintenance Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C2.1	Hardware Maintenance Services (clause 1.2) Specify the Hardware Maintenance Services to be provided: Specify the Hardware that is the subject of the Hardware Maintenance Services:		
C2.2	Contract Period (clause 2) Specify the Contract Period for the Hardware Maintenance Services: Commencement Date (clause 2) Specify the Commencement Date for the Hardware Maintenance Services: Hardware Warranty Period (clause 2) Specify if the Hardware Warranty Period for the Hardware Maintenance Services is Greater than 365 days after AAD:		
C2.3	Contract Specifications and SLA (clause 3) Annex or reference the Contract Specifications: (clause 3.1) Annex or reference the SLA (CLAUSE 3.2) (if any): <i>NB – Include response times for rectification of Defects in the SLA or in this section of the Order.</i>		

No.	Details to be included from Module 2 – Hardware Maintenance Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C2.4	Site (clause 3.2) Specify the Site at which the Hardware Maintenance Services are to be performed: Specify any other facilities that the Customer is to provide to enable the Contractor to provide the Hardware Maintenance Services:		
C2.5	Preventative Maintenance (clause 4.1) Specify the times Preventative Maintenance Services are to be performed, if any: Annex or reference if applicable the Preventative Maintenance schedule:		
C2.6	Remedial Maintenance (clause 5.1) Specify the Remedial Maintenance Services: Specify the times Remedial Maintenance Services are to be performed: Specify the charge payable for any Remedial Maintenance Services performed outside the maintenance period:		
C2.7	Contract Price Specify prices for Hardware Maintenance Services:		

No.	Details to be included from Module 3 – Licensed Software	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C3.1	Licensed Software (clause 1.2) Specify the Licensed Software to be provided:		
C3.2	Licence Period (clause 2) Specify if the Licence is not to be a perpetual licence and specify the term of the Licence:		
C3.3	Class of Licence (clause 2.1) Specify the Class of Licence: Specify the number of copies of the licensed software to be provided to the Customer:		
C3.4	Licence Rights (clause 4.1) Specify and additional licence rights that the Contractor must provide to the Customer:		
C3.5	Warranty Period (clause 5) Specify if the Warranty Period for the Licensed Software is to be greater than 90 days from the AAD:		
C3.6	Protection and Security of the Licensed Software (clause 6) Specify if the Customer must maintain records of the location of all copies to the Licensed Software:		
C3.7	Updates and New Releases (clause 7) Training (clause 7.2) Specify any training the Contractor is to provide and the costs (if any) to enable the Customer and its Personnel to operate an Update or New Release: Installation (clause 7.5) Specify any installation costs: Time and materials rates to be listed: Updates and New Releases (clause 7.5) 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): Additional Software (clause 7.5) Specify any additional software that is not an Update or New Release and its cost:		

No.	Details to be included from Module 3 – Licensed Software	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C3.8	Designated Equipment and Location (clause 8)		
	Specify if the use of the Licensed Software is restricted to any Designated Equipment:		
	Specify if the Licensed Software may only be operated at specific locations:		
C3.9	Consequences of termination (clause 10)		
	Specify if the Customer is to destroy or return to the Contractor all copies of the Licensed Software and all related Documentation after the termination of the Licnece:		
	Specify if the use of Licensed Software for archival purposes will be subject to any restrictions:		
C3.10	Reverse Engineering (Clause 12)		
	Specify any specific rights the Customer has to reverse assemble or reverse compile the Licensed Software in addition to any rights the Customer may have under the Copyright Act (1968 (Cth):		
C3.11	Contract Price		
	Specify prices for Licensed Software:		

No.	Details to be included from Module 5 – Software Support Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C5.1	Software Support Services (clause 1.2) Specify the Software Support Services to be provided, these may include but are not limited to: (a) telephone support; (b) e-mail and fax support; (d) web-based support; (e) one-site support. Specify the support period: Specify the Support Service Fees: Specify Time and Materials rates for additional services: Specify the Supported Software to be supported: Annex the SLA (if any) that the Parties have agreed to in relation to the Software Support Services:		
C5.2	Designated Equipment (clause 1.2) Specify the Designated Equipment on which the Supported Software is to be installed and/or used:		
C5.3	Contract Period (clause 2) Specify the period of the Software Support Services:		
C5.4	Commencement Date (clause 2) Specify the Commencement Date of the Software Support Services:		
C5.5	Additional Services (clause 3.4) Specify any additional services to be provided that are not included in Software Support Services: (Time and Materials rates to be specified):		
C5.6	Service Levels (clause 7) Specify any performance rebates for not meeting Service Levels, or reference any relevant Service Level Agreement Provision:		
C5.7	Contract Price Specify prices for the support period for the Software Support Services:		

No.	Details to be included from Module 7 – Professional Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C7.1	Professional Services (clause 1.2) Specify the Professional Services:		
C7.2	Contract Period (clause 2) Specify the period of the Professional Services:		
C7.3	Commencement Date (clause 2) Specify the Commencement Date of the Professional Services:		
C7.4	Specified Personnel (clause 3) Specify any Specified Personnel (key) to provide the Professional Services and their roles or responsibilities:		
C7.5	Project Implementation and Payment Plan (clause 4) Annex the Project Implementation and Payment Plan (if any) that has been agreed to:		
C7.6	Contract Prices Specify prices for the Professional Services and all applicable Time and Material rates:		

No.	Details to be included from Module 9 – Telecommunications Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C9.1	Telecommunication Services (clause 1.2) Specify the Telecommunication Services to be provided by the Contractor:		
C9.2	Contract Period (clause 2.1) Specify the Contract Period for the Telecommunication Services: Specify the Commencement Data of the Telecommunication Services:		
C9.3	Location (clause 3.1) Specify locations, if any, where the Telecommunication Services are to be provided:		
C9.4	Contractor's Specifications and Service Level Agreement (clause 3.2) Annex or reference the Contract Specifications: Annex or reference the Service Level Agreement (if any):		
C9.5	Critical Services (clause 3.3) Specify and Telecommunications Services that are Critical Services: Include any additional terms and conditions under which the Critical Services are to be supplied:		
C9.6	Scalability (clause 4) Specify any adjustments to the capacity, availability and quality of the Telecommunication Services to be provided by the Contractor during the Contract Period, including the costs of such:		
C9.7	Contract Price (clause 7) Specify the Price to be paid for the Telecommunication Service: <i>NB Establishment costs such as installation fees and set up fees should be separately identified in this section with the corresponding Price.</i>		

No.	Details to be included from Module 9 – Telecommunications Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C9.8	Billing (clause 8) 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 (iv) Default position for the number of audits a Customer may undertake is once per 6 months. Specify the required frequency, if other than this level: Back-Billing (v) Specify if Back-Billing Period is to be greater than 3 months:		
C9.9	Benchmarking (clause 11) Specify the type of benchmarking of the Telecommunication Services that may be conducted by the Customer. Specify remedies available if the Telecommunication Services fail the benchmarking:		

No.	Details to be included from Module 11 – Managed Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C11.1	Managed Services (clause 1.2 and 3.1) Specify the Managed Services the Contractor is to provide:		
C11.2	Contract Period (clause 2.1) Specify the Contract Period the Contractor is to provide the Managed Services for: Specify the Commencement Date of the Managed Services:		
C11.3	Contract Specifications and SLA (clause 3.2) Annex or reference the Contract Specifications: Annex or reference the SLA: Annex or reference the Transition in and Transition out plan:		
C11.4	Other Deliverables to be procured (clause 3.4) Specify if the Contractor is to procure any other Deliverables. List the Deliverables and indicate if the Contractor is to purchase these Deliverables as a Nominee Purchaser of the Customer or otherwise:		
C11.5	Transition In (clause 4) Specify additional obligations of the Contractor other than those specified in clause 4, if any: Specify the Contractor's obligations regarding the transfer or management of third party contracts: Specify any other items to be included in a procedures manual, other than those specified in clause 4(f), if any:		

No.	Details to be included from Module 11 – Managed Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C11.6	Transition Out Plan (clause 6) Specify the hourly rate Time and Materials for the Contractor to provide a transition out plan:		
C11.7	Transition Out Plan (clause 6) 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:		
C11.8	Contract Price Specify prices for Managed Services:		

No.	Details to be included from Module 12 – System Integration Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C12.1	System Integration Services (clause 1.2) Specify the Systems Integration Services: Specify the System the Contractor must provide after it has performed the System Integration Services:		
C12.2	Contract Period (clause 2) Specify the Contract Period of the Systems Integration Services: Specify the Commencement Date of the Systems Integration Services:		
C12.3	Implementation Planning Study (clause 5) Annex the implementation planning study		
C12.4	Project Implementation and Payment Plan (clause 5) Annex or reference customer's Statement of Requirements:		
C12.5	Statement of Requirements (clause 4) Annex or reference customer's Statement of Requirements:		
C12.6	CSI (clause 7) Specify any CSI to be supplied to the Contractor: Set out specification of CSI: Specify any costs to be borne by the Contractor:		
C12.7	Systems Integration Services (clause 4) Specify any additional services the Contractor is to perform that are not described in the PIPP: Specify if the Stages in clause 6 are to be varied or are not to be included: Specify which party will complete the Contract Specification for the Systems Integration:		

No.	Details to be included from Module 12 – System Integration Services	Minimum conditions required by the Contract Authority	Order Details agreed by the Contractor and the Customer
C12.8	Maintenance of Customer Supplied Items (clause 7) Specify if the Contractor is to manage any existing maintenance objections in respect of the CSI:		
C12.9	Warranty Period (clause 9) Specify if the Warranty for System Integration Services is to be greater than 90 days after AAD:		
C12.10	Transition Out Plan (clause 10) Specify the hourly (Time and Materials) rate for the Contractor to provide a transition out plan:		
C12.11	Transition Out (clause 11) Specify if the Contractor is not required to perform the transition out services specified in clause 12 and/or or is to provide additional transition out services:		
C12.12	Contract Price Specify prices for Systems Integration Services:		